

27 September 2013

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 2012 to 30 June 2013.

Yours sincerely



SALLY SIEVERS  
Anti-Discrimination Commissioner

---

LMB 22 GPO, Darwin NT 0801  
Floor 7, 9-11 Cavenagh Street, Darwin NT 0800  
Web: [www.adc.nt.gov.au](http://www.adc.nt.gov.au)  
E-mail: [administrationadc@nt.gov.au](mailto:administrationadc@nt.gov.au)

Telephone: 08 8999 1444  
Freecall: 1800 813 846  
TTY: 08 8999 1466  
Fax: 08 8981 3812

# CONTENTS

<b>From the Commissioner</b>	<b>5</b>
<b>The Office of the Anti-Discrimination Commissioner</b>	<b>7</b>
<b>Emerging Issues</b>	<b>11</b>
<b>Performance</b>	<b>17</b>
<b>Trends</b>	<b>33</b>
<b>Appendices</b>	<b>45</b>

---



## From the Commissioner

---



It was a great honour to be appointed as the 5<sup>th</sup> Anti-Discrimination Commissioner for the Northern Territory on 30 January 2013. I now introduce the 20th Annual Report for the Anti-Discrimination Commission (ADC) to the Attorney-General and Minister for Justice, reporting on the activities of the ADC for 2012-13.

The first five months of my appointed have been very busy. I have met with diverse members of the Northern Territory community to discuss their views on the direction for the ADC. I have also spent time getting to know the staff of the ADC and the way in which the ADC has done its business over the last few years.

I would first like to thank the committed staff and particularly Traci Keys for holding the fort during the five months between Commissioners. A very challenging time of change; where decisions with a long term effect on the direction of the ADC had to be made. I thank her for the stewardship of the ADC.

Whilst overall the number of complaints has fallen this year, and the reasons for this may be many and varied, a priority of mine since commencing has been to ensure that those complaints received are resolved in a timely manner. That a complainant is notified of the receipt and acceptance or otherwise of their complaint within two weeks and an early conciliation of the matter offered if appropriate.

An important aim is to ensure as far as possible that relationships can be maintained and issues resolved at the earliest possible stage. The key performance indicators demonstrate this has been achieved with 78% of complaints accepted being settled usually via conciliation (Appendix 1).

This approach with its emphasis on the timely resolution of all complaints will be adopted in a round of legislative reforms that was commenced in this financial year.

As well as a focus on early resolution of complaints, 2012-13 has seen the finalisation of a number of long standing complaints due to proactive strategies employed by ADC staff. It is anticipated that the success of early resolution will prevent or minimise longstanding matters in the future.

As set out in the report race remains as the number one attribute for complaints with a substantial rise in impairment complaints. The public area of which these complaints arise is most commonly work followed by the provision of goods, services and facilities.

The provision of public education and training by the ADC faced many challenges in 2012-13 as staff holding the position changed and then the dedicated position was unable to be retained in the restructure of the ADC to fit within its budget.



However as with other years a large amount of formal training was provided, as well as ADC being in the unique position to utilise staff contacts to engage with a remote indigenous community to provide information remotely.

Moving forward positions in the ADC are being changed to make involvement in education, training and community engagement part of every-ones role, rather than a dedicated section.

I would like to acknowledge and thank two long term staff members who left the ADC this year, Karyn Jessop and Surya Silva.

Karyn Jessop has been with the ADC since it first opened its doors in August 1993, when Dawn Lawrie was the Anti-Discrimination Commissioner. Karyn has worked with every Commissioner and has worked in a diverse range of roles within the ADC. Roles as diverse as the Commissioner's personal assistant, office manager, complaints support officer and her final role upon retirement as a conciliator.

Karyn has been a fierce supporter of the values of the ADC. She has provided support to parties involved in complaints before the ADC, for people attending and seeking training and in working with stakeholders. Karyn's pragmatism, intelligence and ability to relate to anyone have been significant assets for ADC. Her skills and value as a team member will be sorely missed.



Surya Silva joined the ADC in May 2007 as the Director of Public Education and Training. Her achievements in this role could never be adequately captured in words. In her time in this role she delivered 689 training and public awareness sessions, 1930 training hours for a total of 16584 participants. This is incredible output for one person.

However what she will be most remembered for was her passion for human rights and how she highlighted the importance of these rights through public events. Surya was a key player in making International Women's Day an established event for the Northern Territory, a status that remains today.

She will also be remembered for her work in regard to International Human Rights Day, and International Day of Person with a Disability. Of particular note here is her work in regard to the photographic exhibition – the beautiful “Twenty Women with Disabilities” which she did in partnership with Life without Barriers. Surya's contribution to the ADC will be longstanding.

I would finally like to take the opportunity to acknowledge the many Complainants who lodge complaints with the ADC or who raise their queries and concerns with us. This is often done at a time when people are very vulnerable. It takes real courage to raise concerns and complaints, to challenge systems, and the way others behave. It is through raising complainants and education on rights and responsibilities that we work toward the ADC's objective of equality of opportunity for all Territorians.

# THE OFFICE OF THE ANTI-DISCRIMINATION COMMISSIONER



# The Office of the Anti-Discrimination Commissioner

## Who We Are

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.

The office is a small one, with further reductions in personnel occurring in 2012-13. The current structure can be seen at figure 1.

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

- Complaints;
- Public education and training; 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 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 2013

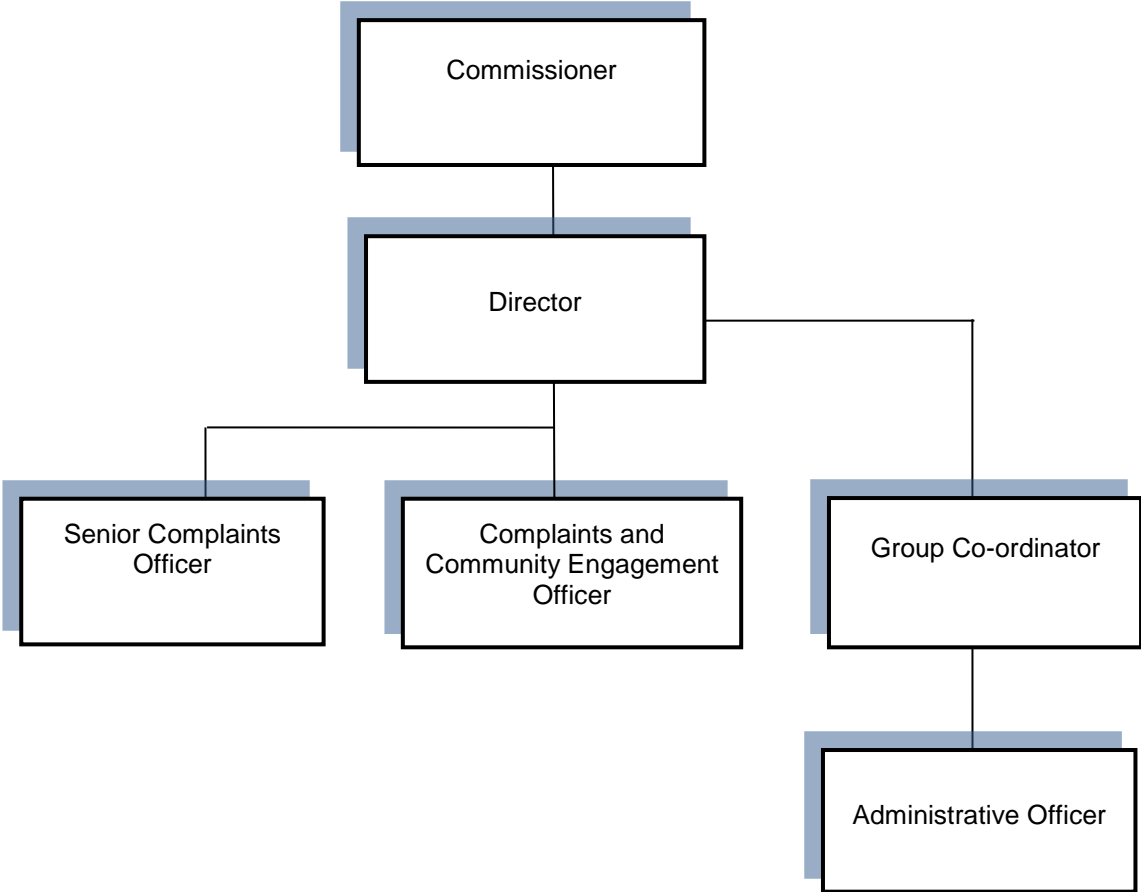


Figure 1



# EMERGING ISSUES



## what is discrimination?



freecall: 1800 813 846 or 8999 1444  
(this is not a freecall from a mobile phone)



## **IMPROVED SERVICE DELIVERY**

---

In 2012-13 the ADC has focused on providing a more timely service. While this has been on the agenda for ADC for several years now, 2012-13 saw the crystallising of many of these efforts with improved timelines and a significant reduction in back log, enabling matters to be turned around quicker and to ensure greater energy was focused on resolving matters. In 2012-13 we saw 78% of complaints being resolved and only 58 complaints being carried over into 2013-14 compared to 117 in 2012-13.

Progress was also seen in finalising matters referred to hearing. At the end of 2012-13 there were only six hearings carried over into 2013-14, there had been 22 hearings at this time last year. Of the six matters remaining, four are listed for hearing early in the next reporting period, one has been determined and waiting final orders and one is being determined on the papers.

We believe our success is due to the close case management of all matters and our focus on seeking resolution to matters as early as possible. Early intervention in our experience results in better outcomes for all parties.

Work has also commenced in 2012-13 to seek amendments to the Act to address procedural reform. The object of the reforms is to support the ADC in providing an expeditious process.

## **EMERGING DISCRIMINATION ISSUES**

---

A relatively new area of complaint arising for the ADC is that of carer or assistant animals. While formal complains are low in this area it is anticipated that this will be a growing issue in the NT and law and infrastructure is not yet there to support this issue.

A carer or assistant animal is an animal that assists in the care of someone with a disability. Most are familiar with guide dogs for the blind community, but there is less awareness of the use of animals to assist and support other impairments.

Currently under the Act the use of carer or assistant animals is not specifically covered, but may be protected under section 24 of the Act, failure to accommodate a special need.

The lack of legislation in this area means that there is also a lack of other systems and processes to support this need as the obligations that arise under the Act are unclear. The issues that arise for people who use carer animals maybe that they are refused access to public transport, accommodation or some other essential service that they require. There is no recognised accreditation process under Northern Territory law which recognises animals as suitably trained or accredited to take on this role, as is the case with guide dogs. This makes it difficult for people relying on the animals to satisfy service or accommodation providers that the animal will behave.

In jurisdictions where specific protections exist there is generally a scheme that protects people from discrimination on this basis if they can demonstrate that their animal is accredited or trained. This has the potential of reducing disputes for the person and reassuring service and accommodation providers that the animal will behave.

The ADC would like to see the Act amended to cover this situation.

## **IMPAIRMENT**

---

A significant spike of complaints on the basis of Impairment has been received in 2012-13, both in the areas of goods, services and facilities and work.

We are seeing a continuing trend of work complaints that may comprise of a work health claim and a discrimination complaint. Employees following a workplace injury may, in addition to managing their work injury, start to experience either differential treatment because of their injury or a failure by an employer to address a need they now have because of the injury. The injury maybe physical or psychological, complaints of both are seen by the ADC.

The other continuing area of complaint relates to access issues; including access issues regarding transport, essential services (e.g. toilet facilities/parking) or access into a service. It is noted that in regard to transport that the Federal Government commenced the 2012 review into the *Disability Standards for Accessible Public Transport 2002* (standards). The Commissioner participated in the public forum in Darwin on 17 May 2013.

## **GOODS, SERVICES AND FACILITIES**

---

A significant spike of complaints in the area of goods, services and facilities has also been seen in 2012-13. This trend is consistent with what is being seen in some other discrimination jurisdictions. The ADC will need to focus some of its community engagement in this area for 2013-14.

It is noted that most of the complaints relate to race and impairment.

## **NATIONAL REFORMS**

---

In 2012-13 several important national issues were raised that are relevant to achieving the aims of the *Act* in the Northern Territory.

### **National Disability Insurance Scheme**

The National Disability Insurance Scheme (NDIS), Disability Care was enacted. The aims of Disability Care align with a key function of the Anti-Discrimination Commissioner and the objectives of the *Act* – to promote equality of opportunity.

The legislation behind Disability Care has as one of its many objectives to support independence and social and economic participation of people with disability.

A further general principle of the NDIS is that people with a disability have the same rights as any other member of society to realise their potential for physical, social, emotional and intellectual development.

Over time we look forward to the NDIS providing more reliable and predictable support for people with a disability and therefore giving more opportunities for people to achieve their goals and ambitions.

## **Aged Stereotypes & Investing in Carers**

Also of note are papers produced by the Australian Human Rights Commission in regard to age stereotypes *Fact or Fiction? Stereotypes of Older Australians* and carers *Investing in Care: Recognising and Valuing Those Who Care*.

In regard to age stereotypes many of the themes identified in this paper are echoed in the enquiries and formal complaints we receive at ADC. In particular stereotypes in the workplace regarding older workers including views that older Territorians are unable to learn or change their ways and that they are likely to be sick all the time. Themes in the complaints and enquiries received at the ADC often relate to pressure to retire and not being interviewed for jobs despite relevant experience. Many of the views expressed by employers about older employees in the report also echo concerns raised with the ADC by Northern Territory employers, in particular that older employees are work health risks and have capacity issues. The release of this report is important in starting to challenge the perceptions and realities around these issues.

*Investing in Care* reveals the extent of this issue in Australia and the variety of ways it can impact on equal participation in society. In the Northern Territory caring can be further impacted by distance, cultural difference, cost of living, accommodation shortage and lack of other support services to assist a carer or the person they care for (e.g. child care places, respite services). The *Act* currently provides protection for parents who are carers but not always for other carer relationships. This report highlights the need for reform to the *Act* to expand the current attribute of parenthood to family responsibilities.

## **Sex Discrimination Act (Cth) - Reforms**

Important this year were reforms to the Federal *Sex Discrimination Act*. These reforms make it unlawful to discriminate against a person on the grounds of their sexual orientation, gender identity and intersex status. Sexual orientation and gender identity are currently covered by the NT *Act* under the attributes “sex” and “sexuality”.

Intersex however is a new ground, not specifically covered by Territory or State law. Intersex recognises biological variation in individuals and that biologically not everyone is able to be classified as male or female. Intersex is not about gender identity and the reforms do not recognise a third sex but seek to recognise the reality of biological variation in persons and the differential treatment they may experience because of this.

Reforms of a similar nature will need to be considered in regard to the *Act*.

A submission was made by the Anti-Discrimination Commissioner to the Standing Committee on Legal and Constitutional Affairs commending the introduction of the above reforms. Concerns were raised that the Bill would not apply to Commonwealth-funded aged care in the Northern Territory as a majority of aged care is provided by religious organisations. It was suggested that Commonwealth-funded aged care be excluded from the proposed religious exemptions. This view was shared by others speaking to the Committee and amendments to this effect were ultimately made to the Bill.





# PERFORMANCE



## what is discrimination?



freecall: 1800 813 846 or 8999 1444

(this is not a freecall from a mobile phone)



Audio: Fabian Andrews

## COMPLAINTS

---

### Enquiries

To support the community in understanding their rights and obligations under the *Act*, the ADC provides a free confidential enquiry service. This is for the general public who wish to ask questions regarding their own experiences and if there is anything they can do under the *Act*. It can also be used by managers in any sector who wish to clarify what their obligations are under the *Act*.

While this service does not provide legal advice, it provides practical information and direction to assist callers at first instance to resolve their issues themselves. If this is not possible then information is provided in regard to the ADC's formal complaint mechanism.

The ADC works hard to ensure that this service is of assistance to any caller, even those whom the ADC is unable to assist. If there is a caller that we cannot directly assist we endeavour to direct the call to someone who can.

Enquiries can be made by phone, by email (via our website) or in person. In 2012-13 phone remained the most common mode of contact (Figure 2).

### Mode of Enquiry

Mode of Enquiry	2009-2010 (%)	2011-2012 (%) <sup>1</sup>	2012-2013 (%)
Telephone	87.1%	85%	87.2%
In person	11.2%	8%	8.7%
Email	1.6%	5%	4.1%

Figure 2

The highest number of enquiries was again this year from Darwin representing 70% of enquiries followed by Alice Springs (8%) and remote NT (7%) and interstate (7%).

The ADC takes enquiries from the general public and from the general business community. In 2012-13 83% (81% 2011-12) were from the general public and 17% (19% 2011-12) were from the business community enquiring about management issues.

The gender of callers was pretty even with 54% of callers being female and 46% being male. A large percentage were enquiries relating to work issues.

### Complaints Received

In 2012-13 formal written complaints were received against 162<sup>2</sup> respondents. This is lower than the last two reporting periods (Figure 3). It is closer to 2009-10 in which

---

<sup>1</sup> In 2011-12 2% of enquiries received no record was made regarding the mode of contact.

complaints against 186 respondents were received. Appendix 3 sets out the current complaint process.

### Formal Written Complaints Received

2012-13	2011-12	2010-11
162	202	244

Figure 3

### Finalisation of Files

In 2012-13, 212 files were finalised (Figure 4).

### Complaints Finalised

2012-13	2011-12	2010-11
212	250	236

Figure 4

### Reasons for Finalisation

Continuing a trend from last year the main reasons for the finalisation of complaints was that matters either settled (84) or were rejected under section 66 (76). The main reason was settlement (Figure 5). Only complainants and respondents whose matters accepted for investigation are invited to participate in our conciliation process. Of the matters accepted (being 108), 78% or 84 of these matters were settled (Figure 6).

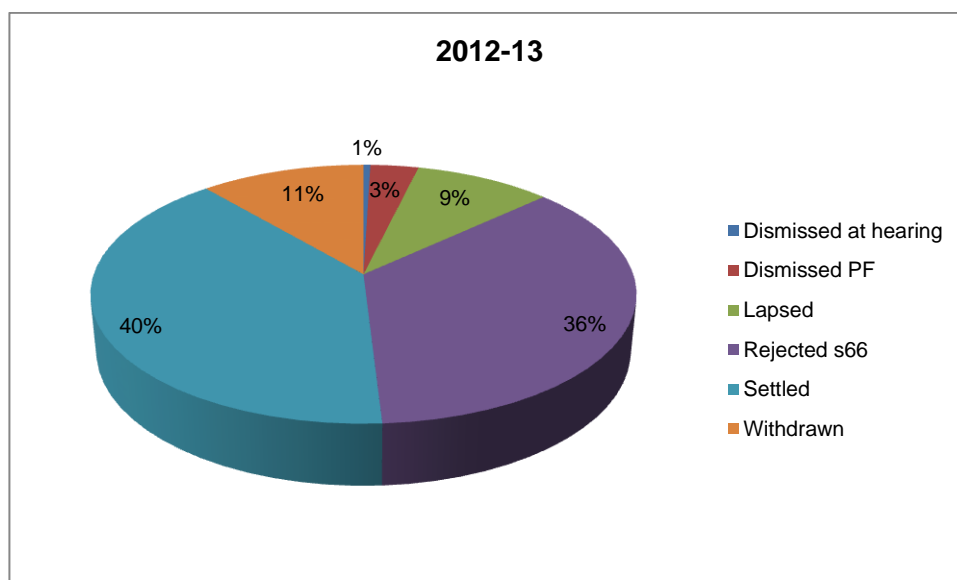


Figure 5

<sup>2</sup> This figure includes complaints referred to hearing.

## Comparative data

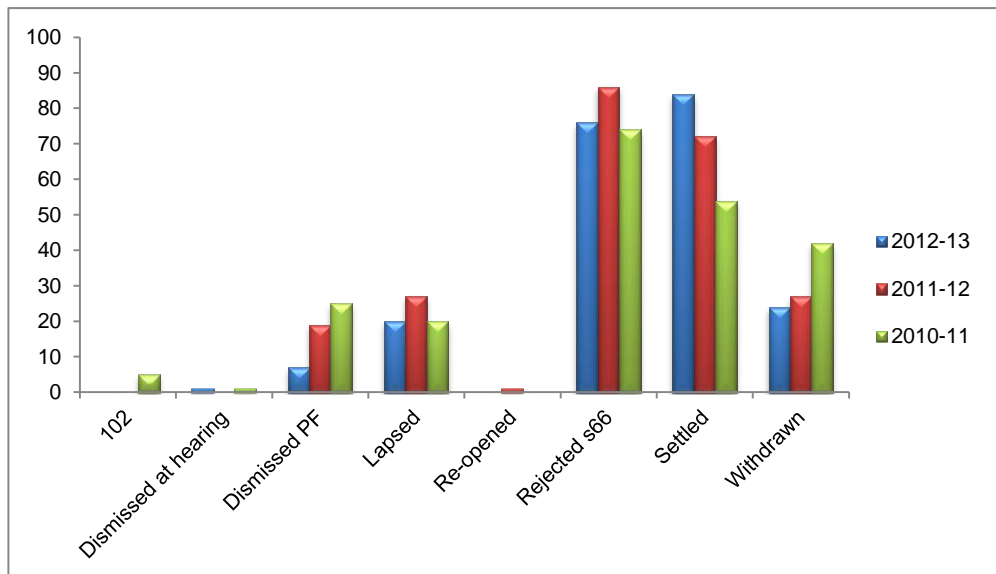


Figure 6

Following is a breakdown of the ways in which a matter may be finalised and the number of complaints concluded in each way for 2012-13.

### Rejected under section 66

In 2012-13, 76 files were rejected under section 66 of the Act, slightly down from 2011-12 (86). When a formal complaint is received by ADC, ADC has 60 days in which to elect to accept or reject a complaint. Complaints at this stage are assessed to see if the allegations made are capable of being prohibited conduct or unlawful discrimination under the Act. It is not a requirement at this stage that a Complainant be able to prove that they have been discriminated against, it is enough that the allegation they make could be unlawful under the Act if proved.

### Dismissed at prima facie stage

If a formal complaint is accepted for investigation a decision is required to be made at the end of the investigation under section 76. The options are to find that prima facie evidence does exist and refer it to a compulsory conciliation or to hearing, or to dismiss it. In 2012-13, 7 matters were dismissed under section 76(1)(a) following an investigation. This is down from 2011-12 in which 19 matters were dismissed at this stage. It is likely that this reflects an increased number of matters being resolved before a matter gets to this stage. Therefore there are less investigations being completed overall, irrespective of their outcomes.

## Section 102

If a matter is referred to hearing under section 76 or following a lack of resolution at a section 76 conciliation<sup>3</sup> a party may make an application under section 102 that a matter be discontinued. The Commissioner may also exercise their power under this section on their own motion.

A matter maybe discontinued if:

- Frivolous or vexatious;
- Trivial;
- Misconceived or lacking in substance; and
- Fails to disclose any prohibited conduct.

No matters were discontinued under this section during this period.

It is possible this is a reflection of the interim decision in *Pereira v Commissioner of Police*<sup>4</sup> in which Hearing Commissioner Rice found that a matter could not be discontinued under section 102 if a prima facie case had been found under section 76. Most matters referred to hearing are now referred under section 76 rather than section 84, due to improved efficiency in resolving complaints. Section 84 gives parties a right to refer a matter to hearing if the ADC has failed to conclude an investigation within 6 months of accepting.

## Lapsed

A formal complaint maybe lapsed under section 72. This is where a complainant appears to have lost interest in the complaint. Notice is provided to the complainant advising they have 60 days in which to advise the ADC that they remain interested. In 2012-13, 20 matters were lapsed. This is less than 2011-12 in which 27 matters were lapsed.

## Withdrawn

A formal complaint may at any stage be withdrawn voluntarily by a party under section 71. In 2012-13, 24 complaints were withdrawn. This is substantially lower than 2011-12 in which 42 complaints were withdrawn.

## Settled

A focus of the complaint process is resolution. Resolution may happen at any stage of the process and is encouraged by the ADC to ensure outcomes that meet the needs of the

---

<sup>3</sup> A s76 conciliation is a matter referred to conciliation following the making of a prima facie decision; this is different from a voluntary conciliation conference conducted at any other stage of the process.

<sup>4</sup> 29 August 2011.



parties. In 2012-13, 84 matters were settled. This is up from 2011-12 in which 74 complaints were settled.

## Dismissed/finalised at hearing

One matter was finalised at hearing in 2012-13 being the matter of *Pereira v Commissioner of Police*<sup>55</sup>. The matter was dismissed. This decision is discussed in more detail in the hearings section.

## Time Frames

Work has continued in 2012-13 to reduce a backlog of complaints and to improve our timeliness in responding to people's complaints. Our statistics for this period indicate that we continue to have success in this area. Last year we managed to finalise 59% of complaints in a six month period. In 2012-13 we finalised 64% of complaints in 6 months.

What is of particular significance this year is the fact that many of the matters finalised in this year were long standing matters, including matters that had been under consideration by the ADC for 3-5 years. While there remain a few longstanding matters at the ADC it is anticipated that these will conclude in 2013-14. A majority of long standing matters are matters that have been referred to hearing, or have been the subject of appeal or judicial review.

There will be only 58 complaints carried into the next reporting period, compared to 117 last year. Of these complaints 38% remain within the 8 month statutory reporting period and 22% are within 12 months. There remain 40% that are outside a 12 month period, or 23 complaints. These are made up of:

- 10 complaints at the hearing stage, each of which are set down for hearing early in 2013-14 or a decision is pending.
- 5 complaints in which matters were delayed due to judicial review proceedings sought by one of the parties.
- 3 are complaints stayed under section 68 due to concurrent legal proceedings.
- 1 is an out of time complaint.
- 4 are matters delayed due to prolonged settlement discussions by parties.

The ADC is optimistic that the majority if not all of these matters will conclude in 2013-14, and many of them early in the new reporting period. It will never be possible to complete all matters quickly as the timing of completion of matters is not always within the ADC's control; however it is possible for us to remove delay at our end. Current statistics suggest that we are succeeding in doing this.

---

<sup>55</sup> 15 August 2012.

The improvement appears to be due to the following:

- Focus on early conciliation is resulting in matters resolving earlier in the process. It is also resulting in matters that don't settle being referred to hearing earlier in the process.
- Tighter internal processes and monitoring.
- Increasing settlements.

This year we revised our timeliness measures to capture our actual statutory time frames. These are 60 days to accept or reject a complaint and 6 months from acceptance to complete an investigation. We therefore now measure how many complaints we finalised within 8 months. In 2012-13 this was 72%.

In 2013-14 it is the intention to continue to improve timeliness of complaints and to focus on service delivery.

## Appeals

---

In 2012-13 two appeals were lodged with the local court, one was dismissed and the other struck out.

The first was the matter of *Kennedy v ADC*<sup>6</sup> in which the complainant appealed a decision of the delegate to reject a complaint under section 66 of the *Act* on the basis that it failed to disclose prohibited conduct. The Complainant had been banned by a physiotherapy clinic following an argument regarding payment for a report prepared for him. He claimed he could not pay for the report because he was a pensioner. Amongst his grounds of appeal were that he was denied natural justice including a failure to conduct a full investigation of his complaint prior to making a decision under the *Act* to reject his complaint.

The decision of the delegate was affirmed at first instance by Morris SM in an extempore decision and was subsequently appealed to the Supreme Court by the complainant. Kelly J in the Supreme Court dismissed the appeal. In doing so, she noted that Morris SM had failed to provide procedural fairness to the Complainant at the appeal by not permitting him to reply to submissions made by the Respondent. However she went on to say that nevertheless it was an appeal "doomed to fail" because the complaint did not allege that the refusal to treat him was due to an attribute under the *Act*. She also referred to the decision of *NTA v Smyth & ADC*<sup>7</sup> ("Smyth") which was handed down after this appeal was filed, providing that there was no right of appeal in relation to a decision to reject a complaint under section 66. The complainant has appealed the matter to the Court of Appeal, listed for 2 September 2013. This decision will be reported on in next year's Annual Report.

---

<sup>6</sup> The Local Court appeal was heard on 17 December 2012. The Supreme Court appeal was heard on 4 April 2013. Both decisions are unreported.

<sup>7</sup>[2013] NTSC 5.

The second appeal was a matter of *Kowcun v ADC*<sup>8</sup> (8 April 2013). In this matter the complainant to a matter that had been before the ADC some years before, lodged an appeal against the ADC due to dissatisfaction with how her matter was settled. Oliver SM struck this matter out on the basis that the Local Court had no jurisdiction to entertain the matter following the decision of *Smyth* (supra).

Four appeals lodged in 2011-12 were still pending and were concluded in 2012-13. Two of these matters *Northern Territory Department of Education and Training v ADC & Christy*; *Northern Territory Department of Housing, Local Government and Regional Services v ADC and Christy* (“Christy”) were discontinued following the decision of *Smyth* (see below). *Smyth* was the third of these appeals, discussed below.

The fourth appeal was the matter of *Spiers v ADC*<sup>9</sup>. This was an appeal lodged by a complainant following a decision by the ADC delegate to dismiss his complaint under section 76(1)(b) following an investigation. The matter was dismissed by the delegate on the basis that the evidence demonstrated that the matter was likely to fail under section 102 of the Act on the basis that it was vexatious. Morris SM found that the evidence did not support this finding but nevertheless affirmed the decision of the delegate on the basis that the evidence failed to disclose prohibited conduct and was lacking in substance.

In 2012-13 the ADC was a party to three judicial reviews, two of which continued from the previous reporting period, being the matters of *Smyth* and *Christy*. A third matter of *NTA v Ferguson & ADC*<sup>10</sup> (“Ferguson”) was also filed.

Of significance was the matter of *Smyth* in which the court looked at whether an acceptance (under section 65(2)<sup>11</sup> or section 66) by the delegate of the second defendant’s complaint was a “decision or order” which is capable of being appealed under section 106 of the Act. His Honour found that it was not. His Honour found that section 106 only applied to a decision or order made under section 88 of the Act as to whether or not a complaint is substantiated. Section 88 only applies after a hearing by the Commissioner or other appointed Hearing Commissioner.

The impact of this decision is that there is no right of appeal under the Act until the matter is determined at hearing. Prior to this decision it had been the view that there was a right of appeal only in regard to final decisions.<sup>12</sup>

It is noted that the pending Court of Appeal matter of *Kennedy v ADC* may consider this decision. This will be discussed in the next reporting period.

---

<sup>8</sup> The Local Court appeal was heard on 8 April 2013 the decision is unreported.

<sup>9</sup> 2 November 2012 unreported.

<sup>10</sup> [2013] NTSC 24.

<sup>11</sup> The complaint subject to this appeal was out of time requiring consideration of s65(2) – discretion for the Commissioner to accept a complaint out of time. A related issue to the main issue regarding the scope of an appeal was whether a decision was made under s65(2) or s66 and whether it was one or two decisions. Barr J found that there was one decision under s66.

<sup>12</sup> See *Malaysian Airlines System v ADC & Lee* 20 April 1999 – unreported Trigg SM.



In regard to the *Smyth* and *Christy* matters, the substantive issues being the correctness of the decisions by the delegate, were not heard in this reporting period, and will need to be discussed in next year's Annual Report.

The third matter of *Ferguson* was a challenge to an interim decision of a Hearing Commissioner regarding the scope of the issues before the Hearing Commissioner. Mr Ferguson had lodged 2 separate complaint forms; in issue was the 2<sup>nd</sup> complaint form. He had ticked boxes on the form alleging discrimination on the basis of trade union activity and victimisation, resulting from the first complaint he had lodged with ADC. The delegate in accepting the complaint only detailed the victimisation complaint with no precise reference to the trade union complaint. The Plaintiff in the Judicial Review (the Respondent to the complaint) argued that a decision of the Hearing Commissioner to include this ground of complaint in the scope of the Hearing was in error.

Her Honour dismissed the Plaintiff's claims. She found that the acceptance of the complaint was an acceptance of the totality of the allegations on the Complainant's form (Figure 7).

### 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 <sup>13</sup> , 2 discontinued, 1 struck out <sup>14</sup>

Figure 7

## Hearings

In 2012-13 7 matters were referred to hearing (Figure 8). Fifteen hearings were carried over from 2011-12, meaning there were 22 hearings case managed during this period (Figure 9). Sixteen hearings were finalised during this period, with only six matters being carried forward into 2013-14. It is anticipated that all six will be finalised in 2013-14.

Improved timelines with complaints is expected to see a drop in hearing numbers for 2013-14.

### New Matters Referred to Hearing

2012-13	2011-12	2010-11
7	11	9

Figure 8

<sup>13</sup> one matter at time of report on further appeal.

<sup>14</sup> These 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.

## Total Number of Hearings Case Managed

2012-12	2011-12	2010-11
22	20	22

Figure 9

## Outcomes

During this period sixteen matters were finalised, nine being settled, four being lapsed, 2 determined and 1 withdrawn.

Decisions were delivered in relation to the matters of *Pereira v Commissioner of Police* and *Vollebregt v Reidy Investments Pty Ltd t/as Desert Palms Resort & Angela Reidy* (“Vollebregt”)<sup>15</sup>.

Hearing Commissioner Rice in the matter of *Pereira v Commissioner of Police*<sup>16</sup> found that the prohibited conduct was not substantiated and dismissed the complaint. The complainant was terminated by the Commissioner of Police from his position as a trainee constable for not disclosing a criminal record in East Timor. The complainant claimed that it was an irrelevant criminal record because he was not in fact charged and no further action took place. Hearing Commissioner Rice found that the complainant was overly reliant on his ignorance of the East Timor process and the fact that the proceedings took place in another language. He found the evidence inconsistent in regard to what occurred in East Timor and was not satisfied that the Complainant had discharged his onus to demonstrate that there was an “irrelevant” criminal record. In particular he was not satisfied that the Complainant wasn’t the subject of a conviction in East Timor at the time of his termination, therefore he was unable to demonstrate its “irrelevance.”

A further decision by Hearing Commissioner Rice was made on 8 November 2013 in regard to costs. He made an order for costs thrown away in favour of the Respondent in regard to the vacating of hearing dates one week after legal counsel for the complainant advised they were ready to proceed.

The matter of *Vollebregt* was decided on the papers the decision was handed down on 18 April 2013, the matter is not yet finalised as it is waiting for final orders to be made. This was a matter in which the Complainant was a manager at the first Respondent’s hotel. He had worked there since 2006. In July 2008 he injured his back. Later in February 2009 he aggravated his back injury due to an altercation with guests staying at the hotel which required ongoing treatment and two lengthy hospital stays. He was terminated on 12 March 2011 due to his incapacity to work. Hearing Commissioner Keys found that while the termination did not amount to discrimination, that the treatment of the complainant from the aggravation of injury until September 2009 was a breach of section 24 (failure to accommodate a special need) and section 31 (2)(d).

---

<sup>15</sup> 18 April 2013.

<sup>16</sup> 15 August 2012.

## Manner of Referral

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.

## Manner of Referral

YEAR	S 76	S84	TOTAL
2010/11	5	4	9
2011/12	11	0	11
2012/13	5	2	7

Figure 10

## **PUBLIC EDUCATION TRAINING & COMMUNITY ENGAGEMENT**

---

Public Education and Training has been a means by which the ADC promotes equality of opportunity in the Northern Territory.

Traditionally this has been offered through formal and tailored education programs. 2012-13 saw a departure from this practice due to staff movements and changes in the resourcing of the ADC. ADC is committed to remain focused and effective in engaging and informing the Northern Territory community about obligations and rights under the Act.

### **Community Engagement**

The focus of the Training and Education role changed to best use the skill set of the person filling the position for part of 2012-13.

The ADC was able to utilise the staff member's existing contacts in a remote community to attend, meet and offer information in September, October and November 2012. This was in line with the desire for ADC to provide information and assistance to people in remote indigenous services regarding rights and obligations under the Act, and to promote equality of opportunity broadly.

Trainer visited Gunbalanya between 24-28 September 2012, 25 October and 21 November 2012. Visits included:

1. Meeting with Western Arnhem Shire Services Manager to discuss training opportunities for ADC in the community including discussion regarding interagency meetings.
2. Meeting with the Government Business Manager to discuss concerns in the communities regarding young peoples' use of social media, including growing concerns about cyber bullying and harassment.
3. Attending the Gunbalanya School; meeting with teachers and principals, and helping and attending with Culture Week.

### **Analysis of the Training Provided**

In 2012 – 2013, 176 training hours were delivered. In 2011-12 it was anticipated that the ADC would deliver 300 hours, this was not possible due to staff movements over 2012-13 and changes in resourcing.

## Type of Training Conducted

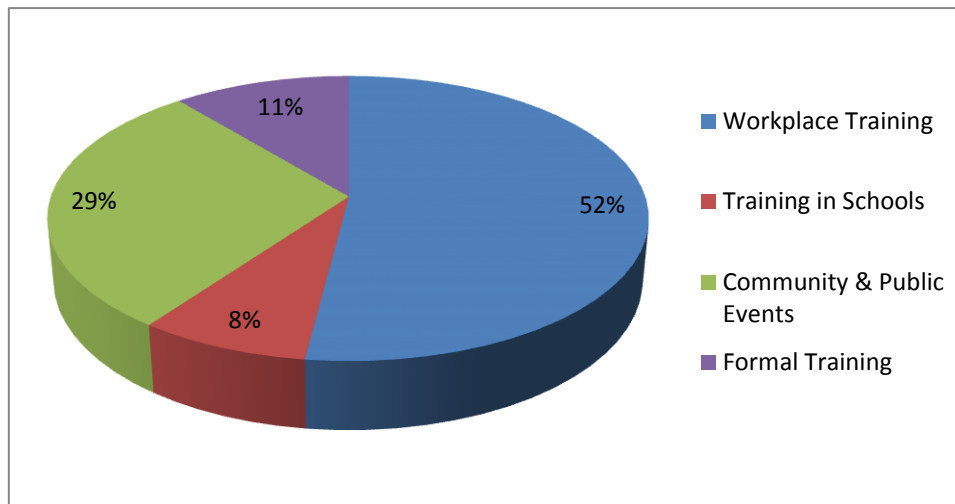


Figure 11

During the 2012-13 financial year 46 training sessions and community awareness events were presented. Workplace and formal training constituted 63% compare to 54% during 2011-2012 financial year.

Public Education and Training			
	2010-11	2011-12	2012-13
Workplace & Formal Training	63%	54%	63%
Training in Schools	4%	11%	8%
Community Awareness/ Events	33%	35%	29%

Figure 12

## Resources

In 2012-13 a new DVD clip was finalised. It is a thirty second DVD featuring images and dialogue from the Talking Posters. The DVD clip has been placed on the ADC website and provided to legal service providers along with a lesson plan.

## Talking Posters

In 2012-13 the distribution of the Talking Posters a Commonwealth Government funded project continued. The Talking Posters were described in last year's Annual Report.

The Talking Posters were distributed to community legal services for use in remote communities with the objective that other service providers' trainers and educators would take the ADC message out to community's the ADC is unable to access. A lesson plan was developed by the ADC to assist the service providers.

Talking Posters have been provided in 2012-13 in the Top End to the North Australian Aboriginal Justice Agency, Top End Women's Legal Service and Northern Territory Legal Aid Commission, and in Central Australia to Central Australian Aboriginal Legal Service and Central Australian Women's Legal Service.

Feedback to date from legal service providers has been positive.

## Public Events

**International Human Rights Day.** The ADC celebrated International Human Rights day 2012 with a Youth Forum held in Darwin on 12 December 2012. The event was attended by 45 people from a diverse range of organisations including government and non-government agencies, Indigenous organisations, schools and members of the community.

Five young Territorians, Aaron Motlop, Lia Finocchiaro, Erin Maczkowiack, Kerrina Tamiano and Mark Munnich (Jnr) spoke about their perspectives on international human rights, including overcoming adversity, combating race and age discrimination, lateral violence, youth suicide, and gender balance.

**International Women's Day.** The Acting Anti-Discrimination Commissioner was invited as a guest speaker by the International Women's Day Steering Committee. Ms Keys spoke to the Committee regarding continuing gender inequity in Australia, in particular in the workforce regarding pay equity. She also spoke of how women were often the unsung heroes; using the top 150 most powerful Territorians, as displayed in the NT News in 2012, to demonstrate the lack of visibility around women's achievements in the Territory. That the list would be very different if it were the top 150 most amazing Territorians as it would capture the many women who manage multiple carer and professional roles every day.

The Commissioner spoke at a breakfast organised by the YWCA and attended by large number of women from across the Darwin community, and Her Honour the Honourable Sally Thomas AM, the Administrator of the Northern Territory.

Staff and family participated in the International Women's Day walk through the streets of Darwin on 9 March 2013. This was followed by a morning tea and other festivities. The Commissioner was a guest speaker at the morning tea and spoke briefly about increased representation of women in the legal profession including in the judiciary. She also noted however that work still needed to be done to achieve equality for women, including

reducing the high rates of domestic violence and sexual harassment. She encouraged women to share their story with her and the ADC.

As part of the festivities ADC held an information stall. The stall was staffed from 9.00am to 12.30 pm with information about the ADC's role and services. Staff also encouraged members of the public to write comments on directions the new Commissioner should take the ADC.

In 2012-13 ADC also staffed information stalls, at Law Week in May, for Seniors Month in August, the Happiness and Wellbeing Market for Disability Awareness Week and International Day of Disability.

## **Future Direction – Training & Education**

The future direction of education, training and community engagement by the ADC will involve a three pronged approach as follows:

First is the preparation and letting of an Expression of Interest for qualified trainers to provide on a fee recovery basis the type of formal training offered by the employed, trainer, particularly focusing on the work place. This will include the licensed use of the train the trainer package developed by the ADC in 2011-2012 and include utilising material developed over the 20 year history by the ADC.

The Second approach is to provide material at this stage in the form of a lesson plan to legal services travelling to remote communities, to present as part of their community education programs. A lesson plan was developed in April 2013 and distributed to various legal services. It is expected that a new lesson plan would be developed at least on a 6 monthly basis.

Also along the same lines is providing training to trainers in various organisations for staff familiar with their client group to present to clients in the most appropriate form. This training commenced in April 2013 with training to the North Australian Aboriginal Justice Agency Night Patrol staff for them to use in carrying out their role.

The third approach to training and education is the more extensive use of the complaints staff and other staff of the ADC to present information sessions to community groups. This has the advantage of the information being informed by the staffs experience in complaint handling, emerging trends and common issues that arise. It enables these sessions to be sprinkled with practical examples from the complaint staffs' experience. The two positions will over the next year be refocused to include community engagement as a core function. This is consistent with the approach taken by Anti-Discrimination Commissions around Australia.



## WEB VISITS

	2011-12	2012-13
Total Visit	58,584	65,298
Average visit per month	4,882	5,442
Most frequent words	What is conciliation?	What is conciliation?

Figure 13

The website provides the ADC with access to a greater audience. It is also an access tool for people wanting to lodge a complaint online.



Renu Sharma & Lenore Dembski, Paperbark Woman at the International Human Rights Day Forum on 12 December 2012.

Traci Keys, Surya Silva and Sally Sievers  
Law Week 14 May 2014





# TRENDS



## what is discrimination?



**freecall: 1800 813 846 or 8999 1444**  
(this is not a freecall from a mobile phone)





## 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, 58% female, 42% male (Figure 14).

#### Gender of Complainant

Year	Male	Female
2012-13	120	162
2011-12	101	101
2010-11	133	111

Figure 14

#### Region

As anticipated a majority of formal complaints received were from Darwin. We saw a steady rise of complaints from Alice Springs from 16 in 2011-12 to 33 in 2012-13. We received very few complaints from Katherine. As in previous years we did see a high number of complaints coming from remote NT and rural NT.

#### Region

Year	Darwin	Other NT	Interstate	Total
2012-13	157	87	20	272 <sup>17</sup>
2011-12	137	64	1	202
2010-11	140	96	8	244

Figure 15

---

<sup>17</sup> Five matters were unknown.

## Who are People Complaining About?

A party lodging a formal complaint may lodge it against an individual or a legal entity (Government, Company, Non-Government Organisation etc.). This party is referred to as the Respondent. When a formal complaint is lodged with the ADC the complainant is required to identify who they are complaining against. The ADC may also elect to add a party to a complaint.

Respondents maybe directly or vicariously liable under the Act, where as an individual can only be directly liable, unless they are operating an unincorporated business.

In 2012-13 a high number of complaints were received against Companies (92) when compared to 2011-12 (72). A high number was also received against individuals (95). A drop in complaints against individual was noted in 2011-12 with only 40 complaints being received in the previous reporting period.

Complaints against government remained steady at 78 (2011-12 (71)), with complaints against the non-government sector dropping marginally.

### Comparative Data

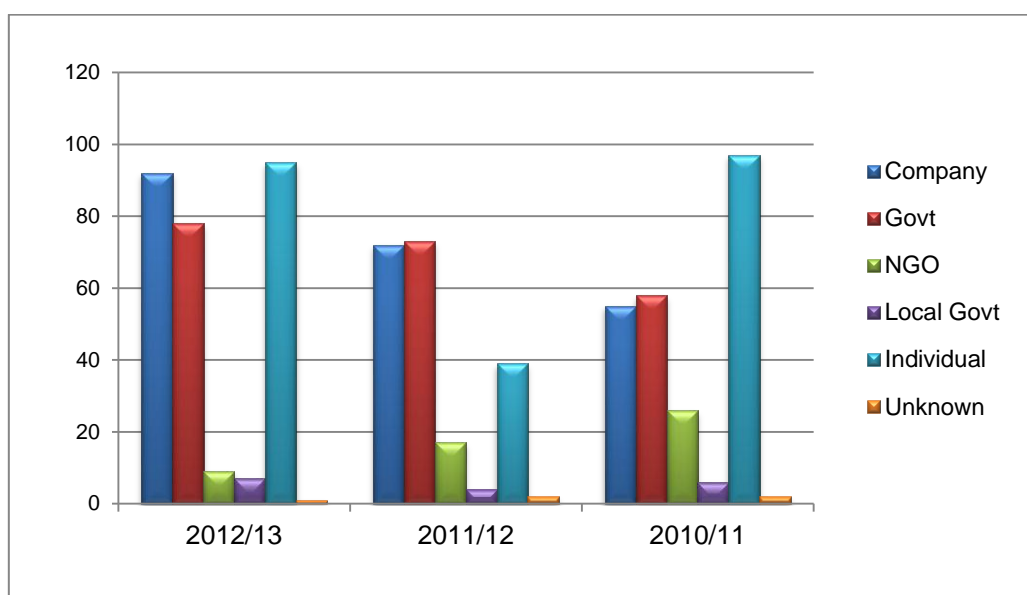


Figure 16

### Respondent Profile

Year	Company	Govt	NGO	Local Govt	Individual	Unknown	Total
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 17

## What are People Complaining About?

### Attributes

An attribute is a characteristic of a person. People are able to complain to the ADC regarding discrimination that they believe is because of an attribute listed in the Act. A list of the attributes in the Act is located in Appendix 4. An example of an attribute is race.

The table at Figure 18 sets out the attributes about which complaints were received in 2012-13. It should be noted that one person may complain about more than one attribute and against more than one person or entity which is why the data totals in the chart do not reflect the number of complaints received or handled for this period.

In 2012-13 allegations about race discrimination were the highest area of complaint. This is consistent with previous years. The number of formal complaints received regarding race discrimination remains high (101, compared with 2011-12 (69)); even with a reduction in overall complaint numbers. A majority of these complaints relate to race discrimination against indigenous people, however there are many other races also represented in these figures.

### Attributes Identified in Formal Complaints made with ADC

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

Figure 18

Following race discrimination the most common complaints received were in regard to impairment (73), failure to accommodate a special need (75)<sup>18</sup>, sex (49), sexual harassment (34) and age (31).

Of particular note is impairment that has increased from 2011-12 from 10 complaints to 73. Impairment has traditionally been a high area of complaint. For reasons unknown complaints in this area significantly reduced in 2011-12. For this reporting period however we have seen a significant increase, which is even higher than preceding years. It is unclear what the cause of this spike in complaints is. It is also reflected in significant increases to complaints about failure to accommodate a special need, which has increased from 44 complaints in 2011-12 to 75 complaints in 2012-13. The significance of this is that many of the complaints received under this ground also relate to impairment.

Complaints regarding sex and sexual harassment have also risen compared to last year and previous years. Complaints regarding sex, which are complaints regarding gender have risen from 16 in 2011-12 to 43 in 2012-13. This returns levels of complaints on this ground to those of preceding years. This has historically been a high ground for complaint. This is also true of sexual harassment in which numbers have risen from 16 in 2011-12 to 30 in 2012-13, which again is in line with preceding years.

Lastly it is noted that the ground of age, whilst remaining a ground of high complaint is lower than the previous year, with 31 complaints being received in 2012-13 compared to 48 complaints received in 2011-12. Other grounds that have reduced in number in 2012-13 include irrelevant criminal record and aiding a contravention of the Act. All other grounds of complaint have seen an increase in 2012-13 when compared with 2011-12, despite a reduction in complaints. This may possibly reflect that we are receiving more complaints about multiple grounds of discrimination.

## **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.

---

<sup>18</sup> The majority of complaints received in regard to failure to accommodate a special need relate to impairment.

Work continues to be the most common area of complaint; and remains high with 334 formal complaints regarding the workplace compared to 216 in 2011-12 and 414 complaints in 2010-11.<sup>19</sup>

A significant area of increase is in the area of goods, services and facilities with 198 complaints received in 2012-13 compared to 86 in 2011-12. This is more than double the previous year.

Also worth commenting on is education which is an area to monitor. In 2011-12, 22 complaints were received in this area, which was a significant increase from 2010-11 in which only 4 complaints were received. In 2012-13 the number of complaints is 34, indicating a developing trend. However it should be noted that there were several complaints in this area in 2012-13 from multiple complainants, in regard to the same issue, this will account for some of this increase.

### Areas

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

Figure 19

### Areas and Attributes

Set out in Figure 20 are the attributes and areas combined that were the subject of formal complaint in 2012-13.

Common combinations of complaint include:

- Impairment at work and goods, services and facilities.
- Race at work and goods, services and facilities.
- Failure to accommodate a special need at work and goods, services and facilities.

These combinations are consistent with previous years.

<sup>19</sup> It should be noted that 2010-11 there was a particularly high number of formal complaints received in this reporting period, being one of the highest years on record.

Of note is the number of attributes and areas complained of. One person complaining may complain about more than one person or entity and allege discrimination in regard to more than one attribute and sometimes more than one area. The high number of attributes and areas indicates that complainants are generally complaining about more than one attribute when they lodge a complaint (e.g. that they were discriminated against on the basis of age, impairment and sex). The number of attributes complained of is high relative to the number of actual complaints handled and is higher than the past 2 years.<sup>20</sup>

---

<sup>20</sup> In 2011-12 formal complaints contained 414 allegations of discrimination (attributes & areas), in 2010-11 formal complaints contained 534 allegations of discrimination (attributes and areas)



## Attributes and Areas Complained About

Prohibited Conduct - Attribute	Education	Work	Accommodation	Goods Services and Facilities	Clubs	Insurance and Superannuation	Not Under Act	Total
Age	1	21		12				34
Impairment	1	40	2	33				76
Irrelevant Criminal Record		3						3
Irrelevant Medical Record	2	12		3				17
Marital Status		8						8
Parenthood		17						17
Political Beliefs / Opinions		4		3			4	11
Pregnancy		11						11
Race	8	41	5	44			3	101
Religious Belief / Affiliation / Activity		14	1	3			1	19
Sex	3	24		14			2	43
Sexuality	3	6		7			1	17
Trade Union Affiliation / Activity		11						11
Prohibited Conduct - Other								
Aiding Contravention of Act	2	16		2				20
Association with a Person	2	12		15				29
Discriminatory Advertising	3			4				7
Failure to Accommodate Special Need	3	32	2	35	3			75
Sexual Harassment		24		4			2	30
Seeking Unnecessary Information	3	18		17				38
Victimisation	3	20		2				25
<b>TOTAL</b>	<b>34</b>	<b>339</b>	<b>10</b>	<b>198</b>	<b>3</b>		<b>13</b>	<b>597</b>

Figure 20

## Hearings

The ADC case managed 22 hearings in 2012-13. Of these 22 hearings nine were about impairment (the highest presentation), four were in relation to an irrelevant criminal record and another four about race discrimination. A total of 16 hearings were in relation to the area of work. This remains that largest area of complaint both for hearings and complaints.

In relation to gender there were an equal proportion of male and female complainants, with nothing of significance to comment on.

## PUBLIC EDUCATION AND TRAINING

The greatest demand for training was in Darwin followed by Alice Springs. This correlates with the higher number of formal discrimination complaints coming from the Darwin area. We continue however to get frequent requests to provide training in Alice Springs and other remote parts of the NT.

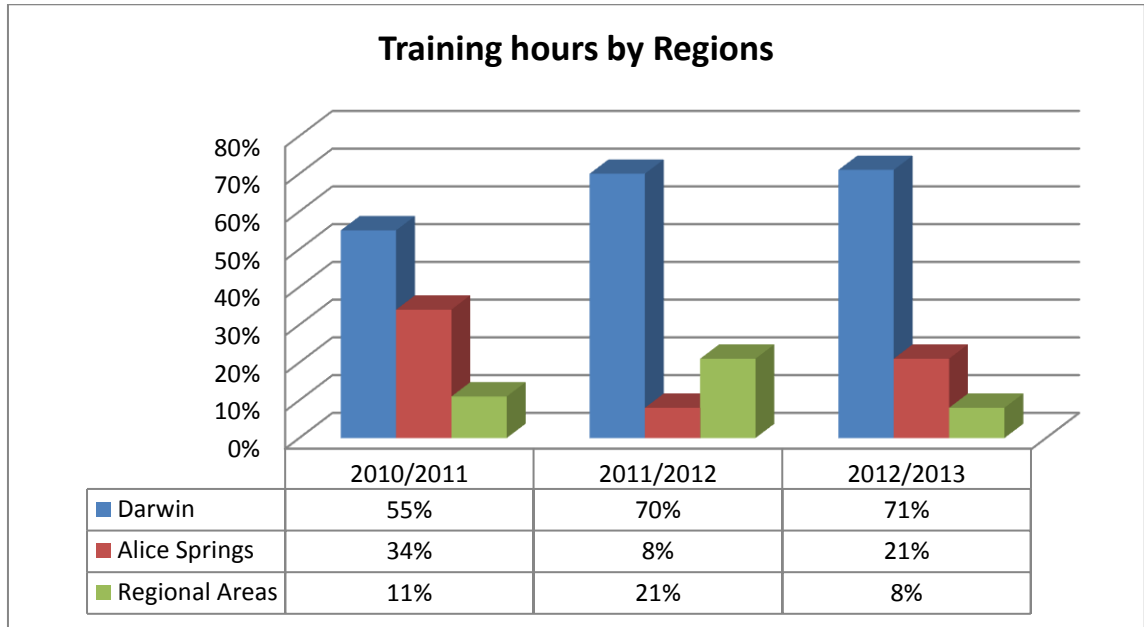


Figure 21

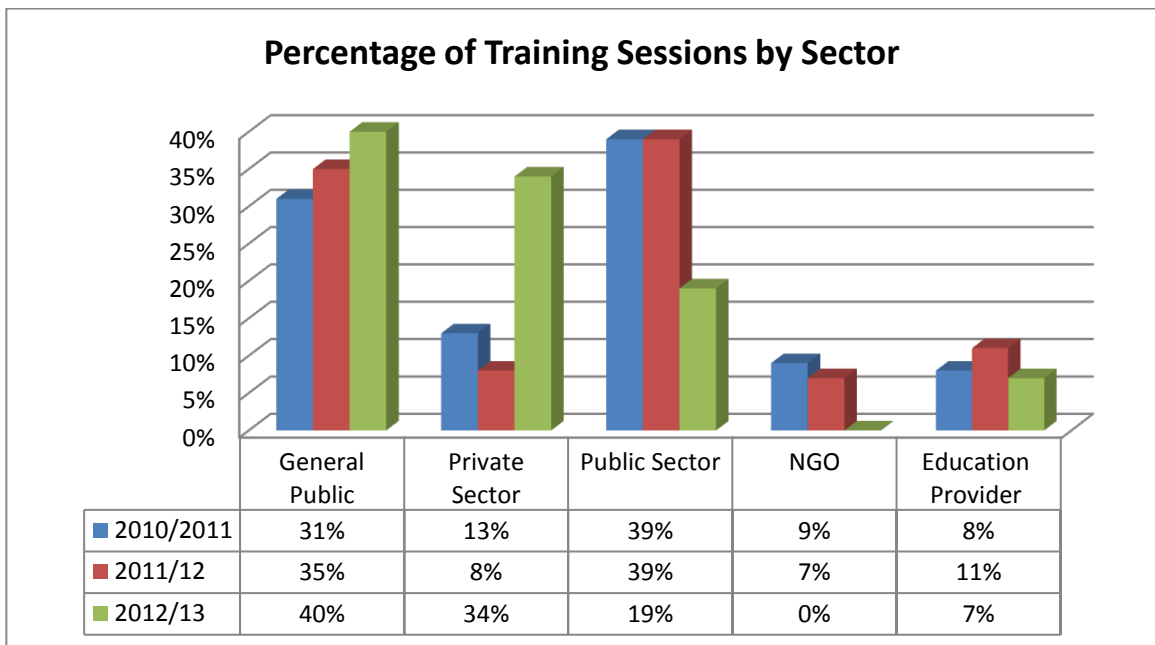


Figure 22

The greatest number of requests for training came from the private sector correlating with a change in the trend with formal discrimination complaints, with most formal complaints being made against the private sector. Following the private sector was the public sector and non-government organisations.



# APPENDICES



## KEY DELIVERABLES 2012-13

Key deliverables	Current Year		Targets	Previous Years	
	2012-13 Estimate	2012-13 Actual	2013-14 Estimate	2011-12 Actual	2010-11 Actual
Public awareness / community-based events, development of educational resources and training (hours) <sup>21</sup>	300	176 <sup>22</sup>	80	623	N/A
Participant satisfaction with training	85%	100	N/A	100	100
Complaints (includes complaints carried over)	300	279	270	N/A	N/A
Complaints accepted	120 <sup>23</sup>	108	N/A	N/A	N/A
Complaints outstanding (in progress)	200	58 <sup>24</sup>	N/A	N/A	N/A
Percentage of accepted complaints settled	35%	78%	N/A <sup>25</sup>	N/A	N/A
Complaints closed within 8 months of receipt	60%	72%	40%	N/A	N/A

<sup>21</sup> Revised measure: expanded to include development of educational resources and training which is measured in hours. The figure has increased due to the hours undertaken developing the 'Fair Go at Work' Train the Trainer package.

<sup>22</sup> Due to funding constraints, ADC ceased providing its scheduled training program in April 2013, which was not anticipated when the estimates for the KPIs were set. The ADC no longer has a full time training position. This has impacted on performance in this area.

<sup>23</sup> A new measure for 2012-13 which will be discontinued in 2013-14.

<sup>24</sup> A new measure for 2012-13 which will be discontinued in 2013-14.

<sup>25</sup> This is a new measure for 2012-13, this will be replaced by a new KPI % of complaints settled, the estimate of which is 35% for 2013-14.





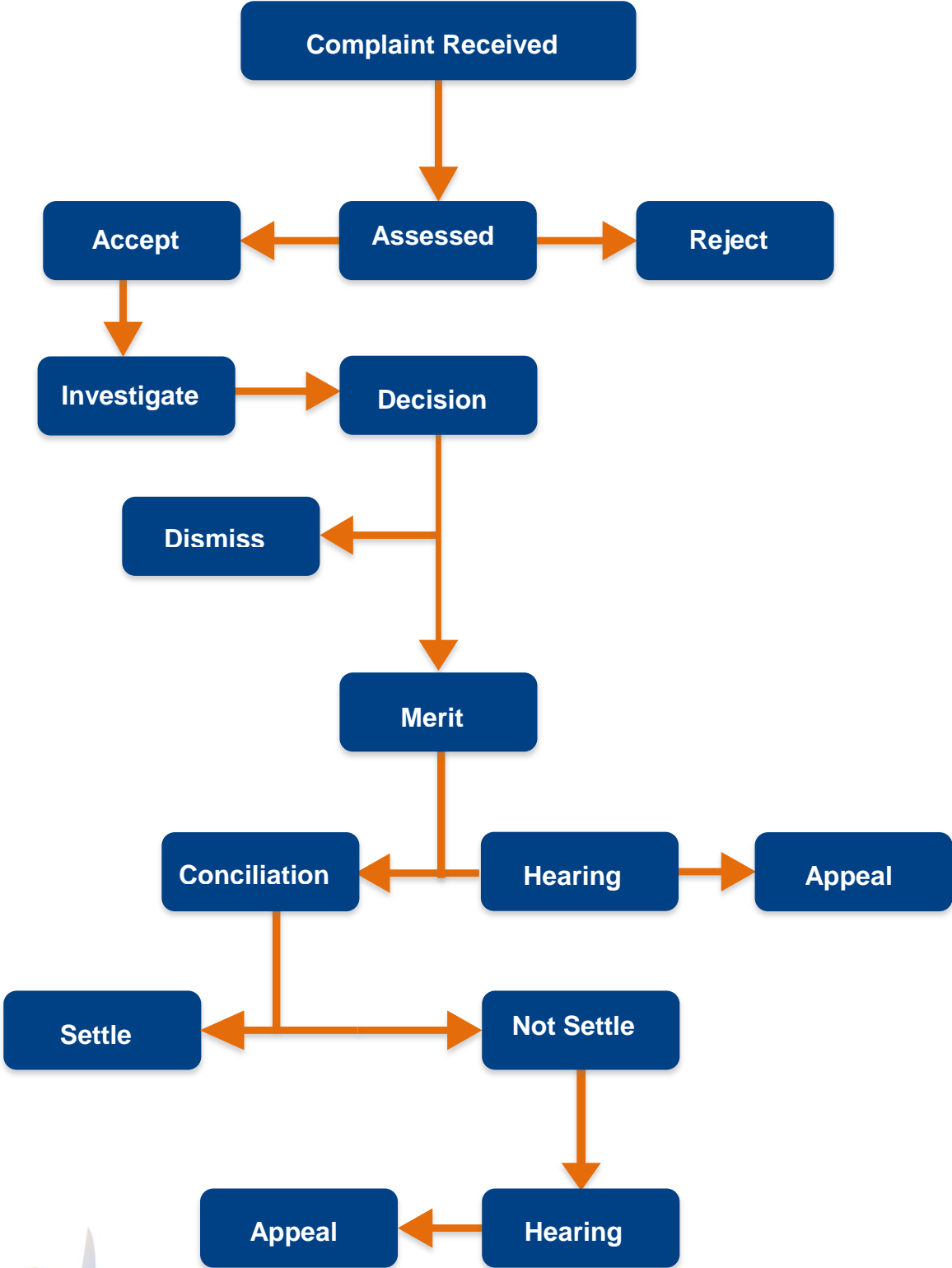
### Functions of the Commissioner

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





## 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.





## CASE SUMMARIES 2012- 13<sup>26</sup>

### **AGE DISCRIMINATION IN THE WORK PLACE**

---

The Complainant worked as a beautician in Darwin. She felt that the manager was pressuring her to retire, as the manager had asked her when she was going to retire. The manager told her that should she decide to retire she would give her some bonus recreation leave. She complained to the Anti-Discrimination Commission (ADC) on the basis of age discrimination in the area of work.

The matter resolved with the employer paying the Complainant \$15,000 compensation. The employer also agreed that the ADC provide training to other staff in relation to their obligations under the Act, including in respect of age discrimination.

### **IMPAIRMENT IN GOODS, SERVICES AND FACILITIES**

---

The Complainant was in a wheelchair due to her impairment. While a patron at a restaurant the Complainant was unable to access a wheelchair accessible toilet because the toilet in question was locked.

The matter was resolved with the Respondent acknowledging that the Complainant felt humiliated and distressed by being unable to access the toilet and apologised for the distress caused to the Complainant. The Respondent also agreed to maintain the toilet in a clean state and ensure that the toilet is open and accessible during normal trading hours.

### **RACE IN THE AREA OF WORK**

---

The Complainant was a waiter at a restaurant. He alleged that the manager of the restaurant was discriminating against him on the basis of his race. He said that he was being treated differently from other staff, in particular that he was monitored more closely than other staff. The complaint was accepted and set down for early conciliation; however, prior to the conciliation taking place the matter was resolved for an undisclosed amount.

---

<sup>26</sup> Each of these summaries has been de-identified to protect the privacy of each party to the complaint, including where necessary changes to facts such as what type of business. The nature of the allegations are however correct as are the outcomes.

## **RACE IN GOODS, SERVICES AND FACILITIES**

---

A woman made a request for a particular drink at a bar; she was advised that they did not sell the drink she was asking for. She was also of Aboriginal and Torres Strait Islander (ATSI) descent. Her friend who was not ATSI asked for the same drink and was immediately served with the drink requested. The ATSI woman complained of race discrimination.

The matter was brought to the notice of the Manager of the Hotel. The discriminatory nature of the service was explained to the Manager, who immediately acknowledged the mistake and cooperated in resolving the matter by giving a written apology and \$500.00 as compensation for the stress and strain caused to the ATSI woman.

## **IMPAIRMENT AT WORK**

---

A man working on a construction site was injured at work and his movements restricted at his doctor's recommendation. The respondent company dismissed him following a standard blood test required by all staff, saying that they had found drugs in his bloodstream.

Material received by the ADC revealed that the testing process carried out by the respondents was dubious and possibly fabricated to create a reason for dismissing him.

The matter was resolved with an apology and financial compensation (\$20,000).

## **SEXUAL HARASSMENT & AIDING CONTRAVENTION OF THE ACT**

---

The Complainant worked for a national company. She worked in a culture where the men in her office openly spoke about their sexual habits and preferences. One of the men on one occasion exposed his genitals to her. When she reported it to her manager he responded by laughing, she felt humiliated. Another female staff member in the office was sent pornographic images from one of the men.

The complainant approached management to ask that these issues be the subject of an investigation and was told that the men were just frustrated.

The matter was settled with policies being developed for workplace and compensation of \$60,000 being paid.

## **SEX, PARENTHOOD AND FAILURE TO ACCOMMODATE A SPECIAL NEED ARISING OUT OF PARENTHOOD**

---

The Complainant worked for a small family business. She had a very high work load and was expected by her managers to work weekends and extra hours after work that she was not paid for.

The Complainant was a mother of a young child with a disability and she was the primary carer of the child. The Respondents refused to let her take the weekend off to care for her sick child. On one weekend she elected not to work because she was unable to find alternative care arrangements for her child. Upon advising her manager she was terminated.

The matter was settled with compensation of \$60,000.00 being paid.