

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

30 September 2016

The Hon Natasha Fyles 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 2015 to 30 June 2016.

Yours sincerely,



SALLY SIEVERS
Anti-Discrimination Commissioner

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FROM THE COMMISSIONER



It is with great pleasure I deliver the 2015-2016 Annual Report as Anti-Discrimination Commissioner. It has again been a very busy year for the Anti-Discrimination Commission (ADC) and the Community Visitor (CVP) Program that sits within the ADC. Both programs have experienced increased demand.

The CVP plays a vital role in ADC meeting its objectives promoting and advocating for the human rights of the Territories most vulnerable on a day to day basis as they visit Territorians in the various settings in which they are detained.

As can be seen from the report we work towards our objective of equality of opportunity for all Territorians in three main ways, public advocacy and community engagement, formal education and training and complaint resolution.

Our advocacy and priority for community engagement is determined by enquiries and complaints we receive and also by Northern Territory and National issues. Advocacy and community engagement is a focus for me and a part of all staffs' roles, from setting up stalls, drafting submissions to speaking at community events.

Myself, and the Director Traci Keys spoke on an array of topics at the request of numerous NT businesses, groups and individuals. A common theme was diversity and inclusion in the workplace, particularly gender equality and cultural diversity. Presentations at International Women's Day events lead to a number of presentations on unconscious bias co-ordinated by the Office of Women's policy and the preparation of workshop exploring unconscious bias.

This year we finalised resources and launched Discrimination Stories, this involved collaboration with iTalk Library and the Aboriginal Interpreter Service. The stories of everyday race discrimination are available in eight Aboriginal languages. This year we also launched a rap and hip hop song, developed and produced in the Top End, at the Shak and at Midnight Basketball.

In the area of Education and Training this year saw the end of an agreement with the Western Australian Equal Opportunity Commission to present our public education program. We appreciate their assistance and commend the great relationship the WA trainers established in the NT. While this arrangement enabled us to continue our training program it is noted that the loss of relationships for us with employers and the regions was a negative aspect of this arrangement.

We were lucky at the end of this arrangement to attract a former WA trainer and a second Trainer from the South Australian Equal Opportunity Commission to temporarily fill the role of Trainer for the last few months of the year. The positions were funded ad-hoc by Agency specific needs and the Department of the Attorney General and Justice. We are still developing a training model to use in 2016-17, and will report on this next year.

In regard to the Commission's complaint resolution role, an analysis of complaints shows that workforce discrimination dominates complaints and also dominates the requests for training. The last decision made by the Commission emphasised the importance of training

and the increasing need for issue specific training to meet obligations of a fair work place, but also to raise a defence to vicarious liability. In this decision Northern Territory Treasury escaped liability because there was a training regime in place unlike another decision made this year, the matter of *Newchurch v Centreprise Resources Pty Ltd & Ors* where the lack of a training regime left the employer exposed.

A worrying trend in this year's complaint figures is a 51% increase in complaints against government. Complaints received during the year are slightly lower than the previous year, with a notable drop towards the end of the year likely to be due in part to uncertainty in funding for the Northern Territory Working Women's Centre. A further troubling trend that continues is the prevalence of disability discrimination in work places, in particular in the area of mental health. We have a lot of work to do as a community in ensuring ongoing education in the area of a recovery model of mental well-being.

This year we also saw a large increase in enquiries. As is apparent in the analysis in this report, this is an important process to filter complaints and provide soft referral for matters that do not fit our jurisdiction. The aim of the enquiry line is to provide information to people to help them resolve their matters.

Early signs are that the new complaints process which came into effect on 1 July 2015 is having a positive impact on timeliness of the resolution of matters. We still need to refine and work with the community in regard to what matters suit the early conciliation process, as whilst there have been good outcomes it is clear that it will not be the right focus for all matters.

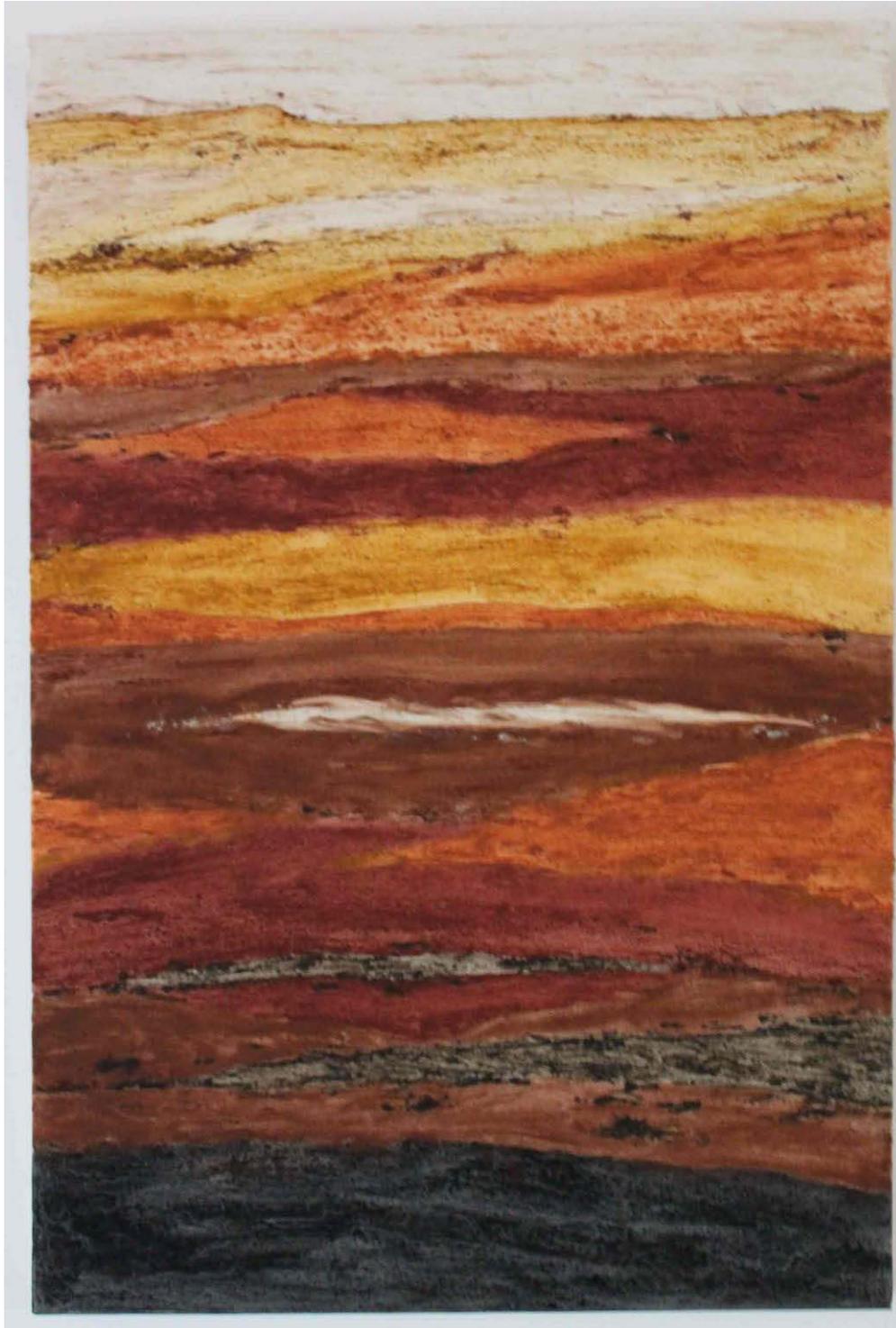
I would like to thank all staff that worked at ADC this year as they have worked very hard in a period where there has been a real clash of time lines, as we finalise old matters using the old procedure which focused heavily on the end of the process, while commencing matters under the new scheme focussed on front end resolution. This meant a particularly busy end of 2015 and start 2016, as the two systems ran side by side.

We are working on ensuring staff have the new skills they need for the new process including a greater investigative role, and writing material for the Northern Territory Civil and Administrative Tribunal's (NTCAT) consideration and submissions.

I would also like to thank all of the community groups and legal aid providers who assist with spreading the message of equality of opportunity. You play an important role in the broader education of the community.

I also acknowledge the courage of those who ring our enquiry line or lodge a complaint, to challenge the status quo to both improve conditions for themselves or to ensure others are not treated in the same way.

THE OFFICE OF THE ANTI-DISCRIMINATION COMMISSIONER



Lucy Van Sambeek – Carbon Capture

(Rights on Show 2015)

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.

The current structure of the office can be seen in Figure 1.

There are three main areas of operation within the Anti-Discrimination Commission (ADC):

- Complaints
- Public education and training
- Advocacy and Community engagement.

The Community Visitor Program also operates from the ADC and is the subject of a separate annual report.

COMPLAINTS

The Act provides a process for people to make individual complaints about breaches of the Act. In July 2015 the Act was amended to provide for the following process:

- Assessment process – where a decision is made whether to accept or decline a complaint. If accepted it is set down for a compulsory conciliation.
- An evaluation process – if the matter does not settle the person making the complaint can elect to have their matter evaluated. If the ADC finds that the matter has a reasonable prospect of success it is referred to the Northern Territory Civil and Administrative Tribunal (NTCAT) for hearing. If it is not referred a person may refer on their own within 21 days of the decision, despite the view of the ADC.

The complaint process is free and confidential. 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

The ADC provides public education and training through:

- Formal public training
- Customised training.

ANTI-DISCRIMINATION COMMISSION ORGANISATIONAL CHART

STRUCTURE AS AT 30 JUNE 2016

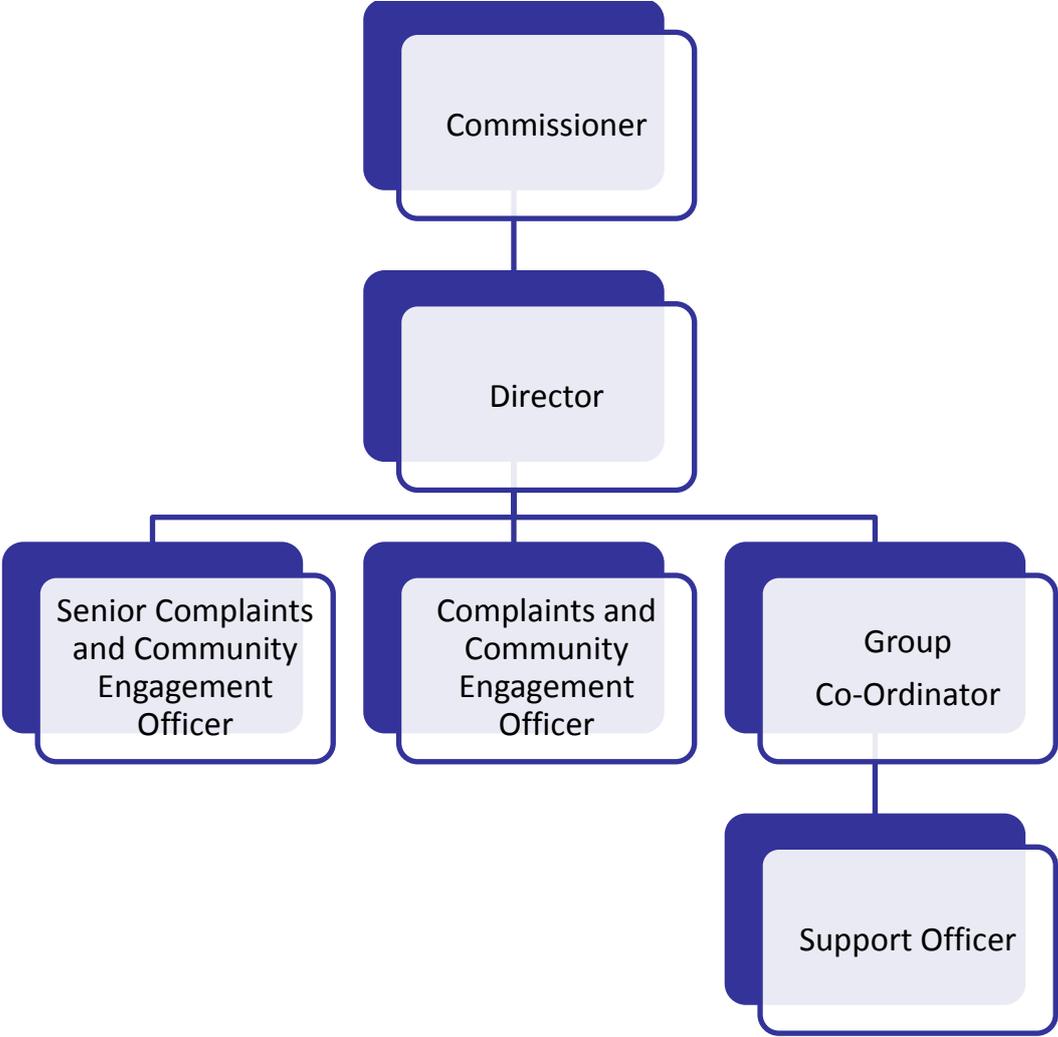


Figure 1

EMERGING ISSUES



Kylie Wallace-Smith – Don't turn your eyes away from the effects of the traffic beneath you

(Rights on Show 2015)

DISABILITY AND WORK

Disability discrimination has been the most complained about attribute for the last two years. Prior to this race discrimination had been the highest attribute complained about and while complaints about race discrimination remain high, it is clear that disability discrimination is a significant issue for Territorians.

In 2015-16 disability complaints represented 14% of all complaints handled, with 45% of these complaints being about work. We also saw a 36% increase in disability complaints since the previous year, having already seen a 31% increase in 2014-15. The most common disability was mental health representing 55% of the complaints handled, compared to 43% in 2014-15. Likewise we saw a 21% increase in complaints handled about failure to accommodate a special need, with 77% of these complaints being about a failure to accommodate a special need relating to disability.



Disability

Observations from complaints received are that the employers are often aware of obligations in relation to their work safety obligations but often have limited knowledge about their obligations under the *Anti-Discrimination Act*. Employers are often surprised to discover that they can be liable for how they treat injured staff.

In 2015-16 the Australian Human Rights Commission released the *Willing to Work – National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability 2016* report, which the ADC contributed to. The report looked into age and disability discrimination in the workplace. It found that 1 in 12 Australians with a disability (equivalent to 281,000 people) had experienced discrimination, with almost half of those between the ages of 24-64 reporting that the discrimination occurred in the workplace. Experiences were about discrimination in the recruitment phase (in particular regarding recruitment bias for able bodied workers over workers with a disability), biases in interviewing processes (including access issues) and discrimination while at work. A majority of the complaints handled by the ADC related to disability discrimination experienced at work rather than in relation to recruitment.

REFORM FOR THE ACT

While urgent procedural reforms passed in 2014-15 commenced in July 2015, a modernisation of the Act is overdue. The Act commenced in 1992, over 20 years ago. Discrimination law is an evolving area of practice and reforms are required to keep pace with community expectations and to ensure achievement of the objectives set out in the Act.

Three aspects of the Act that require particular reconsideration are:

- The Areas to which the Act applies
- The type of complaints that can be made under the Act
- Vilification.¹

The areas are the public locations in which discrimination is prohibited. Currently these spheres are:

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

The original areas reflect a decision to limit where protection of the Act applies, and is based on the idea that law should only regulate the public, not the private spheres of our lives. That in our private spheres we should be free to act and behave as we like.

However some of the areas have notable limitations that do not reflect what actually happens in the community. Of note is the area of service that only protects customers. Providers of services who experience discrimination from customers have no protection under the Act. This is especially challenging in the context of sexual harassment, where a

¹ Race vilification has been discussed in the last two Annual Reports and will not be re-covered in this Report, it remains a high priority.

service provider has no protection under the Act and is left relying on criminal law or work safety laws. This is of concern for industries such as the hospitality industry e.g. pubs and clubs. Similarly service providers, particularly in the transport industry e.g. taxi or bus drivers, might be subjected to racially discriminatory comments. Under current NT law they would be required to seek protection under Commonwealth racial vilification laws as it would not be covered by general discrimination law because of the limited scope of goods, services and facilities.

Likewise the concept of work is less fixed than it was in 1992. People's employment obligations are not always as clear and employees may work in environments where there are multiple employers and businesses. The current law and the extent of the rights and obligations for employers and employees are unclear.

Lastly in relation to sexual harassment consideration needs to be given to whether this protection should continue to be restricted by area. In Queensland the *Anti-Discrimination Act* 1991 does not restrict sexual harassment by area. The 2016 decision of *Smyth v NTT & Kerr* is a recent case where the Commissioner was satisfied that the sexually harassing conduct had occurred but was not satisfied in all instances that the requisite nexus to work was established. It is time to have the conversation about whether such limitations remain relevant.

Also welcome would be a review of the current types of complaints that could be made to the ADC. Currently it is only possible to bring an individual complaint, which requires that you are the individual who experienced the discrimination. The ADC receives a number of enquiries and complaints from people who do not meet this criterion. Often they have witnessed discrimination or they are aware of discrimination occurring against a group of people protected by the Act. Often the individuals who were the target of the discrimination are unknown to the individual or are not in a position to make a complaint.

Individual complaints can be a very important vehicle for individuals to assert their rights to redress discrimination they personally experience. They can also be a vehicle for broader systemic change – the latter is often being driven by the outcomes sought by the Complainant, particularly where they don't want other people to have the same experience as them. An individual complaints model however does not suit all complaints or all Complainants. Sometimes a more systemic approach is required. In reforms to the Act, consideration needs to be given to representative or own motion complaints. This is where either a 3rd party raises the complaint or the ADC does an own motion complaint on behalf

of a group. Currently under the Act there is power for the Commissioner to do an own motion enquiry. The ADC however is not resourced to run these types of enquiries, and does not have the statutory powers to collect evidence and make recommendations. There is currently no power to lodge representative complaints. This type of complaint model would enable individuals or organisations to bring complaints on behalf of individuals or a group of people protected under the Act.

The value of such models is greater systemic reach than the individual complaint model, and enables issues for particularly vulnerable groups to be properly considered. It also enables the ADC to better meet the objectives of the Act “equality of opportunity”.

GOODS, SERVICES AND FACILITIES

In 2015-16 there was a 43% increase in complaints about goods, services and facilities. A majority of these complaints were disability (12%), with high representation also in relation race (8%), failure to accommodate a special need (7%) and sex (7%). The types of complaints received under this area are quite varied, covering a number of attributes and covering a wide range of services. It is an area that has seen increase in complaints over a number of years.

The ADC process can provide an effective vehicle for consumers and service providers, as there is often not the ongoing relationship that may exist in other areas such as workplace complaints, making it easier for parties to be frank with each other and more focused on finding solutions. It is also our experience that service providers, particularly retailers are often skilled at resolving consumer issues and understand the value of resolution.

Of note in 2015-16 is that this area is now almost as high as work as an area of complaint. We will need to watch this trend. At present our training is focused on work, but continuation of this trend might require consideration of training in the area of service delivery. ADC can currently provide tailored training for service providers but as of yet does not run a standardised public program in the area.

TRAINING

A function of the Commissioner is to provide public education and training to the broader community. Details of the training provided and the different ways in which this function has been met is set out in greater detail later in this report.

In 2015-16 training was a strong focus of the ADC, with a clear increased recognition by

organisations for the need and benefit of discrimination training to start the conversation about changing workplace cultures, building and fostering diversity in the workplace and striving towards equality of opportunity for all employees. Increasingly organisations are realising that these are the cornerstones of a high performing workplace and that getting these foundations right works for everyone.

Approaches to ADC for training come from many varied sources. It may be an outcome of the resolution of a complaint or enquiry, it may follow a presentation by the ADC, an approach by the ADC to an organisation or the organisation may make a direct approach to the ADC. Some organisations make the request because they are having difficulties in their workplaces while others may be forward thinking and see the preventative value in making discrimination training a core part of their business and orientation of staff. Some work places have annual or semi-annual required training.

Training can be customised for organisations. This could entail us incorporating organisations workplace policies and procedures in our training, and tailoring the content to inform current issues concerning an organisation.

Attending training is one of the ways an employer can take steps to avoid vicarious liability for the actions of an employee. Of note in 2015-16 was the decision of *Smyth v Northern Territory Treasury & Kerr*² in which the Northern Territory Treasury was found to not be vicariously liable for sexual harassment and sex discrimination by employee Mr Kerr. In part this finding was because the Northern Territory Treasury provided regular discrimination training for its staff. It was noted however in the decision that some time had passed since the conduct subject to the complaint had occurred and that in more contemporary cases more specific training, such as sexual harassment training might be required. In this case only general discrimination training was provided to staff, but at the time of the issues subject to the complaint this would have been seen as a proactive step.

Details of the customised training and public program we provide are detailed further within this report. In addition to this we also commenced work on unconscious bias training. In 2015-16 information sessions were commenced providing the public with a taste of what this topic covers. In 2016-17 we start running unconscious bias workshops for employees. Unconscious bias explores the unknown biases we all have and how this impacts on the decisions we make every day and the systems we unknowingly create that may prejudice members of the community protected under the Act. This new line of

² 1 February 2016, Cmr Sievers

training is vital in assisting organisations to navigate their way through their obligations under the Act. In our experience a significant number of discrimination complaints received stem from decisions or actions taken based on unconscious bias.

In addition to providing our own training we also keep our eye on the horizon for training that we can facilitate or conduct jointly with other organisations to engage the community in regard to rights and obligations under the Act. In 2015-16 we had LEADR-IAMA conduct a week masterclass on conciliations in discrimination. In 2015-16 we also made preparations to bring Michael Small to the Northern Territory to provide workshops for advocates on the Disability (Access to Premises – Buildings) Standard 2010. These workshops will be delivered in 2016-17 and will be discussed further in the Annual Report for 2016-17.



LEADR-IAMA Training

PERFORMANCE



Angela Powell – 50 Shades of NT Soil

(Rights on Show 2015)

IF SOMEONE HAD TOLD ME

If someone would have told me - when I was just a child
That women would be equal - and fairly recognised
I could never have believed them - no matter how I tried
'Cause I saw how hard my mother toiled - to keep us satisfied

She washed our clothes on wooden boards - in galvanised iron tubs
Or down the river on long, flat rocks - those stubborn stains she'd scrub.

If someone would have told me – that women would be seen
As individual persons – who would realise their dreams
I would never have believed then – as I watched their daily tasks
Of caring for their children, home and husband
Their opinion seldom asked.

If someone would have told me - that women one day would drive
I would never have believed them – more sooner pigs to fly.
Our genetic make up was the cause – they said, that women would not fit
In any physical industry, society might fix.

We were seen as weak and puny – our reputation the same,
But women, through persistence, their status now have claimed.

If someone would have told me – one day we would take part
In legislative policy, as a female counterpart
I would never have believed them – 'cause women could not vote
And her repeated contributions were seen as trivial anecdotes.

But I'm pleased I've lived to see the change – and as women we can take
heart
That all their efforts in bygone years – I believe did play a part.

Written by Kathy Mills

COMPLAINTS

ENQUIRIES

The ADC provides an enquiry line for organisations (public and private) and the general public to obtain information about rights and obligations under the *Anti-Discrimination Act* (Act). This is a free and confidential service that can be accessed by phone, in person or by email.

Overall in 2015-16 we received 330 enquiries, this was an increase from 190 (74%) compared to 2014-15.

It has only been since 2014-15 that we have been able to analyse enquiry data in greater detail with any reliability. Our enquiries can be a good measure of what current issues are in the community. We encourage members of the community to contact us and share with us their experiences or concerns, even when they do not want to lodge a formal complaint. This assists us in knowing what issues are happening in the community. If we receive many calls about a particular issue we can find other vehicles to raise concerns without identifying our source.

Issues raised through our enquiry line inform the broader advocacy focus of the Commissioner.

PROFESSIONAL ENQUIRIES

The professional enquiry line is set up for organisations in the public, private and community sector. The purpose of the line is to enable organisations to obtain practical information about how to manage issues in their day to day operations regarding compliance with the Act.

In 2015-16 9% of enquiries were professional enquiries compared to 6% in 2014-15. Common enquires we receive through this service include information on targeted recruitment and responding to employees requests for accommodations in the workplace.

All enquiries are handled by senior staff members.

GENERAL ENQUIRIES

Enquiries come from members of the general public who may have questions about their rights under the Act, or who might be seeking more information about how to lodge a formal complaint with us.

Enquiries provide an opportunity for people to find out what the complaint process might look like and whether it will assist them in getting an outcome they want to achieve. During an enquiry a person can also be redirected to an alternative service for their issue or to an advocate or support agency that can provide them with direct assistance or support. We also assist people who may have difficulty completing our form, this may involve a language or Auslan interpreter.

In 2015-16 91% of enquiries were general enquiries.

Occasionally we are able to resolve people's issues through an enquiry, removing the need for a formal complaint to be made.

ENQUIRY TRENDS

In 2015-16 330 enquiries from Complainants were received about 434 attributes and areas. A majority of the enquiries were about the following areas and attributes:

Attributes

- Race (19%)
- Disability (17%)
- Failure to accommodate a special need (11%)
- Not under the Act (21%)

Race

The majority of enquiries in 2015-16 were about race (19%), with 41% of these enquiries relating to race and work, and 35% being about race and service. A similar breakdown is evident in the formal race complaints received.

Disability/Failure to accommodate a special need

A high number of enquiries were also received regarding disability (17%) and failure to accommodate a special need (11%). Many of the enquiries regarding failure to accommodate a special need related to disability. In regard to disability enquiries³ 14% related to work issues and 9% for failure to accommodate a special need.

Not Under the Act

Not under the Act refers to enquiries where the nature of the issue raised lacks an attribute for the purposes of the Act. An attribute is a characteristic a person may have that is one of the reasons for the alleged discrimination. To come under the Act it must be a characteristic that is protected by the Act, for example, race, age (for a full list see Appendix 5). Common enquiries of this nature are bullying and harassment issues where the behaviour is not because of a particular attribute. The general enquiry process is a valuable process for people to discuss these types of issues as we are able to refer them to other services to address their concerns, rather than requiring them to go through a more formal process when it is not a matter we can accept a formal complaint about.

³ Statistics based on percentage of work enquiries per attribute.

Areas

The Act requires that discrimination is in part because of an attribute (Appendix 5) and occurs in an area (Appendix 5). The following are the main areas in which enquiries were received:

- Work (45%)
- Goods, services and facilities (33%)
- Not under the Act (10%).

Work

Work, as with formal complaints, was the most common area in which enquiries were received. Enquiries in relation to work covered a range of attributes with the highest being race (17%) and disability (15%)⁴.

Goods, Services and Facilities

A high number of enquiries were also in relation to goods, services and facilities. The highest number of enquiries was received in relation to disability (21%)⁵.

Not Under the Act

10% of enquiries were not covered by an area under the Act. This means they may have had a relevant attribute, or not, but where the discrimination occurred was not in an area covered by the Act. For example discriminatory comments made to a person about their age while out walking their dog would not be covered by an area under the Act. Age would be an attribute under the Act, but the conduct does not occur in an area contemplated by the Act.

MODE OF ENQUIRY

In 2015-16 most enquiries were by phone with a smaller number of enquiries being received by email or in person. There was an increase in the number of enquiries received by email. Of note is that this was a common choice of communication for people with sensory disabilities. Email is also a common mode of enquiry for professional enquiries. The increase of enquiries in person in 2014-15 has remained constant in 2015-16 demonstrating the continued need for a counter service. Many enquiries by phone or email are also often followed up by a person visiting the office, as people often want to speak to someone in person. The absence of this capacity in Alice Springs is frequently raised when the Commissioner visits Alice Springs.

⁴ Statistics based on percentage of overall enquiries received in relation to work.

⁵ Statistics based on percentage of overall enquiries received in relation to goods, services and facilities.

MODE OF ENQUIRY

Mode of Enquiry	2015-2016(%) ⁶	2014-2015 (%) ⁷	2013-2014 (%)
Telephone	79%	82%	89%
In person	8%	8%	2%
Email	12%	9%	9%

Figure 2

COMPLAINTS RECEIVED

In 2015-16 formal complaints were received against 153 Respondents. This is slightly down from 2014-15 when 165 were received representing an 8% decrease. It is noted that complaint numbers had been relatively high for the first 9 months of the year with a noticeable decrease in the last quarter. The most likely explanation for this is that several advocacy organisations that refer complaints to the ADC had threats to their funding during this period; of particular note was the Northern Territory Working Women's Centre.

Appendix 3 sets out the current complaint process, Appendix 4 provides case summaries.

FORMAL WRITTEN COMPLAINTS RECEIVED

2015-16	2014-15	2013-14	2012-13
153	165	191 ⁸	162

Figure 3

FINALISATION OF FILES

In 2015-16 196 complaints were finalised. This is higher than 2014-15 where 165 complaints were finalised representing a 38% increase in the number of matters finalised during this period.

COMPLAINTS FINALISED

2015-16	2014-15	2013-14	2012-13
196	156	192	212

Figure 4

⁶ One Enquiry was made via Letter, one through website and the method of enquiry for two others was listed as Unknown.

⁷ One Enquiry was made via Letter and the method of enquiry for another was listed as Unknown.

REASONS FOR FINALISATION

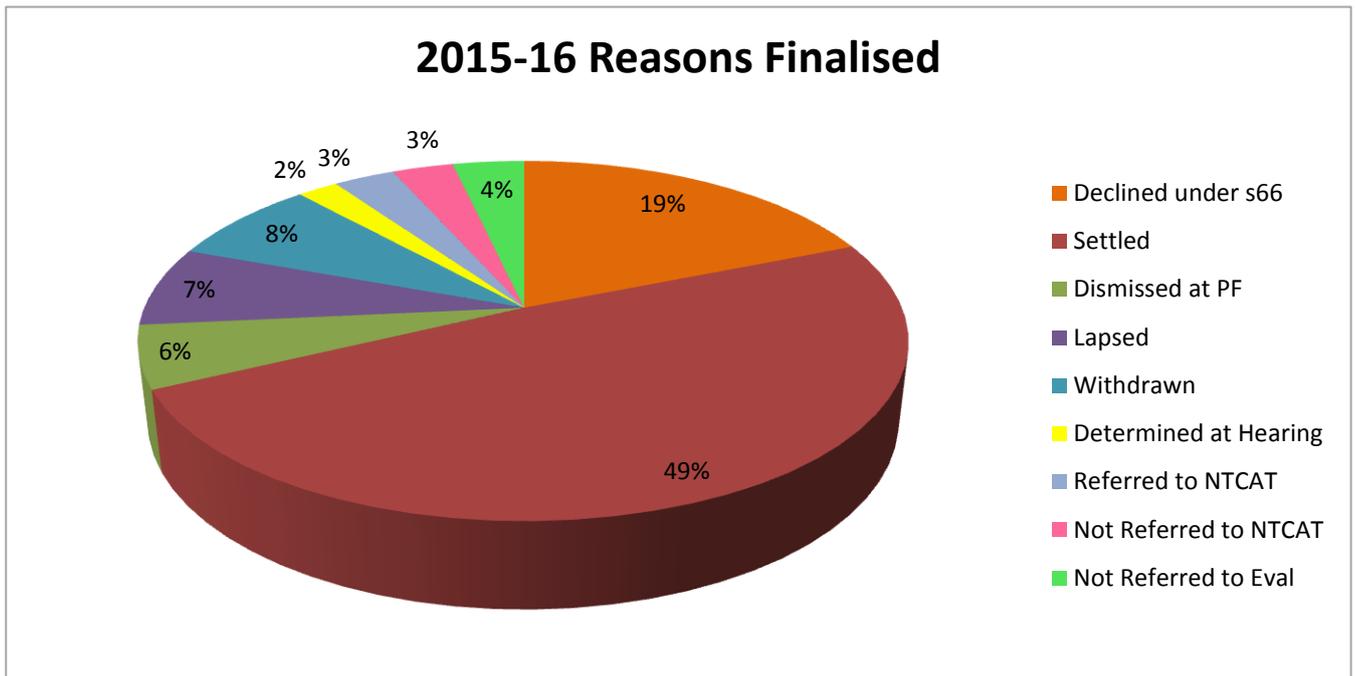


Figure 5

The following is a breakdown of the ways in which a matter may be finalised and the number of complaints concluded in each way for 2015-16.

DECLINED UNDER SECTION 66

In 2015-16, 37 complaints were declined under the Act, compared to 2014-15 when 33 complaints were rejected, being a 12% increase. The term “declined” replaces terminology in the Act prior to amendments which was “reject.” The assessment being made however remains the same. If a matter is declined the ADC is unable to re-consider the complaint at a later date. Considerable time is spent assessing complaints at this stage prior to declining to ensure there is no ground upon which we can accept the matter as there is no right of appeal from this decision. Where necessary additional material is obtained from a Complainant if this will assist in our assessment.

DISMISSED AT PRIMA FACIE STAGE (OLD PROCEDURE)

In 2015-16, 11 matters compared to 7 complaints in 2014-15 were dismissed at the prima facie stage. This was a decision required under the old Act. A prima facie decision was made following an investigation of an accepted complaint was a decision that the matter lacked evidential merit in going further in the process.

If a matter was dismissed at this stage, the complaint came to an end.

There will be no further prima facie decisions to report on in future Annual Reports as all prima facie decisions have now been made. All complaints discussed in next year’s Annual

Report will relate to the new process under the reforms to the Act, in which this process no longer exists.

LAPSED

In 2015-16, 14 complaints were lapsed. This is an increase from 10 complaints in 2014-15. A lapse is where the Complainant has lost interest in a complaint. Every attempt is made by the ADC to make contact with a Complainant with whom contact has been lost, before a complaint is lapsed. This is to ensure there is not a good reason for the contact having been stopped. In accordance with the Act, a notice of 60 days is sent to the Complainant prior to a lapse taking effect.

WITHDRAWN

In 2015-16, 15 complaints were withdrawn, compared to 26 complaints in 2014 -15, this is a 42% decrease. A majority of withdrawals were early in the process with a Complainant deciding not to proceed with their complaint. A withdrawal can occur at any stage of the process.

SETTLED

In 2015-16, 96 complaints settled compared to 2014-15 when 80 complaints settled. This is a 20% increase in settlements.

DETERMINED AT HEARING (OLD PROCEDURE)

Hearings against 4 Respondents were determined at hearing, one of these matters was not finalised in 2015-16 as final orders were due to be made in 2016-17. These were the last hearings to be conducted by the Commissioner. In future hearings will be conducted by the Northern Territory Civil and Administrative Tribunal (NTCAT).

NOT REFERRED TO EVALUATION (NEW PROCEDURE)

In 2015-16, 7 matters were not referred to evaluation.

REFERRED TO NTCAT

In 2015-16, 6 matters were referred to the Northern Territory Civil and Administrative Tribunal. No matters had been heard and determined by NTCAT at the end of 2015-16, with all matters remaining on foot.

NOT REFERRED TO NTCAT

In 2015-16, 6 matters were not referred to NTCAT. This means that the ADC made a decision that the matters did not have a reasonable prospect of success.

A Complainant can still make an application to NTCAT within 21 days of the ADC decision if the decision is to not refer a matter. In 2015-16 this happened on one occasion, it was in relation to a matter where some of the complaint was referred but not all. The Complainant opted to refer all of the original complaint to the Tribunal.

The reason this option exists for Complainants, is that this is a quicker option for all parties rather than having an appeal mechanism. At this stage of rolling out the new process it appears most Complainants will not refer if we evaluate their matter as having no reasonable prospect of success. We aim to provide enough information to parties so they can understand why we form this view.

Overall 86% of complaints handled were finalised within 8 months in 2015-16 compared to 65% in 2014-15 and 79% of complaints in 2015-16 were finalised within 6 months. A majority of the matters not finalised in 2015-16 under the new Act were matters received in the latter half of 2015-16.

TIME FRAMES

In 2015-16, of the complaints finalised, 154 or 79% were finalised within 6 months of receipt.

Under the previous legislation we had 60 days to accept or reject a complaint and 6 months to investigate, so timeliness was measured against 8 months. In 2014-15, 128 or 82% of complaints finalised were completed within 8 months, in 2015-16, 168⁹ or 86% of matters finalised were completed within 8 months.

Under the new Act there are no statutory time frames. Our aim is to conclude matters within 6 months of the date of receipt. For matters received under the new Act that were finalised, 96% (110) were completed within 6 months and 100% (115) were completed within 8 months.

Operationally we work towards 10 calendar days to accept or decline a complaint, 6 weeks to list a complaint for conciliation and 2 months to finalise an evaluation if a matter is referred to evaluation. The more streamlined process has enabled us to complete all matters quicker and enables matters that do not resolve to move into the hearing phase quicker. In 2015-16 6 matters were referred to the NTCAT, all were referred within 8 months, 5 were referred within 6 months. It is clear that the new process has improved our overall timelines.

⁹ This figure includes complaints handled under the new and old Act.

At the end of 2015-16 40 matters remain open. Of these 40 matters, 2 matters have been open for over 12 months, 8¹⁰ are matters that have been open for 6-12 months and 30 matters have been open for less than 6 months; with 13 of these 30 matters being open for less than 2 months.

OBSERVATIONS ON THE NEW ACT AND PROCESS

On 1 July 2015 amendments were made to the Act to provide for a more streamlined complaint process. While it is too early to definitively comment on whether the reforms have had the desired effect, there are some early positive indications. There has however been some trial and error in working towards the objective of the reforms which was primarily to provide a more timely complaints process.

Most notable is the improved time frames reported above. It is clear that matters being handled under the new process are being completed quicker than under the older process. We will however need more time to assess this.

Under the new process matters that are accepted are set down for a compulsory conciliation. If the matter settles then the complaint comes to an end. If the matter does not resolve then the Complainant can elect to refer the matter to evaluation. They have 21 days in which to make this election. If no election is made or an election is made to not refer a matter then the complaint comes to an end.

This option provides Complainants with the ability to only use the conciliation aspect of our process. Some Complainants (3%) elected to not proceed beyond conciliation. The value of this option is that Complainants are better informed about our process at this point and have more information about their issue. A conciliation process can provide a person with answers to questions they need or provides them with an opportunity to be heard, particularly in regard to the impact of the conduct on them.

As indicated earlier, we set ourselves the goal of accepting or declining complaints received under the new Act within 10 calendar days. In 2015-16 46% of matters were accepted or declined within 10 days. We would like this rate to be higher. Barriers to improving this timeline include:

- Delays obtaining additional information from Complainants.
- Delays obtaining additional information from Respondents, where input is required.
- Complainants lodging complaints and requesting a stay of their matter while other processes are being used.
- Public holidays in the last 6 months of the year.

While we have not been able to determine a higher number of matters within 10 days, the existence of this operational time frame has meant that most matters are decided quickly, with a majority of matters decided outside the 10 days, being not far outside it.

¹⁰ 2 are matters that were re-opened.

In regard to conciliations our goal was to set conciliation dates within 6 weeks of receipt of the accepted complaint. In 2015-16 we ran 51 compulsory early conciliation conferences,¹¹ of these 51 conciliations 30 or 59% were conducted within 6 weeks of receipt. A majority of matters listed outside this time frame was due to the availability of parties, not the ability or willingness of the ADC to list the matter in this time frame.

We also set ourselves a 2 month operational timeline to complete evaluations. In 2015-16 3 Complainant's matters were referred to evaluation. These were completed between 2-4 months. Our early observations are that 2 months was too short a time for the parties to get quality material to us. In 2016-17 we will extend this timeframe to 3 months, acknowledging that some complaints will have complexities that require us to go beyond this time frame to ensure procedural fairness and to ensure we have collected the best evidence we can before finalising the evaluation. We will however endeavour to finalise complaints within 6 months of receipt.

Also worthy of comment is our new powers to compel documents and witnesses. These powers have been exercised in 2015-16. In regard to documents and records our approach is as follows:

- Ascertain the relevance of the document or record to the matter to be evaluated by the ADC.
- Ascertain if the document or record could be provided by a party to the complaint. If it can we are less likely to compel it.
- If the document or record is in the possession of a third party, ascertain if it can be voluntarily obtained.
- We are more likely to compel documents if it is direct evidence to support a parties' case, we are less likely to compel documents that are relevant to the character or credit of a party.

Compulsion powers maybe exercised unilaterally by the ADC or following a request from a party. If a request comes from a party it is not automatic that an order is made, and assessment is undertaken to determine if the powers should be used.

In regard to witnesses we generally expect parties to provide their own witness statements. We may, and have in 2015-16 used our powers to compel witnesses¹² where:

- They are a party to the complaint, are unrepresented and may lack the capacity to prepare their own statement.
- There is a witness who may have evidence relevant to our evaluation who may not fairly be called by either party; an example of this would be an independent witness in the workplace.
- A relevant witness that no party is able to get evidence from. Examples of this maybe a relevant third party or an employee that has left employment.

¹¹ Additional conciliations were conducted in 2015-16 including conciliations under the old process and additional conciliations requested by parties.

¹² Compulsion powers are only used where a person will not voluntarily give evidence or is unable to.

The value of these powers is that we are not limited to the evidence provided by the parties and we are able to get better quality evidence to inform our decisions.

APPEALS

APPEAL NUMBERS AND OUTCOMES

In 2015-16 no appeals or judicial reviews were lodged in relation to decisions of the ADC. Only final decisions of the ADC can be appealed under section 106. Amendments to the Act on 1 July 2015 provided for the transfer of hearing functions to the Northern Territory Civil and Administrative Tribunal. As a result of this change appeals can only be made against a decision of the Tribunal not the ADC. A judicial review is still available.

Appeals under section 106 remain for matters heard and determined under the Act prior to 1 July 2015. At the end of this period there were only 2 matters meeting this description.

YEAR	NUMBER	OUTCOMES
2012/13	2	2 dismissed ¹³ , 2 discontinued, 1 struck out ¹⁴
2013/14	Nil	1 dismissed ¹⁵
2014/15	Nil	N/A
2015/16	Nil	N/A

Figure 6

HEARINGS

NEW MATTERS REFERRED TO HEARING

2015-16	2014-15	2013-14	2012-13
0	5	6	7

Figure 7

TOTAL NUMBER OF HEARINGS CASE MANAGED

2015-16	2014-15	2013-14	2012-13
5	10	10 ¹⁶	22

Figure 8

¹³ One matter at time of report on further appeal.

¹⁴ 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.

¹⁵ This is Kennedy which was dismissed by court of appeal filed in 2012-13 not decided in that year – was dismissed at all three levels.

¹⁶ 10 matters equates to complaints against 24 Respondents.

MANNER OF REFFERAL

Under the previous legislation a complaint could 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.

Under the new legislation, referral is by the ADC to the Northern Territory Civil and Administrative process, or by way of self-referral within a 21 day period if the ADC forms a view that a matter should not be referred.

In 2015-16 there were two hearings conducted:

Newchurch v Centreprise Resource Group Pty Ltd, Ride & Ride

Smyth v Northern Territory Treasury & Kerr

Copies of these decisions can be found on our website at www.adc.nt.gov.au.

MANNER OF REFERRAL (previous legislation)

YEAR	S 76	S84	TOTAL
2012-13	5	2	7
2013-14	6	0	6
2014-15	5	-	5
2015-16	-	-	-

Figure 9

REFERRAL UNDER NEW ACT TO NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL

YEAR	ADC referral	Self-Referral ¹⁷	TOTAL
2015-16	6		4

Figure 10

¹⁷ In relation to 1 of the 4 referrals by the ADC, aspect of the complaint that were not referred to the Tribunal, were referred by the Complainant. Our data does not calculate complaints at this level of detail, which is why it does not appear in the self-referral column.

TOTAL NUMBER OF HEARINGS CASE MANAGED

2015-16	2014-15	2013-14	2012-12
5	10	10 ¹⁸	22

Figure 11

In relation to the 4 matters referred to the Northern Territory Civil and Administrative Tribunal the ADC intervened in 2 of these matters under section 14 of the *Northern Territory Civil and Administrative Tribunal Act*. Of the remaining two matters, first directions hearings were listed outside the reporting period & prior to consideration of the role of the ADC in these matters.

The role of the intervener is to support the Tribunal in their decision making, in particular to provide submissions on the law or general practice in the area of discrimination to assist with decision making.

¹⁸ 10 matters equates to complaints against 24 Respondents.

PUBLIC EDUCATION TRAINING & COMMUNITY ENGAGEMENT

A fundamental role of the ADC in working towards its objective is to educate and impart information to the broader community, including business and organisations in the NT about rights and obligations under the Act. We do this by:

- A free complaints enquiry line¹⁹
- A formal training program
- Information sessions
- Information stalls
- Networking
- Public events
- Presentations
- Resources
- Social media and the ADC website.

Through each we gain a picture of issues facing the NT community. This information assists us in setting our priorities.

PUBLIC EDUCATION & TRAINING

In 2015-16 our public education and training was provided for part of the year by the Western Australian Equal Opportunity Commission and partly by additional external and internal funding to engage two trainers for a defined period of time to deliver our training. In 2015-16 we saw an increase in demand for training.

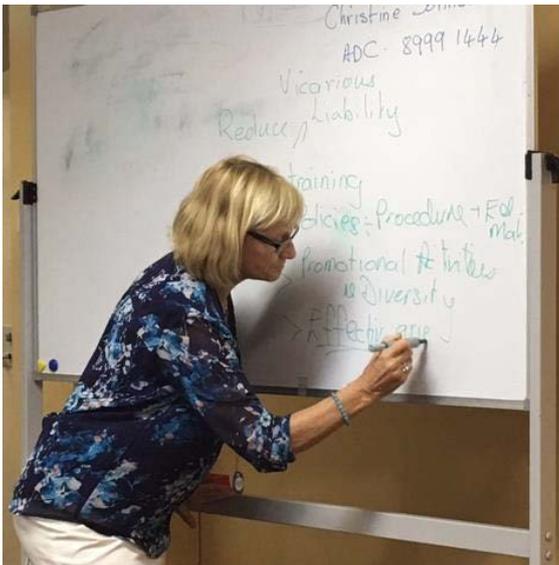
In 2015-16 the following formal training program was offered:

- Customised training
- Anti-Discrimination, Harassment and Bullying
- Preventing Discrimination, Harassment and Bullying for Managers and Supervisors
- Contact Officer Role
- Sexual Harassment – Know where the line is
- Train the Trainer.

The public program was offered four times in Darwin, twice in Alice Springs and once in Katherine, Tennant Creek and Nhulunbuy.



¹⁹ See page 16.



CUSTOMISED TRAINING

Customised training is also available upon request from an organisation, this is training designed to meet the needs of the organisation. This is a popular form of training, as organisations can request that the focus be on issues that are currently a challenge for the organisation.

In 2015-16 83 training sessions were provided to 22 organisations. This equated to 267 hours of training to 1044 individuals.

ANTI-DISCRIMINATION, HARASSMENT & BULLYING

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

- Rights and responsibilities under the Act
- How the Act affects individuals and organisations (including employment and service provision)
- The functions and roles of the ADC
- The difference between bullying and harassment
- What is acceptable behaviour in the work place.

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:

- Requirements under the Act
- 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

SEXUAL HARASSMENT

This workshop explores:

- What is sexual harassment
- The current statistics
- Federal and Territory laws that cover sexual harassment
- Workplace culture and how it can impact on behaviour
- Legal cases
- Liability of individuals and organisations and strategies to help minimise the risk of sexual harassment.

TRAIN THE TRAINER

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

INFORMATION SESSIONS, INFORMATION STALLS AND COMMUNITY EVENTS

In 2015-16 43 information sessions were provided to 43 organisations. Information sessions are sessions provided by the ADC to organisations to provide information about our process. In 2015-16 free information sessions were provided to key stakeholder organisations regarding reforms to the Act and how practically they would be applied.

Information stalls are an opportunity to provide information to the general public about the ADC service and what we do. It is also an opportunity to speak with members of the public to hear their stories and experiences.



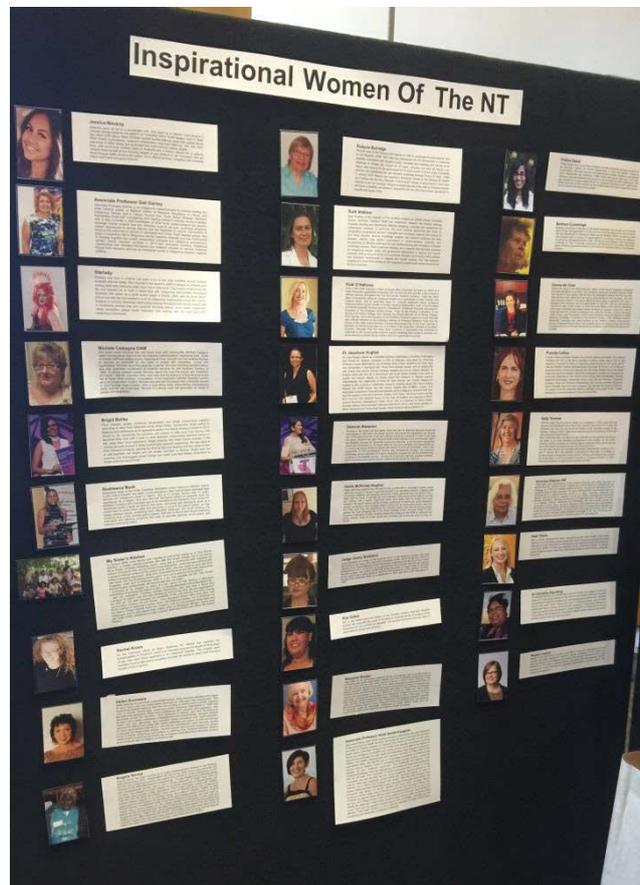
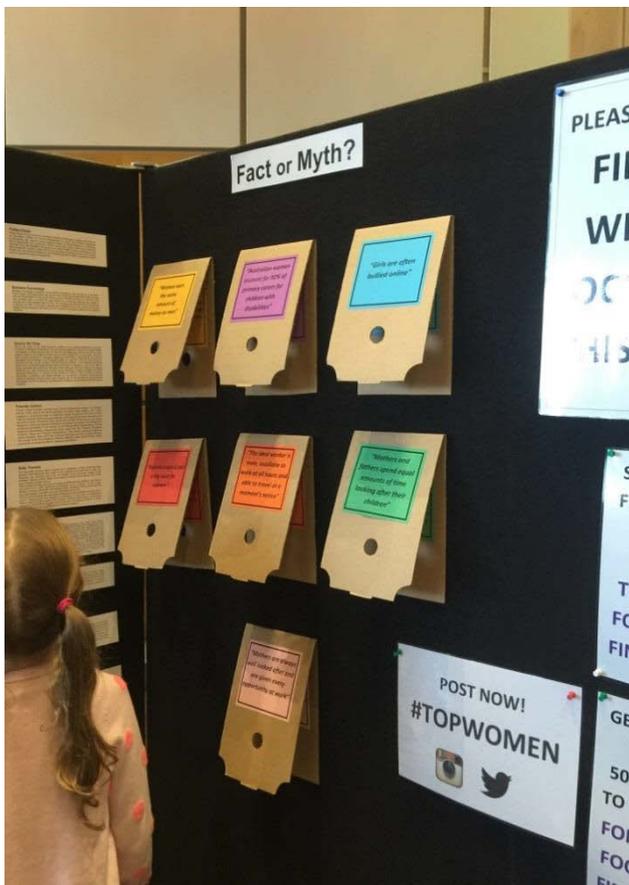
Seniors Expo



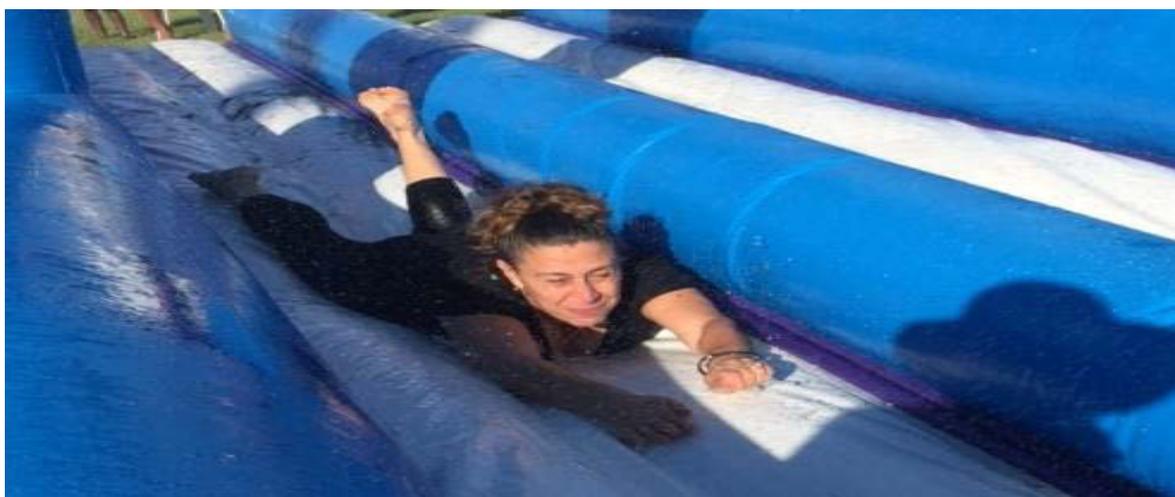
Supreme Court Open Day

In 2015-16 we provided information stalls at the following events:

- Supreme Court Open Day
- International Women's Day
- Harmony Day Football Festival
- Senior's Expo



International Women's Day



Harmony Day

PUBLIC ADVOCACY

Advocacy is an important part of the ADC work. A traditional means by which we advocate for the values under the Act is in writing submissions to ensure the objectives of the Act are factored into the development of laws and policies impacting the Northern Territory. We continued to do this in 2015-16. However advocacy for the values of the Commission also occurs via an array of other platforms including:

- Presentations
- Northern Territory Human Rights Awards
- Social media,
- Our dedicated website
- Resource Development
- Capacity building projects.

PRESENTATIONS

Presentations are given by the Commissioner or other senior ADC staff. In 2015-16 a strong focus was on topics relating to gender and cultural diversity and inclusion in the workplace, particularly gender disadvantage in the workplace, targeted recruitment and unconscious bias. A full list can be found located at Appendix 7.



NTWLA Cocktail Party

Of note in 2015-16 were the following presentations:

- Farewell to the former Sex Discrimination Commissioner, Elizabeth Broderick at the Northern Territory Women's Working Centre
- CDU Governance Institute – Being Employer of Choice – Gender and Cultural Diversity
- Hays Recruitment – Gender Diversity – Why Aren't We Getting it Right
- Chamber of Commerce – Targeted Recruitment
- Office of Women's Policy – four Lunch Box sessions - Unconscious Bias – Raise Awareness to Bust your Bias
- Northern Territory Women's Lawyers Association International Women's Day Cocktail Party – Family Life & Practice – Personal and Equal Opportunity Reflections
- Engineers Australia – What is Unconscious Bias - International Women's Day – Darwin and Alice Springs
- NT Department of Attorney General and Justice – White Ribbon Barbeque
- Northern Institute – Fair Go – No Go - What are the Barriers for Aboriginal Territorians Accessing the ADC



Elizabeth Broderick's Farewell



Don a Hijab Day



Chinese New Year

Lunch time talks
Office of Women's Policy

This session:
Unconscious Bias - raise awareness to bust your bias

What is unconscious bias?
It's the hard wired pattern of decisions we make every day based solely on what feels safe, familiar, likeable, valuable and competent to us without realising it.
It's the very fundamental way we look at and encounter the world to make sense of everything around us.

Find out how unconscious bias can impact our life and how to change it.
1pm to 2pm, Friday 6 May
Ghost Gum Room, Mezzanine Level
Alice Springs Plaza, Todd St Mall.
RSVP by 4 May to the Office of Women's Policy
Phone: 8999 2598
Email: owp@nt.gov.au
Please BYO lunch.

Guest presenter
Sally Sievers
Northern Territory Anti-Discrimination Commissioner




Lunch time talks



Presentation at Northern Institute

NORTHERN TERRITORY HUMAN RIGHTS AWARDS “The Fitzgeralds”

In 2015-16 ADC was part of the steering committee for the 2nd Northern Territory Human Rights Awards “The Fitzgeralds.” Also on the Committee were:

- Joanne Schilling, Rotary Club of Darwin South Inc.
- Rod Meyer, Rotary Club of Darwin South Inc.
- Caz Coleman, Director, Melaleuca Refugee Centre
- Kim Gates, Executive Director, Northern Territory Aids and Hepatitis Council
- Caitlin Perry, Executive Director, Darwin Community Legal Service
- Sally Sievers, Commissioner, Anti-Discrimination Commission
- Lyma Nyguen, Barrister, representative of the Criminal Lawyers Association of the NT (CLANT)



The awards are in recognition of the United Nations Day for Human Rights, which occurs on 10 December every year. The awards are an opportunity to recognise Territorians who have made significant contributions in this space. The awards are named after Tony Fitzgerald, a former Anti-Discrimination Commissioner who is acknowledged as being a fierce advocate for the rights of people who may not have a voice, particularly Aboriginal Territorians. This year it was a pleasure to have Tony’s family present, his sister Shane Fitzgerald, his son Gus and daughter Nina and his friend Roger Allen.

The evening was opened with a welcome to country by Bilawara Lee followed by the guest speaker for the evening Frank Brennan SJ AO.

It was an exceptional year with 51 nominations for the 4 awards from individuals and organisations across the Territory.

Following speeches, the winners for each award was announced, listed below are the awards and the successful recipients:

THE FITZGERALD YOUTH AWARD

For a person or organisation living or based in the NT who has taken action to ensure the promotion, protection and fulfilment of human rights of young people.

Presented by: Nina Fitzgerald

Winner – Joint winners Shahleena Musk & Stronger Sisters – Tennant Creek High School.

Shahleena Musk for her work at the Northern Australian Aboriginal and Justice Agency and Stronger Sisters for their program working with young women at Tennant Creek High School. Leadership and life skills, with philosophy of earn and learn.



Highly Commended went to Project 21.



THE FITZGERALD JUSTICE AWARD

For a person or organisation living or based in the NT who has taken action to ensure the promotion, protection and fulfilment of human rights in the area of justice.

Presented by: Frank Brennan

Winner – Joint winners – Police caution – Aboriginal Interpreter Service and Larrakia Nation Night Patrol.



Aboriginal Interpreter Service for their 4 year-long project to interpret the police caution into 18 Aboriginal languages for use on police iPad.

Larrakia Nation Night Patrol for working protecting rights of Aboriginal people in the greater Darwin area 7 nights a week, 52 weeks a year. Expanded recently to include mini bus to assist children attending a wide range of activities in the community.

Highly commended went to Daryl Murdock.

THE FITZGERALD SOCIAL CHANGE AWARD

For a person or organisation living or based in the NT who has taken action to achieve or ensure the promotion of social change in the area of human rights.

Presented by: Shane Fitzgerald

Winner – Darwin Asylum Seeker Support and Advocacy Network.

For individual and systemic advocacy for asylum seekers in detention and in the community, and their role in changing attitudes in the wider community through talks, films and events.



Highly commended were Children’s Services Support Unit (CSSU) Wadey Safe House and Tangentyere Women’s Committee – Family Safety Group.

THE FITZGERALD DIVERSITY AWARD

For individuals or organisations whose activities focus on promoting, protecting and fulfilling human rights of diverse communities in the NT.

Presented by: Gus Fitzgerald

Winner – joint winners Football Without Borders and Somerville Community Services.



Football Without Borders offers three days of football activities with the aim of supporting asylum seekers and refugees as they integrate into the Darwin community.

Somerville Community Services Inc., the Somerville Diversity Work Group ensures through a range of workplace events and initiatives the inclusion and utilisation of the skills of 79% culturally diverse work force.

Joint Highly commended was Jared Sharp and the NT Legal Aid Commission for their CALD project.



RESOURCES – SOCIAL MEDIA

WEBSITE

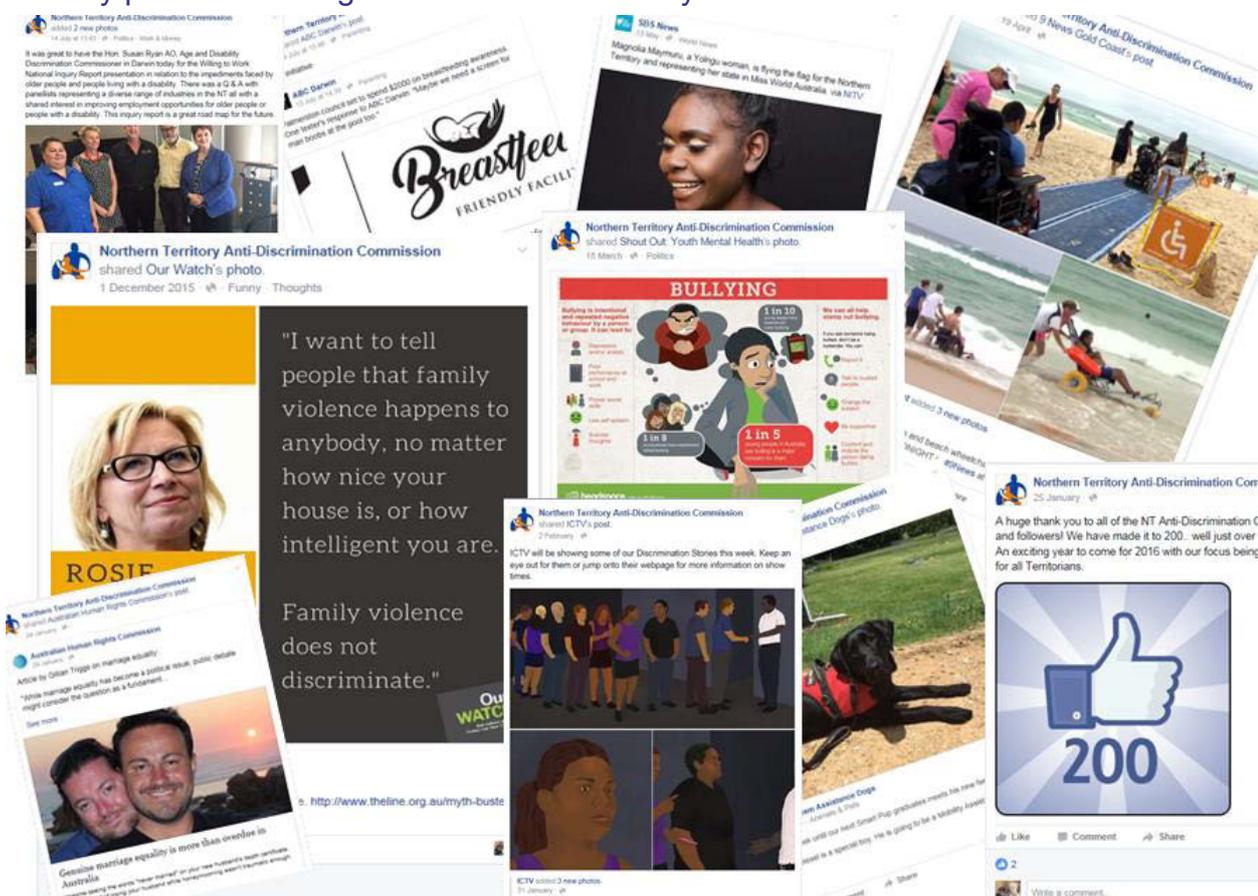
Our website is a vehicle for members of the community to find out about current events relating to our work, information on discrimination, details about our training and to lodge a formal complaint. A majority of formal complaints are received via our online complaint mechanism.

In 2015-16 we had:

- 78% of viewers were new visitors to the website
- 16,602 sessions were recorded
- 13,806 users
- 35,711 page views.

SOCIAL MEDIA

In 2015-16 the ADC remained an active user of Facebook and Twitter. The figure below displays a collage of positive postings placed on the ADC Facebook page. Social Media is used by the ADC as a vehicle to advocate for positive messages and images about groups in the community protected under the Act, who are often the subject of negative coverage in mainstream media. In particular the Commissioner is an avid user of Twitter, using it to convey positive messages out to the community.



In 2015-16 we saw our likes increase on Facebook from 119 to 253. The demographics of viewers were 69% women and 28% men.

We also created our own YouTube channel which can be located by searching Northern Territory Anti-Discrimination Commission.

RESOURCES

Resources can be an important tool to support advocacy for the rights of groups protected by the Act. In 2015-16 the ADC developed training resources (images below) “The Discrimination Stories.”



These are three short animations available through the iTalk Library app as an interactive training resource or in video format. They show three scenarios that reflect common discrimination issues for Aboriginal Territorians. The videos are designed to assist people to identify and address discrimination constructively. The resource was developed by iTalk Library with the Aboriginal Interpreter Service. The resource is available in 8 languages including English and languages from the Top End and Central Australia. They are designed to be used in a training setting. The videos are accessible on our website and our YouTube channel, and are also on Indigenous Community Television (ICTV). The iTalk Library app also displays them in a manner that is interactive.

Discrimination Stories was launched in Alice Springs on 18 November 2015 and we are looking forward to the launch in the Top End.

Also developed in 2015-16 was a rap video targeted at Aboriginal Youth. This was developed by Moonfish Productions and Easy Street, featuring Bala G and Ineke. The video was launched at the Youth Shak on 29 April 2016. It can be viewed on our website, Facebook page and our YouTube channel. On 30 April 2016 the Commissioner and Bala G hosted an ice-breaker activity before Midnight Basketball. Bala G performed the rap with Michael Trikilis “Triki” and a dancer from his hip hop crew. The dancers then performed to a number of other songs.



In 2015-16 the opportunity was also taken to refresh all our training material, including the Fair Go at Work manual and development of unconscious bias training.

CAPACITY BUILDING PROJECTS

In 2015-16 the ADC ran its first project designed to better skill targeted members of the community in discrimination conciliation by engaging LEADR-IAMA to conduct a 5 day Master class in discrimination conciliation. This was the first course of its kind run by LEADR-IAMA in Australia and was developed in consultation with the ADC.

The course was for invited participants only. Including in the group were ADC staff, staff of other independent commissions and senior mediators from the Community Justice Centre, staff from equivalents to the ADC interstate. The Masterclass was conducted by Bradley Chenoweth from LEADR-IAMA and Justine Davis a senior mediator from the Community Justice Centre (CJC).

The purpose of the training was to:

- Increase skills in the Northern Territory in conciliation
- Increase an understanding of conciliation in the context of discrimination
- Increase the skills of ADC conciliators
- Skill senior mediators from the CJC in discrimination conciliation, to provide additional resources for the ADC to outsource suitable conciliations
- Create a community of conciliators
- Provide an opportunity for skill sharing across jurisdictions
- Provide training for experienced conciliators and mediators.

The training was extremely successful and it is likely that in part the training contributed to the ADC's high settlement rate in 2015-16. As a result of the training ADC also now has a pool of conciliators it can utilise to outsource suitable matters if there are insufficient resources at ADC or there are conflicts. This has been particularly helpful in Alice Springs, as it has assisted with quicker listings of matters, reducing the need to fly staff to Alice Springs.

TRENDS



Jennifer Knight – Spirit Eyes 2

(Rights on Show 2015)

COMPLAINTS

WHO IS COMPLAINING?

GENDER

In 2015-16 52% (122) of Complainants were male compared to 48% (114) identifying as female. As in 2014-15 there were a higher number of male Complainants to other genders. A closer analysis of the data however shows that the slight difference is due to multiple complaints being lodged by one male Complainant against several Respondents.

GENDER OF COMPLAINANT

Year	Male	Female	X
2015-16	122	114	0
2014-15 ²⁰	121	114	1
2013-14 ²¹	128	121	2
2012-13	120	162	0

Figure 12

REGION

In 2015-16, 150 (64%) complaints were handled from Darwin; up from 139 (58%) in 2014-15. There was a decrease of complaints from Alice Springs during this period, representing 52 (22%) of complaints compared to 56 (24%) in 2014-15. It is noted that in the latter half of the year there was a reduction in new complaints coming from Alice Springs, in part this appears to have been due to the funding uncertainties for the Northern Territory Working Women's Centre who have an office in Alice Springs and are a source of complaints from this region.

REGION

Year	Darwin	Other NT	Interstate	Total
2015-16	150	85	1	236
2014-15	139	94	5	238
2013-14	175	72	3	253 ²²
2012-13	157	87	20	272 ²³

Figure 13

WHO ARE PEOPLE COMPLAINING ABOUT?

In 2015-16 37% (88) of complaints were handled against individuals, 31% (74) against government and 20% (46) against companies. Most complaints against individuals are in the context of a government department or company, generally employees of the entity. A smaller number of complaints were handled against non-government organisations, clubs and local government see figure 15. Of note is the increase in complaints against

²⁰ The gender on 2 complaints was unknown.

²¹ The gender on 2 complaints was unknown.

²² Three matters were unknown.

²³ Five matters were unknown.

Government compared to 2014-15 and a decrease of complaints against the private sector.

COMPARATIVE DATA

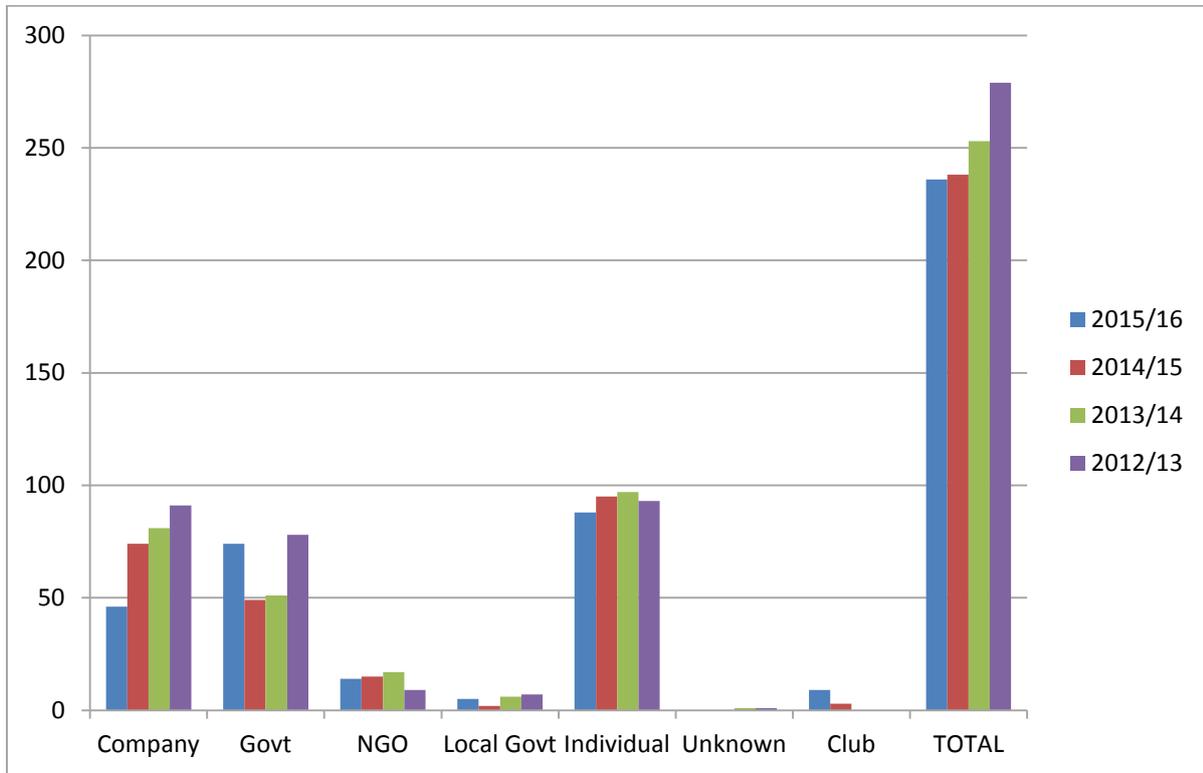


Figure 14

RESPONDENT PROFILE

Year	Company	Govt	NGO	Local Govt	Individual	Club	Unknown	Total
2015-16	46	74	14	5	88	9	0	236
2014-15	74	49	15	2	95	3	0	238
2013-14	81	51	17	6	97	0	1	253
2012-13	91	78	9	7	93	0	1	279

Figure 15

WHAT ARE PEOPLE COMPLAINING ABOUT?

ATTRIBUTES

A list of the attributes in the Act is located in Appendix 5. Figure 18 sets out the attributes complained of in 2015-16.

The highest attributes complained of in 2015-16 were:

- Disability (36% increase)
- Failure to accommodate a special need (21% increase)
- Race (11% increase)
- Sex (7% increase)
- Victimisation (5% increase)
- Sexual harassment (2% decrease)
- Association with a person (7% increase)
- Age (22% increase).

The table below sets out the top ten attributes complained of in 2015-16 compared with 2014-15.

2015-16		2014-15	
Disability	114	Disability	84
Failure to accommodate a special need	100	Race	83
Race	74	Failure to accommodate a special need	83
Sex	66	Seeking unnecessary information	64
Victimisation	61	Sex	62
Sexual Harassment	49	Victimisation	58
Association with a Person	46	Sexual Harassment	50
Age	45	Marital Status	43
Marital Status	32	Association with a person	43
Irrelevant Medical Record	32	Age	37

Figure 16

DISABILITY

Disability is the highest attribute in complaints handled for the second year in a row. Again the highest type of disability being complained of is mental health representing 55% of disability complaints. As in 2014-15 the second highest type of disability complained of was physical disabilities.

- Physical disability 23%²⁴
- Mental health 55%
- Sensory disability 6%
- Medical condition 2%
- Neurological condition 8%

²⁴ The remaining data were disability complaints where it became apparent that the Complainant had no disability but were associated with someone who did have a disability.

- Acquired brain injury 1%
- Cognitive disability 4%

FAILURE TO ACCOMMODATE A SPECIAL NEED

Failure to accommodate a special need was the second highest conduct complained of. The Act places a positive obligation on employers, service providers, educators, accommodation providers, clubs and superannuation and insurance providers to reasonably accommodate special needs a person may have relating to an attribute under the Act. Examples of the types of complaints that might be received under this ground include, ramp access to a building for a person in a wheelchair, or flexible work arrangements for a parent who needs to collect children from school.

In 2015-16 a majority of complaints received related to accommodations required for people with a disability (77%). Other complaints related to special needs relating to sex, sexuality, age, race and marital status.

RACE

There was an 11% decrease in complaints handled in 2015-16 about race; but it remains a high ground of complaint. A majority of these complaints were in the area of work (59%) with 37% being about discrimination in the area of goods, services and facilities. Aboriginal complaints represented 60% of the race based complaints, with 60% of these complaints being about work and 36% being about goods, services and facilities. Complaints from the African community represented 15% of race complaints, while complaints from the broader European community represented 11% and the Asian community represented 10%.

This is the first year we have reported on a race complaints based on a breakdown by racial origin, but know anecdotally that there has been a significant increase in Aboriginal complaints. This is likely to be because of an increased use of the ADC by Aboriginal legal services.

Also of note is the gender of the Complainants; while complaints from the Aboriginal community was even in terms of gender, it was notable that for Asian and European complaints all Complainants were male, and in regard to complaints from the African community they were predominantly male (91%). This may not indicate that greater discrimination is being experienced by men in these groups, but reflect that they are better placed to complain.

SEX / SEXUAL HARASSMENT

In 2015-16 there was a slight increase in sex complaints up 7% and a slight decrease (2%) in sexual harassment complaints, but they remain high with 49 complaints handled compared to 50 in 2014-15.

In 2014-15 80% of complaints about sexual harassment were from females, while 20% came from males. In relation to the male complaints 100% of these were ambit claims, where the Complainant ticked multiple attributes irrespective of the relevance to the discrimination they complained of. A majority of sexual harassment complaints were in the workplace (61%).

In regard to sex discrimination complaints 68% were from females and 32% were from males, with 58% being about the workplace.

AGE

In 2015-16 complaints of age increased 22%, a majority of these complaints related to older age with most being about work, but a significant number relating to goods, services and facilities.

NEW ATTRIBUTE

Of note is a new attribute included in the Act in 2015-16, being protection for persons whose details are published under section 66M of the *Fines and Penalties (Recovery) Act*. Section 66M provides for a Register of fine defaulters. The decision to place someone on the defaulters register rests with the Fines Recovery Unit in the Department of Attorney-General and Justice. People are entered following other failed attempts to retrieve a payment of a fine. The fine must exceed \$10,000. A high number of people are on the defaulter's list but no complaints were received in relation to this attribute in 2015-16. It is likely that awareness of this protection is low.

ATTRIBUTES & PROHIBITED CONDUCT IDENTIFIED IN FORMAL COMPLAINTS

Attribute	2015-16 ²⁵	2014-15	2013-14 ²⁶	2012-13
Age	45	37	35	34
Aiding the contravention of the Act	30	22	17	20
Association with a person	46	43	22	29
Breastfeeding	3	0	0	0
Discrimination Advertising	3	3	5	7
Failure to accommodate a special need	100	83	62	75
Guide/Assistance Dog	0	1	0	0
Disability	114	84	64	76
Irrelevant criminal record	29	29	3	3
Irrelevant medical record	32	31	14	17
Marital status	32	43	12	8
Parenthood	28	27	8	17
Political Beliefs/Opinions	24	15	6	11
Pregnancy	4	8	7	11
Race	74	83	79	101
Religious beliefs/activity	25	24	11	19
Seeking unnecessary information	30	64	47	38
Sex	66	62	63	43
Sexual harassment	49	50	57	30
Sexuality	9	24	31	17
Trade union activity	13	12	13	11
Victimisation	61	58	16	25

Figure 17

²⁵ 2 Matters were complaints that did not classify as an attribute or prohibited conduct under the Act and were recorded as 'Not Under the Act'

²⁶ Minor errors were reported in the 2013-14 for attributes, this contributed to other reporting errors in this report. Each of these errors referred to again has been correctly reported and file noted accordingly.

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
- Clubs.

AREAS

Area	2015-16	2014-15	2013-14	2012-13
Accommodation	28	37	56	10
Clubs	2	10	2	3
Education	76	71	19	34
Goods Services and Facilities	349	243	118	198
Insurance and Superannuation	0	Nil.	1	Nil.
Not under Act	0	32	Nil.	13
Work	364	419	375	334

Figure 18

Work remains the highest area of complaint, but is closely followed by goods, services and facilities (see Emerging Issues). There is no major change of note in the other areas, other than complaints received not under the Act, in which there has been a noticeable decrease from 32 to nil. This is positive reduction as it may indicate that parties complaining had an understanding of the areas we can look at, or that many Complainants made contact with our enquiry line prior to lodging a complaint and were provided with this information.

AREAS AND ATTRIBUTES

ATTRIBUTES AND AREAS COMPLAINED ABOUT

Prohibited Conduct (Attribute)	Education	Work	Accommodation	Goods Services and Facilities	Clubs	Insurance and Superannuation	Not Under Act	Total
Age	4	21	1	18	1	0	0	45
Breastfeeding	0	1	0	2	0	0	0	3
Disability	12	51	8	43	0	0	0	114
Irrelevant Criminal Record	2	6	0	21	0	0	0	29
Irrelevant Medical Record	2	11	0	19	0	0	0	32
Marital Status	5	7	1	19	0	0	0	32
Parenthood	0	10	5	13	0	0	0	28
Political Beliefs / Opinions	2	5	0	17	0	0	0	24
Pregnancy	0	4	0		0	0	0	4
Race	1	44	1	27	1	0	0	74
Religious Belief / Affiliation / Activity	2	2	0	21	0	0	0	25
Sex	2	38	1	25	0	0	0	66
Sexuality	0	5	1	3	0	0	0	9
Trade Union Affiliation/ Activity	0	5	0	8	0	0	0	13
Prohibited Conduct (Other)	Education	Work	Accommodation	Goods Services and Facilities	Clubs	Insurance and Superannuation	Not Under Act	Total
Aiding Contravention of Act	5	18	0	7	0	0	0	30
Association with a Person	14	11	0	21	0	0	0	46
Discriminatory Advertising	0	0	0	3	0	0	0	3
Failure to Accommodate Special Need	19	46	9	26	0	0	0	100
Sexual Harassment	2	30	1	16	0	0	0	49
Seeking Unnecessary Information	2	12	0	16	0	0	0	30
Victimisation	2	37	0	22	0	0	0	61
Not Under the Act	0	0	0	2	0	0	0	2
TOTAL	76	364	28	349	2	0	0	819

Figure 19

The most common combinations of complaints were as follows:

- Disability discrimination in the workplace
- Failure to accommodate a special need in the workplace (mostly relating to disability)
- Race discrimination in the workplace
- Disability discrimination in goods, services and facilities
- Sex discrimination in the workplace.

HEARINGS

In 2015-16 5 hearings were case managed. The main attributes represented at these hearings were race (2), sex (2), sexual harassment (2), with matters relating to the work place and 1 relating to goods, services and facilities.

Of the 5 matters, 2 were determined, 2 settled and 1 was determined with orders pending, but not complete before the end of 2015-16.

APPENDICES



Aly De Groot – A new leaf

(Rights on Show 2015)

APPENDIX 1

KEY DELIVERABLES 2015-16

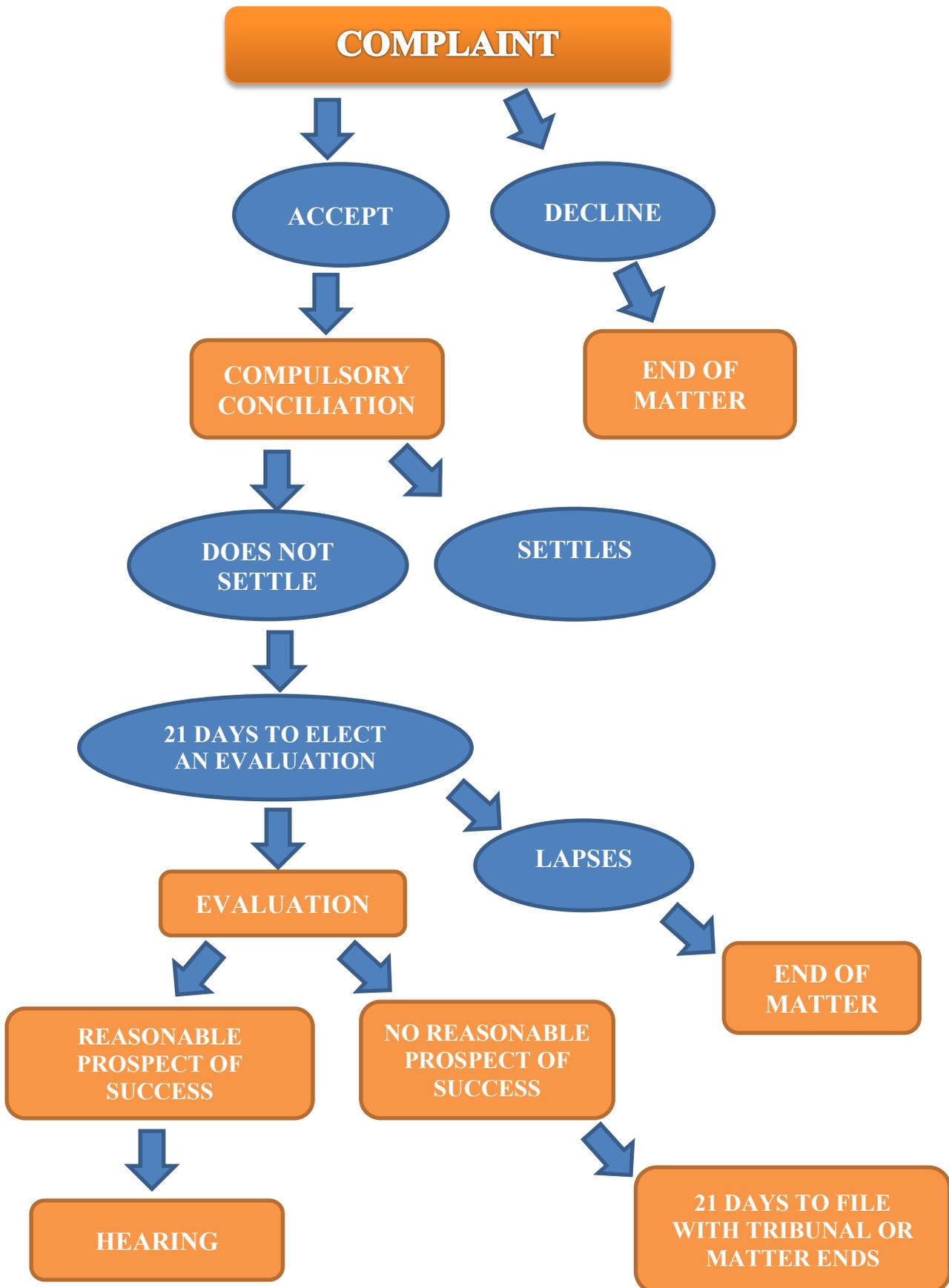
Key deliverables	Current Year		Targets	Previous Years	
	2015-16 Estimate	2015-16 Actual	2016-17 Estimate	2014-15 Estimate	2014-15 Actual
Public awareness / community-based events, development of educational resources and training (hours)	80	586	80	80	174
Public awareness / community-based events, development of educational resources and training (sessions)	30	123	30	Nil	Nil
Complaints (includes complaints carried over)	200	236	200	200	238
Complaints conciliated	40%	62%	40%	40%	65%
Complaints closed within 8 months of receipt	40%	86%	40%	40%	82%

FUNCTIONS OF THE COMMISSIONER

The Anti-Discrimination Commissioner is appointed by the Administrator under section 6 of the 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.

COMPLAINT PROCESS



CASE SUMMARIES

Race and Disability in Goods, Services and Facilities

An Aboriginal couple went to a local restaurant for a meal for their wedding anniversary. They were very excited as they had been out bush for 6 months and finally had an opportunity to go out for dinner. The Aboriginal woman had a slur as a result of a childhood illness.

The bar waiter approached their table and asked them what they wanted to drink. The Aboriginal woman said she would like a bottle of champagne. The waiter took the order and returned to the bar. Another waiter took their food order. The bar waiter then returned to the couple and told them they could not serve them any alcohol. The couple were incredulous and highly offended. They asked why, and the bar waiter said they were not permitted to serve them alcohol under the Liquor Act. The discussions became heated as the supervisor came over and told them to leave for making a scene. The couple were embarrassed and hurt that this happened in front of everyone. As they walked out of the restaurant, a staff member yelled out "Your wife is a drunk. You're all the same."

The Aboriginal couple lodged a complaint with the ADC on the basis of race and disability. The matter was referred to conciliation where the couple were able to explain the slur was due to a childhood illness, and the humiliation they felt when they were presumed to be drunk. The restaurant manager provided a written apology to the couple and reinforced their zero tolerance to discriminatory conduct by staff. The restaurant manager also agreed to send all staff to discrimination training and to pay the couple \$6000 for hurt and humiliation.

Age, Disability and Failure to Accommodate a Special Need in Accommodation

A homeless 70 year old woman was discharged from hospital with an injury requiring daily cleansing and care. She approached a community shelter for accommodation and was told that she was too old for their accommodation.

The woman lodged a complaint with the ADC on the basis of age, impairment and failure to accommodate a special need. The matter was resolved at conciliation by payment of compensation for hurt and humiliation (\$2000) and removal of the age limit to their eligibility criteria for accommodation.

Race and disability at Work

The Complainant was an aboriginal woman who lived in a remote aboriginal community. She had been employed as a health worker for 20 years in the community and was highly regarded. One day at work she had a heart attack. Heart disease rates in the community were extremely high for the Aboriginal community.

Upon return to work, after a period away, her manager told her that she would need to start making plans to finish up at work because of her heart condition.

She lodged a complaint with the ADC on the basis of race and disability at work. She argued race on the basis that heart disease was high for Aboriginal people in the community and to not employ someone on this basis would result in discrimination against Aboriginal people in obtaining employment.

The matter was listed for conciliation. Conciliation gave the parties an opportunity to discuss the Complainant's health condition openly and what impacts, if any it would have on her doing her job. The matter was resolved with the Complainant retaining her job with special arrangements put in place to support her heart condition.

Impairment and Failure to Accommodate a Special Need at Work

A worker was involved in a physical assault at work resulting in Post-Traumatic Stress Disorder.

Following the incident the complainant complained that he:

- could only speak to HR staff by telephone
- was only offered telephone counselling
- was encouraged to take additional leave by his manager but the leave was deducted from his annual leave
- upon return to work was relocated from the café where he had been working to a bar with no consultation.

When he advised his manager that he was not comfortable with the new location he was told to toughen up.

The Complainant experienced a decline in his mental health including panic attacks.

The complaint was accepted for compulsory conciliation and was resolved by agreement between the parties. The employer agreed to:

- Re-credit all personal and annual leave hours deducted after the workplace incident.
- Reimburse the Complainant for all leave taken without pay.
- Pay for the Complainant to attend 12 counselling sessions with the counsellor of his choice.

Sex/Sexual Harassment at Work

The Complainant was employed as a cook and cleaner on a road works site in Darwin.

The Complainant contacted the project manager and company director and informed them of an incident of sexual harassment involving the team leader physical touching her. The management team agreed to address this with the individual anonymously.

After being spoken to, the team leader confronted the Complainant and accused her of causing trouble on the site.

As a result the Complainant resigned from the organisation and suffered ongoing mental health issues as a result of the incidents.

The complaint was accepted for compulsory conciliation and was resolved by agreement between the parties by way of monetary compensation for the hurt and humiliation suffered.

SECTION 19 – LIST OF ATTRIBUTES

- Race
- Sex
- Sexuality
- Age
- Marital status
- Pregnancy
- Parenthood
- Breastfeeding
- Disability
- Trade union or employer association activity
- Religious belief or activity
- Political opinion, affiliation or activity
- Irrelevant medical record
- Irrelevant criminal record
- Association with a person who has, or is believed to have, an attribute referred to in this section
- The person's details being published under section 66M of the *Fines and Penalties (Recovery) Act*.

SECTION 28 – LIST OF AREAS

- Education
- Work
- Accommodation
- Goods, Services and Facilities
- Clubs
- Insurance and Superannuation.

INFORMATION SESSIONS, INFORMATION STALLS & COMMUNITY EVENTS

The ADC was also present or participated in the following community events and forums:

July 2015

- Presentation by Auditor General Julie Crisp – Driving Efficiencies

August 2015

- Launch of the Intervention Anthology
- IDA – Know Your Rights Forum
- Committee for Economic Development of Australia – Women in Leadership
- Rosie Batty Australian of the Year Australia Day Function
- Aboriginal Interpreter Service – launch of police caution in 18 languages – Parliament House
- Opening of Annual Art Exhibition – Behind the Wire
- Wear it Purple morning tea – NTAHC
- Law and Language Conference
- ACHRA Officers Conference
- Australian Network on Disability – 2016 – Enabling Change Creating Impact – National Conference

September 2015

- Gillian Trigg presentation – Charles Darwin University
- NAAJA launch of IHHP
- Cement Stars Performance
- Youth Forum

October 2015

- Opening Pride NT : Our Queer History
- Darwin Pride Equality Forum
- Law Society Mental Health Week Breakfast
- “Putting Gender on the Agenda” (Alice Springs)
- Walk Together – March and Ceremony

November 2015

- Disability Service Awards
- Australian Councils of Human Rights Agencies, Tasmania

December 2015

- Rights on Show
- Government House reception for Human Rights Awards
- Northern Territory Human Rights Awards (“The Fitzgeralds”)
- Northern Territory Human Rights Awards Dinner

February 2016

- Daniels Law consultation in Darwin
- NT Multicultural Participation Framework consultation at the Multicultural Council of the Northern Territory (MCNT)
- Launch of the Aboriginal Affairs Strategy at Parliament House
- MCNT consultations on Federation of Ethnic Communities Council Aged Care
- Chinese New Year celebration at Parliament House
- Adult Guardianship Draft Bill consultation
- Don a Hijab – Darwin Islamic Society (International Women's Day event)
- Opening of Mental Health Inpatient Youth Program
- Northern Institute - International Women's Day Afternoon Tea

March 2016

- Banner making workshop – Larrakia Nation
- NT Safe Schools Coalition letter writing event at the Roma Bar
- Multicultural community International Women's Day lunch
- International Women's Day breakfast
- Northern Institute – International Women's Day afternoon
- National Day of Women Living with HIV Australia – morning tea Northern Territory Aids and Hepatitis Council (NTAHC)
- AFT NT presentation by Melissa Hickey and Katie Brennan
- International Women's Day AFLNY Women's Grand final
- Harmony Talk's City of Darwin event – panel discussion
- MSK International Women's Day Dinner and story telling
- Harmony Day reception at Parliament House
- Chief Justice farewell dinner
- Integrated DisAbility Action Inc. (IDA) Annual General Meeting

May 2016

- Workshop on oral storying telling – part of Wordstorm – spun
- Play by the Rules – Canberra
- Australian Council of Human Rights Agencies (ACHRA)
- Garramalang Festival – panel on reconciliation – Mick Gooda, Pat Anderson, Olga Haven & Jade Cubillo
- ANZOG Executive Leadership Course
- Launch of NAAJA's CLE video range and YouTube station
- AFL NT TIO Women's Lightning Cup

June 2016

- IDA members drinks
- Top End Health Services - Quality Awards
- World Refugee Day Celebration

PRESENTATIONS

As part of its public education, the ADC provides presentations to sectors of the community on current topics relevant to their needs. Presentations in 2015-16 included:

- Farewell at Northern Territory Women's Working Centre to former Sex Discrimination Commissioner, Liz Broderick
- Indigenous Legal Pathways Program at Northern Australian Aboriginal Justice Agency
- Opened building for Darwin Skills Development Scheme
- CDU Governance Institute – Being Employer of Choice – Gender and Cultural Diversity
- Launch of Discrimination Stories in Alice Springs
- Presentation to the Police, Fire Emergency Services Diversity Group
- Executive Leadership Group- PWC
- Hays Recruitment – Gender Diversity – Why Aren't we Getting it Right
- Chamber of Commerce – lunch box session – Target Recruitment
- Office of Women's Policy – lunch box sessions – Unconscious Bias (Alice Springs, Palmerston, Casuarina and Darwin).
- Ministerial Advisory Council on Disability Reform
- Commissioned Officer Retreat Session – Northern Territory Police – Working Towards a Gender Equal Workplace
- Northern Territory Women Lawyers Association International Women's Day – Cocktail Party – Family Life & Practice – Personal and Equal Opportunity Reflections
- CPSU International Women's Day – Working Towards Gender Equal Work Place
- Engineers Australia –What is Unconscious Bias – International Women's Day (Darwin and Alice Springs)
- Candlelight Vigil – Orlando
- Community Visitor Program Interagency Meeting
- U3A Aging and Anti-Discrimination
- Attorney General and Justice Department (AGD) White Ribbon Event

