

Northern Territory Anti-Discrimination Commission



ANNUAL REPORT
2011 - 2012

Anti-Discrimination Commission

Postal Address
LMB 22 GPO
DARWIN NT 0801

Office Address
7TH Floor
9-11 Cavenagh Street
Darwin NT 0800

General Enquiries
(08) 8999 1444

Freecall:
1800 813 846

Facsimile:
(08) 8981 3812

Website:
www.adc.nt.gov.au

Email:
administrationadc@nt.gov.au

TTY:
(08) 8999 1466

30 September 2012

Hon John Elferink MLA
Minister for Justice and Attorney-General
Parliament House
DARWIN NT 0800

Dear Minister

In accordance with the requirements under section 16 of the *Anti-Discrimination Act*, I am pleased to present the Annual Report on the operations of the Northern Territory Anti-Discrimination Commission for the period 1 July 2011 to 30 June 2012.

Yours sincerely



EDDIE CUBILLO

Anti-Discrimination Commissioner

CONTENTS

From the Commissioner	3
The Office of the Anti-Discrimination Commission	7
Emerging Issues	11
Performance	15
Trends	28
Appendices	39

From the Commissioner



I am pleased to report that 2011/12 has been a busy and productive year for the Anti-Discrimination Commission of the Northern Territory (the ADC). Over the past year the ADC has worked closely with the Department of Justice in a review of its operations to develop a structure that I expect will provide us with the capacity to assist in meeting our busy work loads and ongoing commitment to equality in the Northern Territory. I hope that with this new structure staff can settle into their roles and really commit to providing quality service to all Territorians.

Education and Training

This year the ADC was very busy in the area of education and training. Through hard work of staff we have been able to produce two new initiatives: the Talking Posters and the Fair Go at Work training package. These initiatives will improve the way the ADC delivers its messages throughout the Northern Territory.

Talking Posters

The ADC was provided with funding by the Commonwealth Government to develop a series of talking posters which provide an audio message and can be used to provide information to people whose first language is not English. The Aboriginal Interpreter Service provided translations for the posters and Batchelor College Press and One Talk Technology assisted with design and production.

The Talking Posters are designed to inform Aboriginal residents in remote Northern Territory communities about their rights under the *Anti-Discrimination Act (Act)*. The ADC has been concerned for some time that its message has not reached people in remote communities, and that they therefore have little or no awareness about their rights under the Act. The Commonwealth intervention in particular has caused misunderstanding in this area and it is vital that all Territorians know their rights and where they can go for help. I hope that having these posters in place will contribute to a better general knowledge about rights and the promotion of equality for all Territorians.

Fair Go at Work Training Package

The other major initiative for public education and training this financial year has been the development of a training package called "Fair Go at Work". This is a "train the trainer" package designed so trainers can present a two hour program on discrimination, harassment and bullying in their own workplace. The package contains an entire program complete with: PowerPoint slides, a glossary of terms, activities, stories for discussion, case scenarios and summaries, useful contacts and a copy of the Act. It also contains several DVD clips that can be used for discussion purposes.

The ADC thanks the following Commissions for their assistance with the development of this package: the South Australian Equal Opportunity Commission, the Anti-Discrimination Commission Queensland and the Victorian Equal Opportunity and Human Rights Commission.

Organisations who are interested in knowing more about how their staff can attend the training to prepare them for delivering the package are invited to contact the ADC on (08) 8999 1444.

Complaints

2011/12 continued to be a busy year for formal written complaints. The focus of this year was to reduce a significant backlog of complaints and to focus on early resolution. Settlement and complaint finalisation figures indicate we were successful in each of these areas.

In 2011/12 we continued to have a significant number of complaints being referred to hearing. It is unclear why this trend continues. Conducting and case managing hearings remain a resource issue for the ADC with timeframes for listing matters remaining problematic. The issue of delay is addressed further in the body of this report. ADC will continue to focus on finding ways to improve the timeliness of this process.

In regard to the type of complaints being received there has been some change in what people are complaining about. While race remains the most common ground for complaint, emerging areas are age discrimination, irrelevant criminal record and seeking unnecessary information. Seeking unnecessary information is where a person is asked to provide information that is subsequently used to discriminate against them (e.g. being asked at a job interview are you pregnant?) Areas of complaint that have historically been high, sexual harassment, impairment and sex have lowered in 2011/12.

Strategic Engagement

The ADC's in its brief for promoting equal opportunity has been very busy this year. We have lobbied both the Commonwealth and Northern Territory Governments about the impacts of the Stronger Futures Legislation which repealed the *Northern Territory Emergency Response Act 2007* (Intervention), reflecting concerns about its practical as well as its discriminatory impacts. The ADC wrote extensive correspondence to governments and appeared before the Senate Inquiry.

Another notable development this year was the ongoing collaboration between the ADC and the Australian Human Rights Commission. We have worked jointly on various issues affecting Indigenous Territorians and assisting in organising the Race Round Table Forum conducted in Alice Springs.

The purpose of the Australia and New Zealand Race Relations Round Table was for national and state/ territories Anti-Discrimination Commissioners to engage in strategic dialogue on issues related to racism in Australia and New Zealand. It enabled leadership on race issues, better coordination between jurisdictions and community engagement with

Commissioners in specialised sessions. The 2012 Round Table had a particular focus on systemic discrimination and racism.

In a session at the Round Table people and organisations were able to participate and raise any concerns that they may have in relations to such issues as the newly formed Stronger Future Bills, National Racism Strategy, etc.

On completion of the Roundtable a Communiqué was released and can be found: http://www.hreoc.gov.au/about/media/media_releases/2012/25_12.html

Agencies represented at the Round Table were:

- New Zealand Human Rights Commission
- Australian Human Rights Commission
- Northern Territory Anti-Discrimination Commission
- Anti-Discrimination Commission Queensland
- Victorian Equal Opportunity and Human Rights Commission
- Office of the Anti-Discrimination Commissioner, Tasmania
- South Australian Equal Opportunity Commission
- Western Australian Commission for Equal Opportunity

I would like to take the opportunity to thank the Alice Springs Mayor Damien Ryan and his council for the provision of his Mayor welcome and reception to our interstate guests. I would also like to thank all those who attended and contributed to the Round Table in particular the Desert Knowledge Precinct who allowed us to utilise their facilities at the Desert People Centre and all those people and organisations in Alice Springs for attending.

I was also honoured this year to receive an invitation from the Social Justice Commissioner Mr Mick Gooda to attend the United Nations Permanent Forum on Indigenous Issues (UNPFII) 2012 which was held in New York. I am the first Northern Territory Anti-Discrimination Commissioner to be invited.

Attending the UNPFII allowed me to participate in relevant consultations such as the Australian Caucus and the Pacific Indigenous Regional Caucus. I was able to represent the Northern Territory at all relevant sessions of the meeting and participate in and contribute to the preparation of written interventions and recommendations.

Attending the UNPFII forum provided a unique opportunity to observe a Human Rights vehicle in action. It allowed me to raise issues affecting Indigenous Territorians at the highest level. It also provided the opportunity to build strong networks internationally.

During this year the ADC also assisted Race Discrimination Commissioner Dr Helen Szoke consult with the Northern Territory community about addressing racism and the Commonwealth Government's National Anti-Racism Partnership Strategy. Meetings were conducted in Alice Springs and Darwin to raise the profile of the Strategy and to collect ideas about what people think works and what successful strategies have been used previously.

Lastly, I am very pleased to report, that despite our size and capacity, the ADC has continued to improve the service that can be offered. I thank the small group of highly skilled staff for their continued enthusiasm and commitment to achieving high service standards. I note that this will be my last report as I will finish up as Commissioner at the end of September 2012. It has been a great opportunity and I would like to thank all those that supported my time as Commissioner. I hope that the ADC continues to be supported by the broader community and that it can continue to achieve great outcomes for the Northern Territory and its people.

Lastly I would like to thank and acknowledge Donna Nadjamerrek for her permission to use her amazing photos of indigenous art scattered through out this report. It is much appreciated.

THE OFFICE OF THE ANTI-DISCRIMINATION COMMISSION



The Office of The Anti-Discrimination Commission

Who We Are

The Commissioner in 2011/12 had nine¹ staff to assist in performing the functions set out in Appendix 1. The structure for 2011/12 is set out in figure 1. A new structure is proposed for 2012/13 that will focus on maximising resources to ensure improved response times and client service.

The office remains a small office with resources being directed to three primary focuses:

- Public education and training;
- The handling of complaints/hearings; and
- The Community Visitor Program.

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

Public Education and Training

Equality of opportunity is promoted through our public education and training program. It consists of:

- A scheduled public training program;
- Customised training to meet specific workplace needs;
- Hosting or co-hosting of public events; and
- Participation in community events.

Complaints

The *Anti-Discrimination Act* provides a formal written complaints process for people to complaint about alleged breaches of the Act. Appendix 2 sets out the current complaint process.

Lodging a complaint is free and confidential. A complaint maybe lodged in person, by email, fax or through our online process.

There are three stages to the complaint process:

1. Whether to accept or reject a complaint for further investigation.
2. Investigation/early conciliation.
3. Compulsory conciliation and/or hearing.

¹ There are two additional staff at the ADC, who are employed by the Community Visitor Program. They do not perform functions under the Anti-Discrimination Act.

To assist people understand our complaint process and to understand obligations under the Act; we also provide an enquiry service for the general public and managers. This service allows people to contact the ADC by phone, email or in person to obtain information about our service and the Act. This service is free, confidential and comes with no obligation to lodge a formal complaint.

If a person has difficulty completing our forms they can contact the ADC on 8999 1444 and will endeavour to arrange assistance.

Anti-Discrimination Commission Organisational Chart

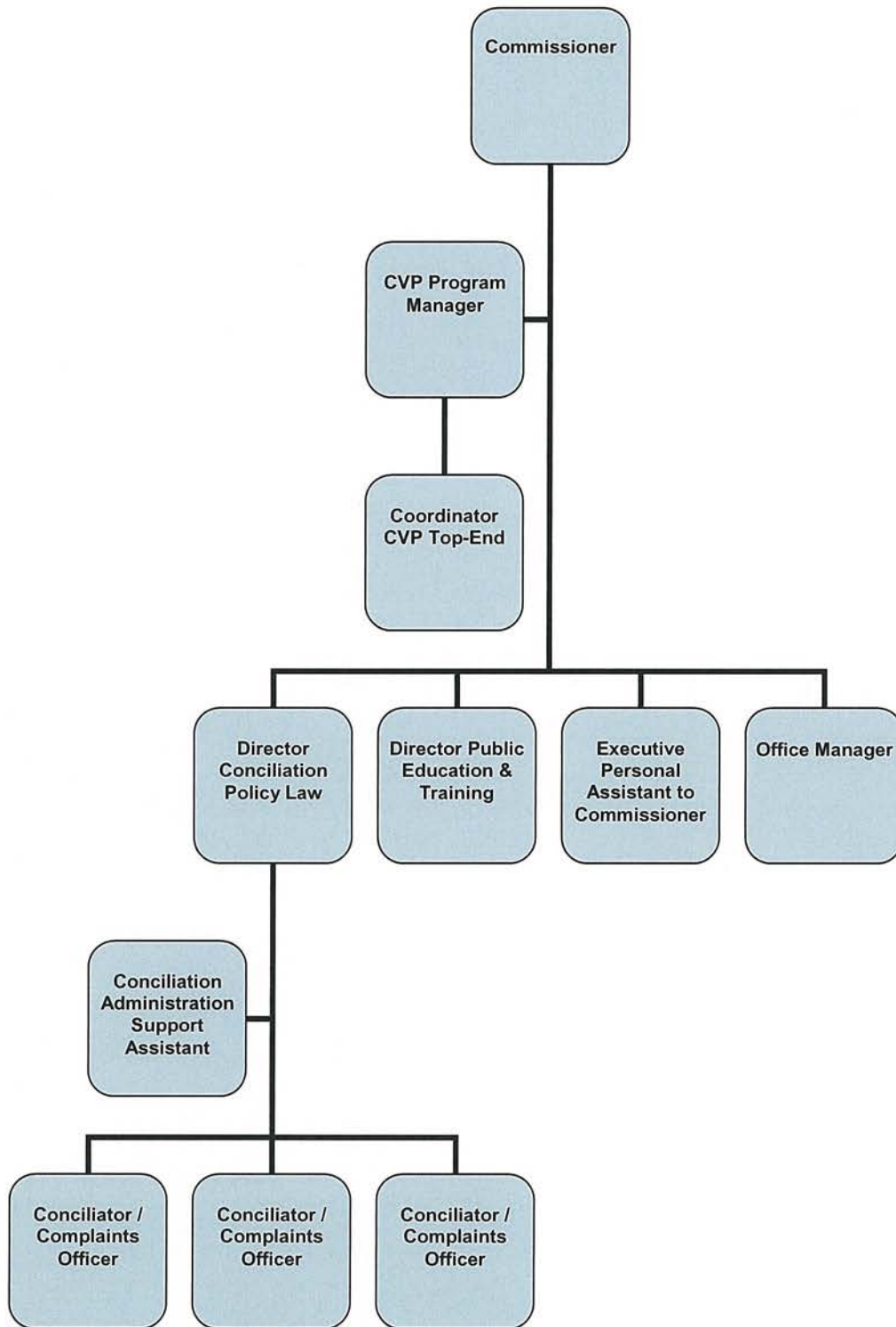


Figure 1

EMERGING ISSUES



Stronger Families

In 2011/12 the Strong Futures legislation was introduced by the Commonwealth Government. The Act repealed the *Northern Territory Emergency Response Act 2007* (Commonwealth Intervention); and sought to tackle remote Northern Territory Aboriginal issues differently. However the reforms at their heart still maintained the position of Commonwealth control and influence over the affected communities.

The presence of the Commonwealth Government in remote Northern Territory remains controversial and continues to be of concern to the ADC. In 2011/12 the issues pressed by the ADC were:

- To push for culturally appropriate engagement with communities. In particular to ensure wide spread participation and to address access issues such as language (including dialect) and deafness. It is important that all members of these communities who wish to be engaged can be.
- Addressing discrimination. Fundamental to the reforms in remote Northern Territory is to understand and address the discrimination felt, experienced and expected by Aboriginal people. Discrimination is a real obstacle to developing real futures for people in the bush. An example is education. ADC believes any attempts to encourage participation in education must address beliefs held that Aboriginal children if they get an education will not have the same chances as non-Aboriginal children. This must be addressed and clear pathways provided that show Aboriginal families that there are future possibilities for their children.
- The importance of self-determination for Aboriginal people; in particular allowing local management of local issues. Communities must be given responsibility and ownership over their own issues.
- Lastly, constitutional reform; the appropriate and respectful recognition of Aboriginal Australians in the Australian Constitution.

Over-Representation in the Prison System

The ADC receives a significant amount of feedback from Aboriginal people across the Northern Territory about their perception of an unfair justice system that results in disproportionate numbers of Aboriginal people being incarcerated.

The Australian Bureau of Statistics report titled "Corrective Services Australia" (15 March 2012) records that 54% of Aboriginal and Torres Strait Islander people in the Northern Territory found guilty in a criminal court were sentenced to a custodial sentence, while only 28% of non-Aboriginal people had a custodial sentence imposed. In December 2011 nearly 84% of Northern Territory prisoners (1095 out of 1309) were Aboriginal or Torres Strait Islander.

Custodial sentences should be the last not the first resort. Prison ceases to be a deterrent if it is overused. There is also no evidence that high rates of sentencing has made the Northern Territory community safer. Consideration needs to be given to making the justice system more responsive to the needs of Aboriginal people.

Naming and Shaming

The ADC continues to be alarmed at the naming of shaming of juveniles by the media. The current *Youth Justice Act* permits the media to circulate information about juveniles, irrespective of whether they have been found guilty of a crime. Elsewhere in Australia this requires the sanction of the Courts.

While it is acknowledged that there might be occasions where such information out of necessity may need to be circulated, this decision should be left to the Court not to the media. The public release of details about juvenile offenders carries a stigma that may remain with the child for life. The stigma impacts not only the child but the family.

The ADC acknowledges and applauds the Chief Magistrate's advice of an intention to no longer publish names of juveniles on the court lists.

Age Discrimination

Age continues to be an area of discrimination that is growing in the Northern Territory. We know this through our formal complaints and from our broader engagement with the community. In particular the discrimination relates to older age in the area of work.

There are two issues commonly raised, the first being the difficulty faced by older Territorians in obtaining work. At present our information does not suggest that this issue is greater for men or women, or has any connection with other attributes. Age discrimination is a notoriously difficult area of discrimination to prove and it is therefore difficult to delineate what is real from what is perceived. The Australian Human Rights Commission report on "Age Discrimination – Exposing the Hidden Barrier for Mature Age Workers" (2010) says some of the stereotypes reported for this group included:

- Older people have had a good run, now it is time to give younger people an opportunity;
- Unable to learn new skills;
- General assumption of physical decline and an injury risk.

Complaints and enquiries received indicate similar concerns in the Northern Territory.

The second issue relates to older Territorians who continue to work past the age of 65 and their declining entitlements e.g. workers compensation. The ADC would encourage the Northern Territory Government to review all legislation relating to older worker's entitlements and consider whether legislation remains current and appropriate for today's workplace.

The ADC will continue to monitor this issue and engage with workplaces and employees to find constructive ways forward in regard to these issues.

Bullying and Harassment

This continues to be a growing area of concern. Issues of bullying and harassment are raised during our training sessions, via our enquiry line and through our formal complaints process. Many of these matters do not fall within the scope of the *Anti-Discrimination Act*. Frustration is often experienced by people believing they are being subjected to bullying and harassment because there is a lack of clarity on where to go for help.

The ADC refers people to appropriate agencies where they exist and provides practical information about how they can address bullying and harassment in their workplace. We continue to provide training in this area, beyond the scope of our Act. It has proved to be an important area of our training program.

The ADC believes that training is critical to assist people who maybe experiencing bullying and harassment to address the problem. It is also critical for managers and businesses to understand what bullying and harassment looks like and what they can and cannot do. Our training seeks to provide practical information to redress the issue.

The ADC waits with interest to see the outcome of the House of Representatives Standing Committee on Education and Employment Inquiry into Workplace Bullying.

Mental illness and discrimination

The ADC is uniquely placed to have insight into discrimination faced by people experiencing mental illness because of its relationship with the Community Visitor Program. Mental illness can impose significant barriers, which at times causes difficulties in accessing services for mental and physical health, and support for daily living activities.

Processes to lodge complaints are often difficult to access and formal procedures often act as deterrents to raise complaints and express dissatisfaction. The Community Visitor Program provides complaints processes with low level of bureaucracy, advocacy and support for people with a mental illness accessing other complaint agencies.

The ADC remains committed to working with the Community Visitor Program and other stakeholders to better educate the community about mental illness and the attitudes that surround it and to look at better processes for complaints.

PERFORMANCE



Public Education and Training

Public Education and Training is the primary vehicle by which ADC promotes equal opportunity in the Northern Territory.

Training programs are offered throughout the year and advertised through our bi-annual training calendar, copies of which can be located on our website. We travel to major centres and offer training sessions on a variety of topics that may include:

- Introduction to Anti-Discrimination;
- Harassment and Bullying;
- Skills Training for Contact Officers;
- Crossing the Line - Sexual Harassment in Today's Workplace;
- Recruitment and Retention of Staff; and
- Preventing Harassment and Bullying for Managers and Supervisors.

Everyone is welcome to attend these sessions with bookings accepted via email, fax, in person or over the phone. The training seeks to educate people about their rights and obligations under the Anti-Discrimination Act. The training has a practical focus and is aimed at encouraging changed behaviour and attitudes.

Training can also be made on request, outside the formal program. ADC will customise training to meet the needs of individual organisations. This is a popular form of training for organisations who maybe experiencing difficulties within their workplace.

Community Events

Community events are events in which the ADC attends and participates, such a GAMA. These events provide an opportunity to disseminate ADC material and to answer questions about who we are and what we do.

Public Awareness Events

Public awareness events are those that we host or co-host for example the International Human Rights breakfast.

Development of Community Resources

The ADC develops material to assist the community in understanding equality of opportunity. This may involve the development of brochures or more complex material such as training manuals.

In 2011/2012 300 hours were allocated across each of these areas. Hours worked exceeded this with 623 hours actually being performed. Figure 2 sets out the breakdown of the type of training provided during this year.

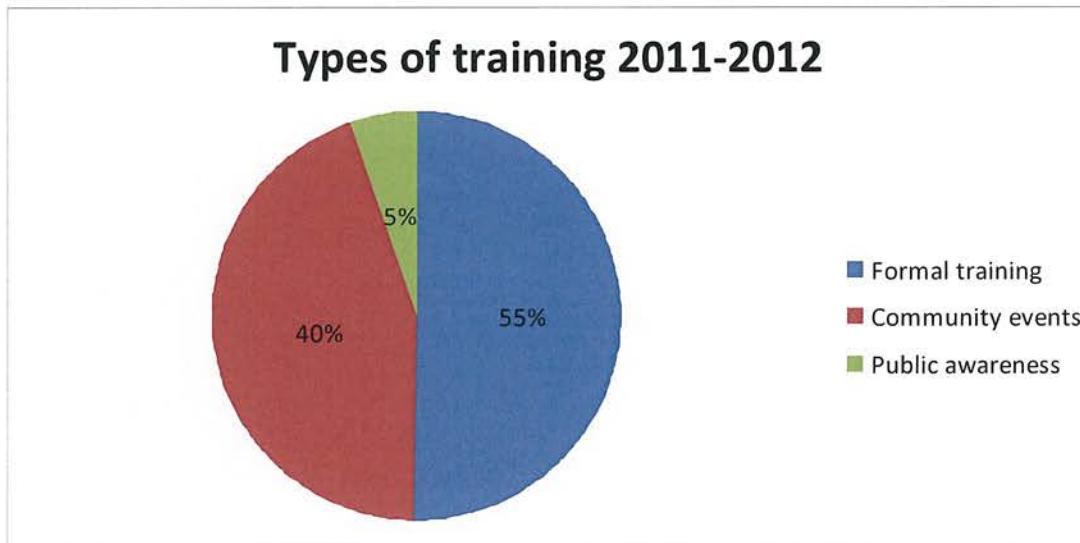


Figure 2

Considerable time was spent on the development of community resources during this period; more than in previous years. This is due to the focus on developing the Fair Go at Work package and the development of the talking posters.

During 2011/12 we presented 72 training programs/events. Workplace training constituted 54%, training in schools 11% and community events 35% of the 72 sessions.

Public Education and Training 2011/12		
Workplace Training	39	54%
Training in Schools	8	11%
Community Events	25	35%
Total	72	100%

Talking Posters

In 2011/12 the Commonwealth Government provided funding for the ADC to develop what we refer to as a talking poster. These are posters that can be pressed to get an audio message. The message provides information in language about who ADC is, what we do and how people can contact us. Photos of the design can be found at Appendix 3.

The posters were developed with the input and assistance of the Aboriginal Interpreter Service, Batchelor College Press and One Talk Technology. The Aboriginal Interpreter Service translated the ADC audio message and assisted in ensuring the message was culturally appropriate. Batchelor College Press and One Talk Technology designed and produced the posters.

Posters have been delivered to all 20 communities, and 6 communities have been visited by the ADC.

It is expected that the posters will assist ADC engage with the remote communities. Feedback to date from communities has been positive.

Fair Go at Work Training Package

The ADC receives a high number of requests for discrimination training in the workplace; more requests than we are able to meet. In response to this need, the Fair Go at Work training package was developed.

The package is a comprehensive tool kit created to support trainers, other than ADC trainers, present their own training on discrimination at work. The benefits of this package are:

- Organisations can become self sufficient in relation to skilling their managers and staff about rights and obligations under the Anti-Discrimination Act.
- ADC can target its training on other areas and groups.
- Equality of opportunity is promoted through wider circles than is possible through individual ADC training programs.

Critical to the success of this program is the quality of the material produced and provided to participants and the controls around how the material will be used. The package was developed primarily by the ADC Director of Public Education and Training, to ensure that it was developed for trainers and met their needs. Input was provided from ADC staff, including complaint and legal staff, to ensure the accuracy and practicality of the content.

To ensure that the package promotes quality training in this area the package is unable to be purchased as a stand alone item. To obtain the package it is mandatory that an organisation participates in training provided by ADC in how to deliver this material. This is not a course in how to train but on how to deliver a training session on this particular material. Prerequisites for attendance at this training are:

- Participant must be a qualified or experienced trainer.

- They must have attended at least one but preferably two of the scheduled discrimination training with ADC prior.

It is acknowledged that not all workplaces will have staff who can meet this criteria, training on discrimination in the workplace will need to continue to be provided by the ADC to provide for these workplaces.

The program is still in its early days however feedback received has been overwhelmingly positive with many enquiries being made about the training.

Public Events

In 2011/12 in conjunction with the Darwin branch of the United Nations Association of Australia, the ADC co-hosted an International Human Rights Day Breakfast. The theme for the breakfast was "Do Asylum Seekers Have Human Rights?" The speakers were Senator Trish Crossin, John B Lawrence SC and Bishop Eugene Hurley. The panel was moderated by well know human rights activist Rob Wesley-Smith. The event was well attended and received with much lively discussion afterwards.

To celebrate International Day of Disability ADC partnered with the Disability Advocacy Service Inc to hold the Mixed Ability Bake Off. This was held at the Alice Springs Town Council. Prizes were awarded for the following categories:

- Decorated cupcakes;
- Every day cake; and
- Savoury muffins and slices.

It was a fun and positive celebration.

Disappointingly this year due to resource constraints our Annual International Women's Day dinner was unable to be held. This has been a very successful event for us in the past.

Lastly, ADC in conjunction with the Committee on Human Rights Education held a series of lectures focusing on human rights. In particular a lecture by: Stephen Gray titled "The Apology and Good Intentions: What was White Australia Really Apologising For?" and by Professor Giselle Byrnes "Settling History: Paying for the Past in Australia and New Zealand."

Web Visits

In 2011/12 there were a total of 58,584 visits to the ADC website, with an average of 4,882 visits per month; 10969 being new visitors to the site. The most frequent keywords used were "what is conciliation". Our website provides the ADC with access to a greater audience. It is also an access tool for people wanting to lodge a complaint online.

Complaints

Enquiries

The ADC provides a free confidential enquiry service for people wanting to obtain information relating to the *Anti-Discrimination Act*. Enquiries may be by phone, email, mail or in person, with no prior appointment required. Telephone remains the most common form of approach. (figure 3) The process allows people to get information about their issues without being required to disclose their identity, lodge a formal complaint or physically attend the service. It can be a useful vehicle for people to get information in relation to the formal complaint process, or if ADC is not the correct place assistance in being referred to the best service for their issue.

In 2011/12 ADC commenced an intake service for potential complainants to make an appointment so that an ADC staff member can help them complete their paperwork if they are unable to do it themselves.

Mode of Enquiry	2008-2009 (%)	2009-2010 (%)	2011-2012 (%)
Telephone	88.3%	87.1%	85%
In person	8.3%	11.2%	8%
Email	2.9%	1.6%	5%
Mail	0.5%	0%	0%

Figure 3

The highest numbers of enquiries were from the Darwin area followed by Alice Springs. Enquiries were also received from other centres and remote Northern Territory.

Enquiries may come from the general public or from managers wanting advice about how to comply with the Anti-Discrimination Act. In 2011/12 81% were enquiries from the general public and 19% were from managers.

Complaints Received

In 2011/12 formal written complaints were received against 202 respondents. This is slightly lower than 2010/11 but remains high when compared with previous years (Figure 4). The nature and make up of these complaints is discussed later in the report.

Formal written Complaints Received

2011/12	2010/11	2009/10
202	244	186

Figure 4

2 In 2011/12 2% of enquiries received no record was made about what mode of contact was used.

In 2011/12 we focused on improving our internal systems and resourcing to provide for quicker resolution of complaints. Considerable work was undertaken by staff to reduce a back log of complaints as well as improving time delays in resolving new complaints. To this end the ADC continued to trial the early conciliation model. For the first time, the ADC was able to employ three conciliator/complaint officers for a full year. Prior to this reporting period the ADC had only two conciliator/complaint officers. While there remains work to be done in improving the timeliness of our process, there has been demonstrated improvement in this area this year. It is expected that these improvements will continue into 2012/13.

Our success in resolving complaints more quickly is demonstrated through use of the following indicators:

1. Number of files being finalised;
2. Time frames in which files are being closed; and
3. Impact of the early conciliation model.

1. Finalisation of Files

In 2011/12 250 files were closed, while 236 were closed in 2010/11 and 152 in the previous reporting period (Figure 5).

Complaints finalised

2011/12	2010/11	2009/10
250	236	152

Figure 5

The reasons for matters being finalised were varied however two of the most frequent reasons for finalisation were settlement and matters being rejected in the first stage. In 2011/12 74 matters (45%) were settled as compared to 42 matters (24%) settled in 2010/11. In 2011/12 86 matters were rejected compared to 74 in 2010/11.

An increase in files being closed is an indicator that matters are being resolved quicker. This does not correlate necessarily with an increase in matters being settled, as matters may end by way of a variety of reasons, but indicators that we are concluding matters quicker each year.

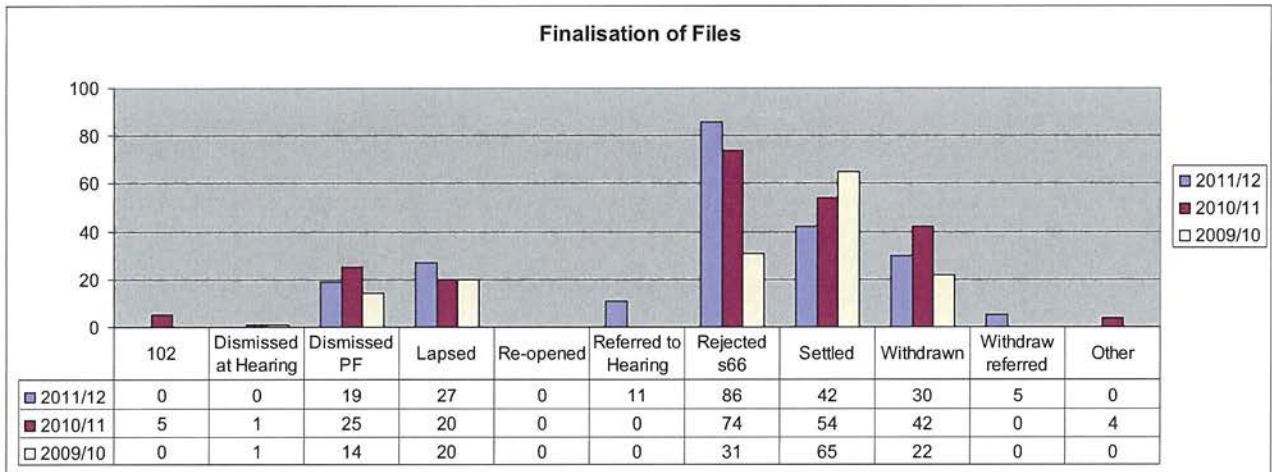


Figure 6

Following is a breakdown of the ways in which a matter may be finalised and the number of complaints concluded in each way for 2011/12.

Rejected under section 66

When a formal complaint is first received the ADC needs to elect within 60 days whether to accept or reject a complaint. In 2011/12 86 complaints were rejected under section 66.

Dismissed at prima facie stage

A complaint may be dismissed following an investigation on the basis that it lacks prima facie evidence. There were 19 matters dismissed for this reason in 2011/12. None of the matters dismissed during this period were new complaints received in 2011/12.

Section 102

A matter may be discontinued at the hearing stage under section 102. An application can be made by a respondent to a complaint or the Hearing Commissioner on their own motion. A matter can be dismissed on the grounds it is:

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

No matters were dismissed under section 102 in 2011/12. Two applications were made under section 102 during this period.

Lapsed

Section 72 provides that a matter may be lapsed if a party has lost interest in a complaint. Notice is provided to the complainant advising they have 60 days to advise the ADC that they remain interested. In 2011/12 27 complaints lapsed for lack of interest by the complainant. This is consistent with past years.

Withdrawn

Under section 71 of the Act a complainant may withdraw a complaint at any stage. In 2011/12 30 complaints were withdrawn, 5 of these complaints were withdrawn so the matter could be referred to a more appropriate body. This number is slightly lower than last year in which 42 complaints were withdrawn.

Referred to hearing

Eleven matters were referred to hearing. This is a slight increase in the number of matters referred in 2010/11. The number of hearings continues to grow each year; this is discussed and considered later in the report. While our complaint timelines are improving, hearing timelines continue to be a problem for the ADC.

Settled

The ADC focuses on resolving complaints. In 2011/12 74 matters were successfully settled. This is an improvement from the last reporting period in which 42 matters were settled.

Dismissed/finalised at hearing

Following the hearing of a matter the ADC can elect to dismiss a complaint. In 2011/12 no complaints were dismissed at hearing.

While several matters were listed for hearing in 2011/12 only one matter proceeded to hearing. A decision in relation to this matter is expected in 2012/13.

2. Time Frames

Staff have worked hard to reduce a backlog of complaints from previous years and to improve the turn around times of complaints. In relation to all complaints (including matters carried over from the previous year) 59% were finalised within six months (compared to 53% in 2010/11). In relation to new complaints received in 2011/12 60% of matters were finalised within six months, in 2010/11 this was 51%.

In 2012/13 we will no longer measure our timeliness based on matters finalised within a six month period but will change it to a period of eight months. The reason for the change is that eight months is the statutory period under the Act and is the true period we work

towards. It will remain our goal to resolve matters as early in the process as possible, irrespective of statutory timeframes.

3. Early Conciliation Model

In 2010/11 an early conciliation model was trialled. Drastic changes in staff levels throughout the year made it difficult to properly evaluate its effectiveness. A decision was made to continue the trial into 2011/12.

While the ADC has continued to face issues with staffing levels, it was able to offer early conciliations throughout 2011/12; this was not the case in 2010/11. It is now possible to look at the impact of this change. Early indicators are that it is having a positive effect on our settlements and improving the timeliness of our process. The latter is of benefit not only to the ADC but to all parties coming before the ADC. We know that earlier resolution of matters can often result in saved relationships; and less cost to parties both financially and emotionally.

To assess the merits of the system we decided to review the success rate and timeliness of complaints received in 2011/12. It is not possible to evaluate 2010/11 in the same way as resource levels during this year meant that there were periods where due to staff shortages we were unable to offer any conciliation at all. 2011/12 is the first full year in which the model has been fully implemented. In 2012/13 we will continue to assess these measures to assess trends.

In 2011/12 59 matters out of 202 matters received were given the option of an early conciliation. The rest were:

- Rejected;
- Withdrawn before settlement options were presented;
- Referred to other jurisdictions;
- Not appropriate for conciliation because parties indicated a preference not to have a conciliation; or
- Matters where early conciliation dates fell outside the reporting period.³

At the end of 2011/12 69% of complaints were resolved as a result of this process, with 95% of matters proceeding to an early conciliation being resolved within six months of receipt. The statutory time frame is eight months.

In 2011/12 of the 202 new complaints received 60% were resolved within six months, raising the possibility that the model may have contributed to an overall improved efficiency. At 2011/12 94⁴ complaints were carried forward into the next year compared to 172 in 2010/11; and 123 in 2009/10 before the introduction of the model. These figures

³ Example, a matter was received in 2011/12 but the date for early conciliation was in 2012/13.

⁴ Note that some of the 96 matters are new complaints received at the end of 2011/12 that remain to be resolved within the six month statutory time frame or matters that were finalised in the next reporting period.

demonstrate a clear reduction in the matters being carried over into the new year, reflecting quicker turn around with new complaints being received.

Our timelines were also improved because additional resources were provided part way through 2010/11 and because of tightened internal processes to monitor time frames.

An unexpected outcome of this model is an increase in matters being referred direct to hearing under section 76 instead of to a compulsory conciliation. Historically at the end of an investigation, if a matter was found to have merit, it was referred to conciliation. As a result of the early conciliation model it is now apparent which matters are unlikely to settle. These matters are being referred direct to hearing. This is a good outcome as it is likely to improve timeframes in regard to hearings. Parties can still voluntarily request conciliation at any time, even after a matter has been referred to hearing.

Anecdotal evidence suggests that the model is generally supported. There have however been some issues including:

- Some parties prefer to have a concluded investigation before a conciliation is conducted. An early conciliation requires attempting resolution before parties know what the ADC's view is of the merits of the complaint.
- Early conciliation is voluntary; the ADC has no power to force parties to attend.
- It can be used by some parties as a tactic to delay an investigation being finalised by the ADC.
- If an early conciliation is not done promptly and it fails to settle, it may reduce valuable investigation time.⁵

Our lessons learnt from this model are:

- Dates for a conciliation should be set at the time in which the complaint is accepted and should give parties enough time to make arrangements for the conference, but close enough to the accept date to not lose valuable investigation time, if one is required.
- The model cannot be applied inflexibly. If there is not a will between parties to attend a conference it should not be pushed on parties. It is not the right option for every complaint.

Appeals

In 2011/12 four appeals were lodged with the local court. At the end of 2011/12 three of those matters were yet to be finalised.

The matter of *Kennedy v ADC and Minister Health and ors* was the only matter finalised in this year; with the Local Court striking out the notice of appeal and making a costs order against the appellant.

The matter of *Spiers v ADC* is awaiting a decision of the Local Court. This matter argued, amongst other issues, that the ADC had failed to interview a critical witness prior to finalising its investigation. The matter had been dismissed by the ADC under section 76 of the Act on the basis that it lacked prima facie evidence to proceed further. Leave was granted by the court for the appellant to file fresh evidence to the appellant court.

A further two matters; *Treasury v ADC & Smyth*; *Dept of Education & Dept of Local Government and Housing v ADC & Christy* were lodged in relation to decisions made by ADC under section 65(2) of the Act to accept each of these complaints outside the 6 month statutory limitation period. The ADC is arguing that the Local Court does not have jurisdiction to hear an appeal in relation to this type of decision. Each matter has also been filed in the Supreme Court seeking judicial review of the same decision. A decision as to which is the correct court to hear the matter is likely to be determined in 2012/13.

Hearings

In 2011/12 11 matters were referred to hearing (Figure 7). Nine hearings were carried over from 2010/11, meaning there were 20 hearings in total managed during this period (Figure 8). The hearing jurisdiction of the ADC continues to grow. It is acknowledged that the size of the ADC makes it difficult to handle these matters in a timely way.

New matters referred to hearing

2011/12	2010/11	2009/10
11	9	8

Figure 7

Total number of hearings case managed

2011/12	2010/11	2009/10
20	22	135

Figure 8

The ADC will consider reviewing these processes and finding ways to expedite these matters. Many of the matters being referred to the ADC have been going for long periods of time.

Outcomes

During this period three matters were finalised, one being settled the other two being withdrawn.

Manner of Referral

A complaint maybe referred to hearing at the third stage under:

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.

Of significance is that no matter referred to hearing during this period was referred under section 84. In 2011/12 all matters referred were either referred following an investigation or following a conciliation in which the matter was not resolved. Of the current matters before the Commissioner 14 matters were referred under section 76⁶ and six matters were referred under section 84⁷.

It is a pleasing trend that most hearings are being referred through the usual statutory process rather than being referred because of delay by the ADC. We will continue to reduce matters being referred under section 84. Experience tells us that matters referred under section 84 often end up protracted. We believe this is because no investigation has been concluded. The investigation report can assist in refining and identifying issues that need to be determined at hearing. If no report is written this process needs to occur through the hearing process, this can be slow and cumbersome.

Delay

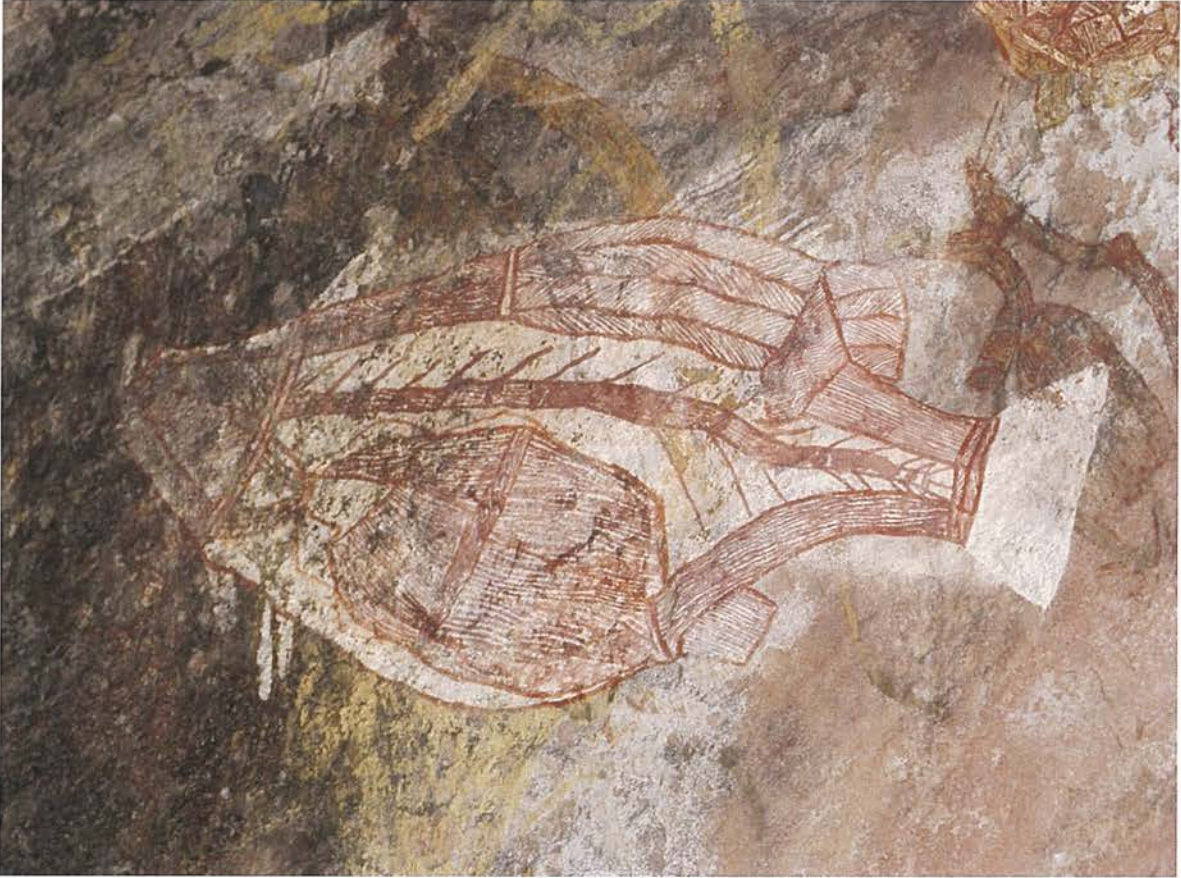
The ADC continues to experience delays in progressing hearings with matters unable to be concluded in the year in which they are referred. There is a currently a back log of matters waiting to be heard. Delays in progressing hearings appear to be for the following reasons:

- Resource difficulties for the ADC;
- Non-compliance by parties to timelines set for the filing of paperwork for hearing; and
- Difficulties experienced by self-represented parties in complying with directions issued by the ADC.

The ADC will continue to find ways to simplify this process, to better assist and educate self represented parties and to ensure that matters get listed for hearing sooner.

⁶ Section 76 provides that a matter can be referred directly to hearing following an investigation or after an attempt to conciliate a matter has failed.

⁷ All of these were referred in years preceding 2011/12.



Public Education and Training

The greatest demand for training was in Darwin followed by Alice Springs. However the reach of the program in 2011/12 was extensive including areas such as Nhulunbuy and Tennant Creek. The demand for training in 2011/12 exceeded what the ADC was able to provide.

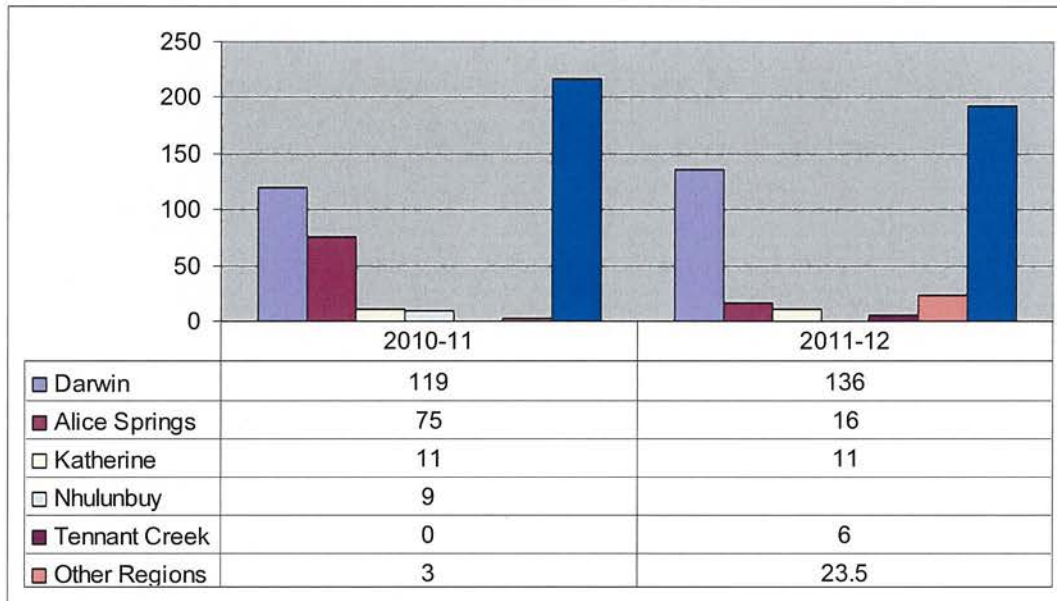


Figure 9

Reflecting the make up of complaint trends, people employed in the public and private sector were the higher participants in training. This is unsurprising given that much of training relates to discrimination in the workplace and that these sectors are the largest employers in the Northern Territory. Some attend as a result of a conciliated outcome through our formal complaints process, while some organisations attend to proactively address discrimination in the workplace.

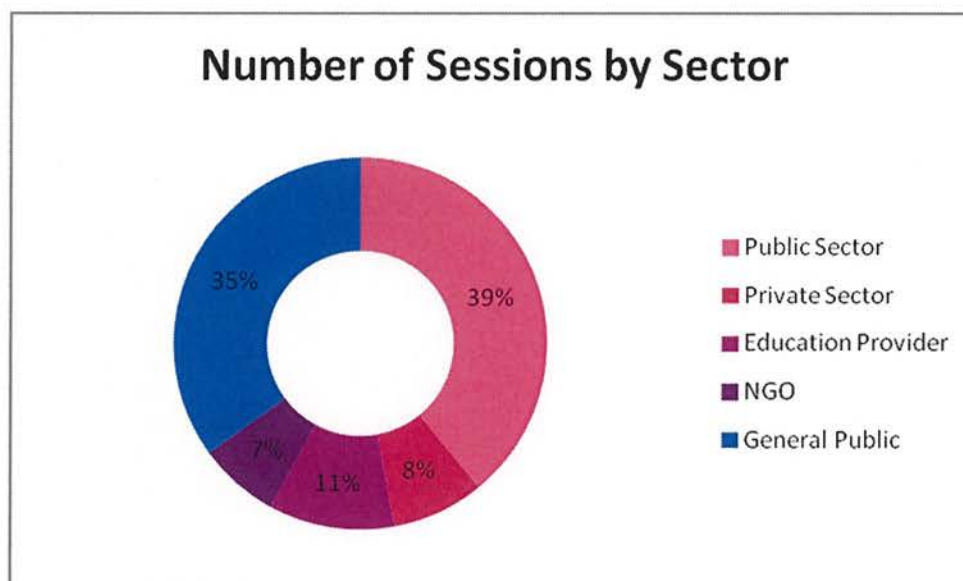


Figure 10

Complaints

WHO IS COMPLAINING?

Gender

In 2011/12 there were an equal proportion of men and women complaining. This differs marginally from previous years where men have been the slightly higher demographic. (Figure 11)

Gender of complainant

Year	Male	Female
2011/12	101	101
2010/11	133	111
2009/10	110	76

Figure 11

Region

In 2011/12 the higher number of complaints came from people living in the Darwin region. This is consistent with past years, and is expected given we are physically located in Darwin and it is where the higher percentage of people reside. Complaints for Alice Springs have dropped significantly with 16 complaints only being received in 2011/12 compared to 40 in 2009/10. We know anecdotally that this is not reflective of the issues being faced in Alice Springs. The lower complaint number suggests that we are not effectively engaging with this part of the Northern Territory. We continue to lobby for funds to open an office in Alice Springs to provide a better service for central Australia and the outlying communities.

Of note is that we received more complaints from Katherine this year than Alice Springs, receiving 20 complaints in total. We have worked hard to build relationships with service providers in Katherine to improve knowledge of the role of the ADC.

Complaints received outside these three regions were extremely varied and included complaints from people living in many of the outlying regional communities. It is positive that our service, despite its size is managing to provide a complaint process for the outlying regional areas.

Year	Darwin	Other NT	Interstate	Total
2011/12	137	64	1	202
2010/11	140	96	8	244
2009/10	114	67	5	186

Figure 12

WHO ARE PEOPLE COMPLAINING ABOUT?

When a formal complaint is lodged with the ADC the party has to identify a person or entity that they say acted in a discriminatory way. Under the act this party is referred to as the Respondent. Under the Act an individual and/or an entity can be responsible for discriminatory conduct.

In 2011/12 complaints of discriminatory conduct were equally high against companies and government. There was a noticeable decline in complaints being made against individuals. It is unclear why this has occurred.

ADC needs to continue to work with these organisations to ensure they understand their obligations under the Act, and to skill them to be able to address issues before they become complaints.

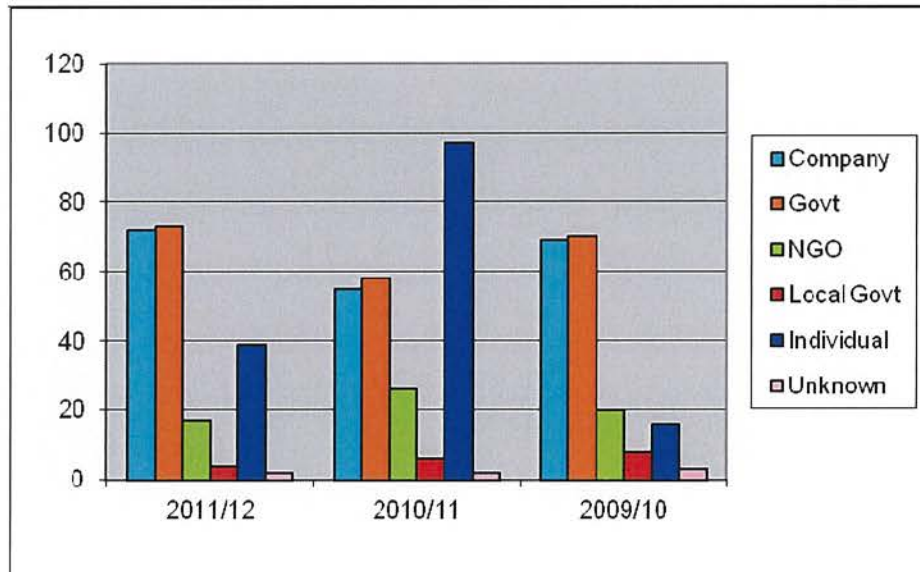


Figure 13

Respondents

Year	Company	Govt	NGO	Local Govt	Individual	Unknown	Total
2011/12	72	71	13	4	40	2	202
2010/11	55	58	26	6	97	2	244
2009/10	69	70	20	8	16	3	186

Figure 14

WHAT ARE PEOPLE COMPLAINING ABOUT?

Attributes

Attributes are the characteristics of a person that are believed to be a reason for the discrimination (e.g. race). A list of the attributes covered by the Act is located in Appendix (4).

The attached table demonstrates the attributes complained of in 2011/12 (figure 15). Because complainants may complain that more than one attribute under the Act was the reason for the discriminatory conduct the number of attributes alleged does not correspond with the number of complaints against respondents.

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

Attributes identified in formal complaints made with ADC

Attribute	2011/12	2010/11
Age	48*	37
Aiding the contravention of the Act	16*	8
Association with a person	33*	16
Breach of the Act	0	2
Discrimination Advertising	1	7
Failure to accommodate a special need	44*	44
Impairment	10	44
Irrelevant criminal record	32	10
Irrelevant medical record	15	26
Marital status	18*	20
Not under Act	2	11
Parenthood	5	13
Political Beliefs/Opinions	0	7
Pregnancy	6	8
Race	69	102
Religious beliefs/activity	6	4
Seeking unnecessary information	47	38
Sex	16	58
Sexual harassment	16	41
Sexuality	4	8
Trade union activity	5	8
Victimisation	16	21

Figure 15

Race remains the most common attribute complained of. The next highest attribute complained of is seeking unnecessary information, followed by age and irrelevant criminal record. This is a change in trend from previous years where the higher grounds of complaint have traditionally been sex, sexual harassment, impairment and failure to accommodate a special need.

Of note, and possibly of concern is the significant drop in complaints of discrimination on the basis of impairment and sexual harassment complaints. While it is hoped that the reason for this is a reduction in the occurrence of these issues, the ADC will need to be satisfied that there are not other reasons why these complaints are not being received. The reduced number of complaints do not appear to reflect anecdotal information being received, this is particularly so in relation to impairment.

Areas of complaint

An area of complaint is where the discrimination occurred. The Act is limited to discrimination in the following areas:

- Work;
- Education;
- Superannuation and insurance;
- Accommodation; and
- Clubs.

As in previous years, work remains our biggest area of complaint; though it is notably lower than 2010/11. Goods, services and facilities is the second highest area of complaint. A noted growth area is education, with an increase from four complaints to 22. The ADC will need to monitor this trend in the next year and determine if more work needs to be done in this area.

Area	2011/12	2010/11
Accommodation	14	11
Clubs	1	19
Education	22	4
Goods Services and Facilities	86	74
Insurance and Superannuation	4	1
Not under Act	1	11
Work	217	414

Figure 16

Areas of complaint are calculated based on allegations made against individual respondents and therefore do not correlate with the number of complaints received

(e.g. one complaint making allegations in the area of work against four different people would arise in the above data as four entries against work).

Areas and Attributes

Figure 17 illustrates the attributes on which complaints of discrimination are based and the areas in which complaints occur.

Common combinations of complaint include:

- Race and work;
- Irrelevant criminal record and work;
- Race and goods, services and facilities;
- Impairment and goods, services and facilities; and
- Race and education.

These combinations are consistent with previous years.

Attributes and areas complained about

Prohibited Conduct - Attribute	Education	Work	Accommodation	Goods Services and Facilities	Clubs	Insurance and Superannuation	Not Under Act	Total
Age	0	46	1	1	0	0	0	48
Impairment	2	0	2	6	0	0	0	10
Irrelevant Criminal Record	0	29	0	3	0	0	0	32
Irrelevant Medical Record	0	7	0	4	0	0	4	15
Marital Status	0	15	2	1	0	0	0	18
Parenthood	0	3	0	2	0	0	0	5
Political Beliefs / Opinions	0	0	0	0	0	0	0	0
Pregnancy	0	6	0	0	0	0	0	6
Race	6	43	6	14	0	0	0	69
Religious Belief / Affiliation / Activity	3	2	1	0	0	0	0	6
Sex	0	10	0	6	0	0	0	16
Sexuality	0	4	0	0	0	0	0	4
Trade Union Affiliation / Activity	0	5	0	0	0	0	0	5

Not Under Act	0	0	0	0	1	0	1	2
Prohibited Conduct - Other	0	0	0	0	0	0	0	0
Aiding Contravention of Act	0	16	0	0	0	0	0	16
Association with a Person								66
Discriminatory Advertising	0	0	0	1	0	0	0	1
Failure to Accommodate Special Need	5	25	1	13	0	0	0	44
Sexual Harassment	0	11	0	5	0	0	0	16
Seeking Unnecessary Information	2	21	1	23	0	0	0	47
Victimisation	2	14	0	0	0	0	0	16
TOTAL	22	281	14	86	1	4	1	409

Figure 17

Hearings

The ADC case managed 20 hearings in 2011/12. Of these 20 hearings six were about impairment (the highest presentation), four were in relation to an irrelevant criminal record and the remaining were in regard to a range of attributes. A total of 17 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.

It is expected that many of the matters currently referred to hearing will be heard in 2012/13.

APPENDICES

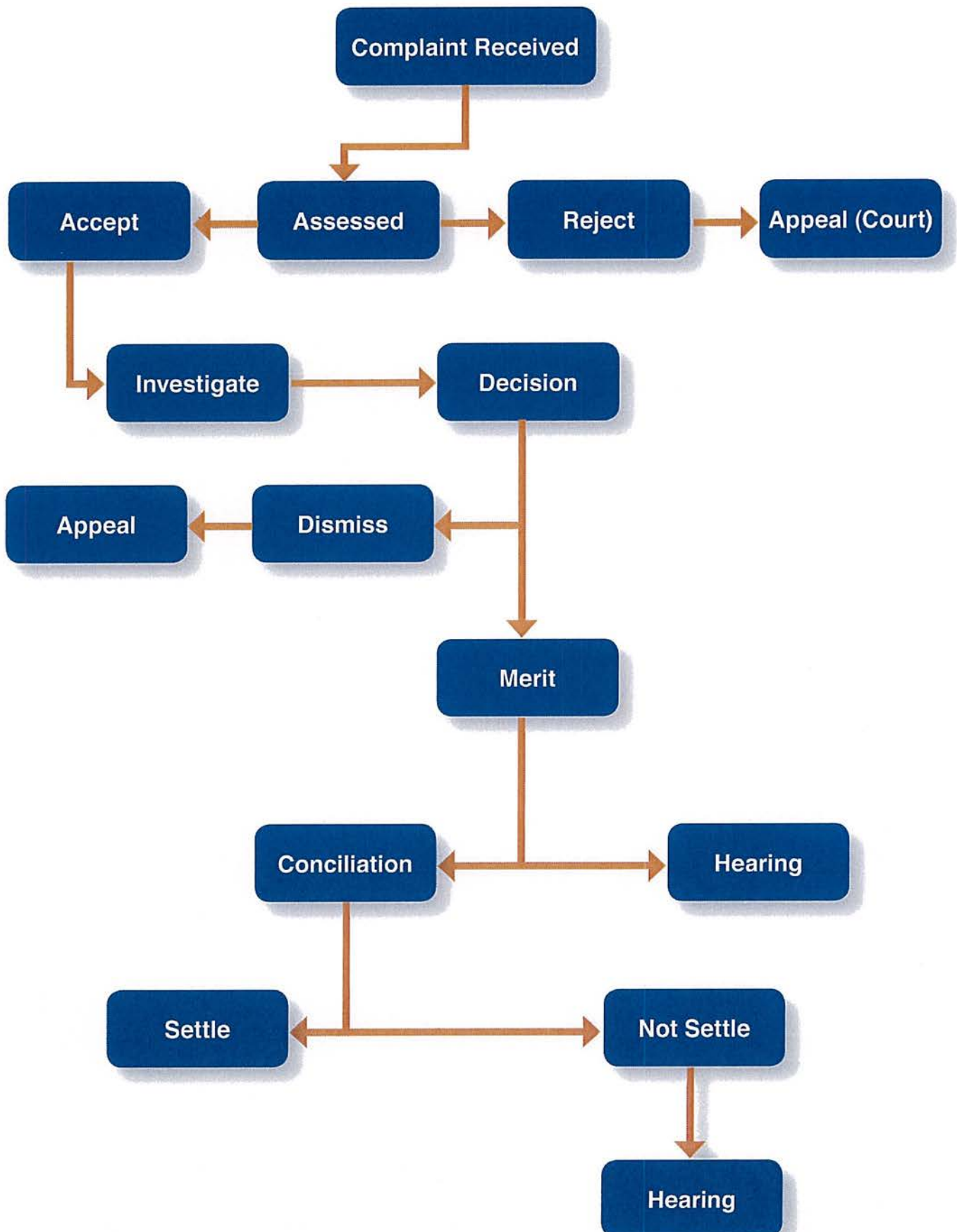


Functions of the Commissioner

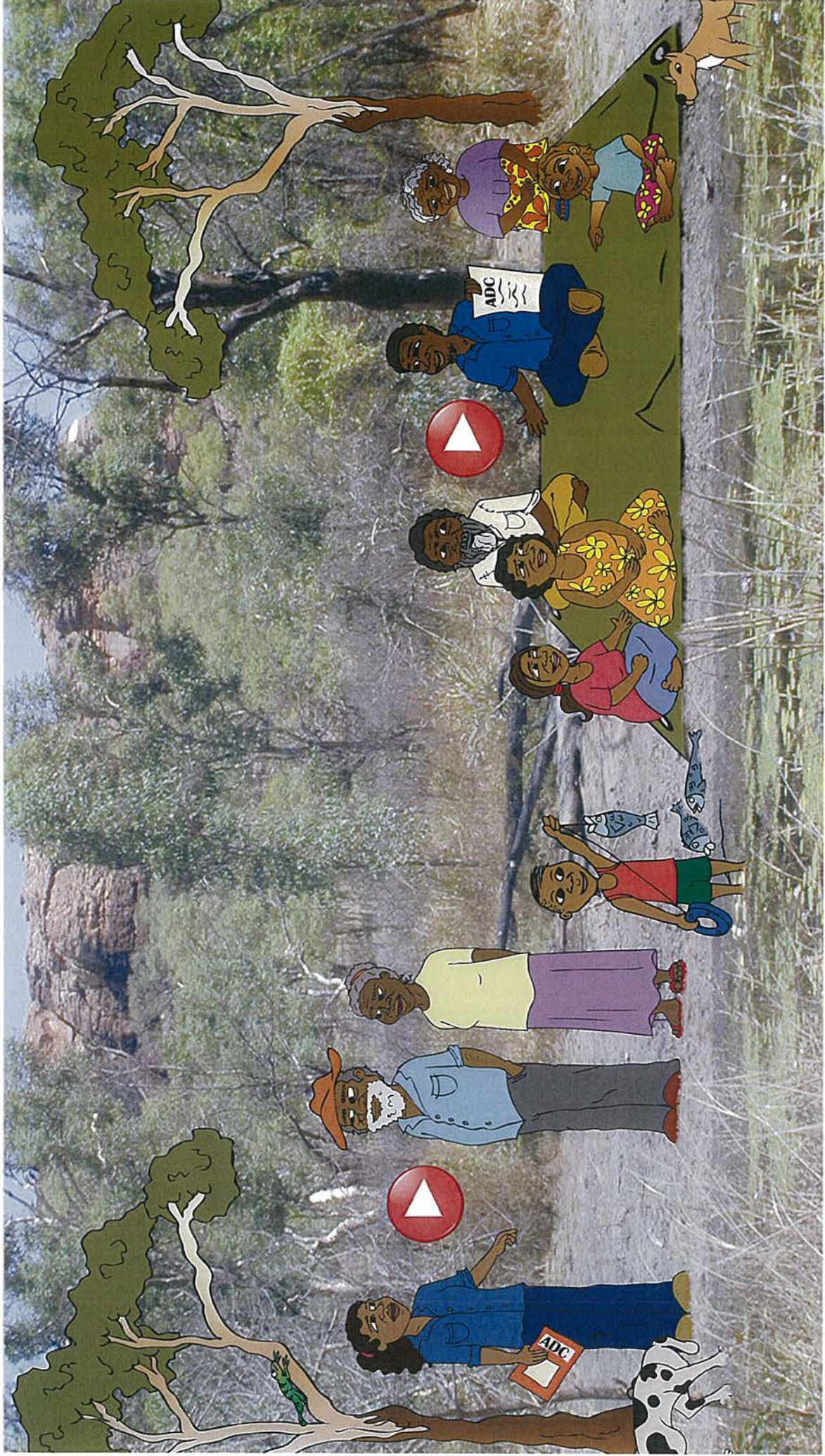
The Anti-Discrimination Commissioner is appointed by the Administrator under section 6 of the Anti-Discrimination Act. The functions of the Commissioner are set out in section 13 of the Act.

- 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



what is discrimination?



freecall: 1800 813 846 or 8999 1444

(this is not a freecall from a mobile phone)

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.