

Our Ref: ADC2009/45

30 September 2009

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

Dear Minister

In accordance with the requirements under section 16 of the *Anti-Discrimination Act*, I am pleased to present the Annual Report on the operations of the Northern Territory Anti-Discrimination Commission for the period 1 July 2008 to 30 June 2009.

Yours sincerely



LISA COFFEY
Acting Anti-Discrimination Commissioner

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From the Acting Commissioner

This report must begin with a tribute to Tony Fitzgerald, Anti-Discrimination Commissioner from 2002 until his death in February 2009.

Tony's passion for the Anti-Discrimination Commission's work was an example to us all. He had a vision that Territorians could achieve community harmony if only we could work together. He fought the Intervention. He fought for equal opportunity employment that recognised the value of diversity. Tony's great strength was his independence. He challenged governments, office holders and the community at large without fear of favour. He was recognised by the Northern Territory Legislative Assembly, and Australia wide after his death; a testament to his achievements and his impact on the Territory.

Tony's main focus in this reporting period was the continuation of the Intervention. Tony was a fierce opponent of the one-size-fits-all approach inherent in the Intervention measures, discriminatory welfare quarantining, the absence of constructive engagement with remote communities, and of course the suspension of the *Anti-Discrimination Act* (the Act). In the words of the ADC submission to the Review of the Northern Territory Emergency Response (NTER), the suspension of the Act was the "ultimate irony" of the Intervention, a scheme that was "purportedly designed to improve the well-being and human rights of various Northern Territory communities" and yet removed the "human right of community members to complain about unfair treatment".

The current federal government has stated that the Act and the Commonwealth *Racial Discrimination Act 1975* (RDA) will be reinstated in the Northern Territory in 2009. The ADC welcomes this commitment but there is a need for a good deal of work to be done to restore the confidence of communities that their rights will be respected, and their voices heeded in the future. The way forward must be one that is based on partnerships and equality, not merely consultation.

Tony's death has made this year a particularly challenging one for all of the team at the ADC. The achievements outlined in this report are a tribute to their dedication, hard work and commitment to the cause of equality of opportunity. I thank them in particular for their support of me and of each other. I am confident that Tony would be immensely proud of his team for the way that they have risen to the challenges of the past twelve months.

Some of our team moved on to other roles in 2008/09. Melanie Campbell started at the ADC as an apprentice back in 1998. After ten years with the ADC Melanie decided it was time for a change, taking up a position with the Department of Health and Families. We wish her every success in the future.

Simon Wiese has worked as a conciliator at the ADC since 2003. This year saw Simon complete his law degree and in early 2009/10 he began work with the Department of Justice. Thank you to Simon for his hard work and enthusiasm for the aims of the ADC over the years.

Thank you finally to all of the individuals and organisations that continue to value and support the work of the ADC. Special thanks to the other Commissioners around Australia for their support of me in my role as Acting Commissioner, and to our stakeholders in the Northern Territory who continue to recognise the importance of the work carried out by the ADC.

Functions of the Commissioner

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

- (a) to carry out investigations and hearings into complaints and endeavour to effect conciliation;
- (b) to examine Acts and regulations and proposed Acts and regulations of the Territory to determine whether they are, or would be, inconsistent with the purposes of this Act, and to report the results of such examinations to the Minister;
- (c) to institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination and the effects of discrimination;
- (d) to consult with organisations, departments and local government and community government bodies and associations to ascertain means of improving services and conditions affecting groups that are subjected to prohibited conduct;
- (e) to research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in this Act;
- (f) to examine practices, alleged practices or proposed practices of a person, at the Commissioner's own initiative or when required by the Minister, to determine whether they are, or would be, inconsistent with the purposes of this Act, and, when required by the Minister, to report the results of the examination to the Minister;
- (g) to promote in the Territory an understanding and acceptance, and public discussion, of the purposes and principles of equal opportunity;
- (h) to promote an understanding and acceptance of, and compliance with, this Act;
- (j) to promote the recognition and acceptance of non-discriminatory attitudes, acts and practices;
- (k) to promote within the public sector the development of equal opportunity management programs;
- (m) to prepare and publish guidelines and codes of practice to assist persons to comply with this Act;
- (n) to provide advice and assistance to persons relating to this Act as the Commissioner thinks fit;
- (p) to advise the Minister generally on the operation of this Act;
- (q) if the Commissioner considers it appropriate to do so, to intervene in a proceeding that involves issues of equality of opportunity or discrimination with the leave of the court hearing the proceeding and subject to any conditions imposed by the court;
- (r) such functions as are conferred on the Commissioner by or under this or any other Act; and
- (s) such other functions as the Minister determines.

ADC Highlights 2008/2009

2008/09 was a very busy year for the ADC. Some of our most notable achievements are highlighted below and discussed in further detail later in this report.

- **Outback Pichas and our regional visits** – 2008/09 has seen a concerted effort to reach regional areas around the NT with the message of equality of opportunity. Over 40% of ADC training occurred outside Darwin in this period, and Outback Pichas took us to communities that we haven't visited in some time. For further details on these events see page 19.
- **Inaugural Women with Disabilities Photographic Exhibition** – This exhibition documented the success of an amazing group of Territory women living with disabilities.
- **International Women's Day (IWD) Dinner** – Over 340 people celebrated IWD at the Cypriot Club on 8th March 2009. The keynote address was delivered by Pat Anderson, and other entertainment came from local performers and dancing until late.
- **Our work with students** – The ADC had an increased focus on younger people in 2008/09 with numerous visits to schools to discuss issues including human rights, discrimination and equality of opportunity. We also visited tertiary institutions and career expos to give students information about the role of the ADC in relation to unfair treatment in the workplace and education.
- **Complaint numbers and conciliated outcomes** – Complaint numbers went up in 2008/09. Despite the increase in complaints the timelines for finalisation of those complaints remained relatively stable. The rates of complaints resolved through conciliation remains high, with almost 40% of total complaints resolved in this manner.

About Us

Vision:

A fair, equal and inclusive Northern Territory

Mission:

To lead the community in promoting human rights and achieving equality of opportunity and community harmony in the Northern Territory.

Role and Functions:

The Anti-Discrimination Commissioner is required to carry out the functions set out in section 13 of the Act (see page 6). The staff at the ADC assist the Commissioner to fulfil these functions in two main ways, by acting as the Commissioner's delegate in complaint handling; and through delivery of public education and training. ADC staff are also involved in providing policy advice, examining legislation for consistency with the Act, liaising with other organisations and departments to achieve the aims of the Act, and advising the Minister on the operation of the Act. The ADC performs all functions fairly and impartially.

Performance Measures:

The ADC's performance is measured through a set of agreed parameters as set out below. These performance measures are intended to present an overview of the operations of the ADC over the twelve month period. More detail on performance in each of the two main areas of work can be found in the Report on Functions (p11-35).

As is evident from the statistics contained in the performance measures, 2008/09 was a busy and successful year for the ADC.

ADC Performance Measures 2008/09

Outputs		2006-07 Actual	2007-08 Actual	2008-09 Estimate	2008-09 Actual
Quantity	Public awareness and training hours	276	377	300	299
	Participants	1898	2695	2200	3567
	Complaints received	132	130	130	155
	Complaints closed	128	101	130	134
	Complaints open as at 30 June	46	68	N/A	89
	Quality	Participant satisfaction with training	84%	93%	80%
	Percentage accepted complaints conciliated	53.5%	57%	50%	51%
Timeliness	Time from receipt of complaint to final resolution	6.4 months	3.3 months	6 months	5.3 months

Report on Functions

Public education and training

In accordance with section 3 of the Act, one of the ADC's primary objectives is "to promote recognition and acceptance within the community of the principle of the right to equality of opportunity of persons regardless of an attribute". The ADC achieves this objective through its public education and training strategies, involving formal and workplace training, visits to regional and remote communities, consultation and engagement with both the public and private sectors, speaking engagements and education events. We also have a range of publications and posters on a range of topics and in various languages that are available at the ADC office, on-line and via email. A full list of our current publications and posters can be found at Appendix 4.

One of the main aims of the ADC during 2008/09 was increased regional engagement. To this end a good deal of time and energy was devoted to the delivery of training and raising public awareness about issues of discrimination in regional and remote Northern Territory. In 2008/09 over 3,500 people either participated in or were exposed to the work of the ADC through our public education and training.

The level of participant satisfaction with our formal and workplace training remained very high at 91%.

Despite the high level of satisfaction, we continually review program content and methodologies to ensure that our training remains relevant and engaging, and is improved accordingly.

Nature of Public Education and Training:

Type of event	Number of sessions
Formal (calendar-based) Training	8
Workplace Training	62
School / Education Provider Sessions	17
Expos etc	5
Public Education Events	11
Other	5

Formal/Calendar Training:

In 2008/09 the ADC offered a range of sessions to members of the public through our formal training program, produced bi-annually and circulated throughout the Northern Territory. Sessions offered through the training program are available to individuals as well as businesses, and are designed to educate management and staff (for information on tailored programs refer to “Workplace Training”).

Training programs offered in 2008-09 included:

- Introduction to Anti-Discrimination Law;
- Anti-Discrimination Law, Harassment and Bullying in the Workplace;
- Contact Officer Training; and
- Preventing Harassment and Bullying for Managers and Supervisors.

Eight formal training sessions were delivered in 2008/09 through these programs: four in Alice Springs; two in Darwin; and one each in Nhulunbuy and Katherine, with a total of 80 participants.

“Preventing Harassment and Bullying for Managers and Supervisors” was the most popular of the courses offered as part of the formal training program. This course is designed to provide management with the knowledge and skills to deal appropriately with unacceptable behaviour in the workplace. It identifies unacceptable behaviour, lawful and unlawful behaviour, examines management responsibilities and the potential costs of failing to act in response to this behaviour, and assists in the development of strategies to deal with it.

The formal training program is an important part of the training services offered by the ADC as it allows us to provide information to a broad cross-section of the community outside their own working environment. The formal training program is also a vehicle to design, develop and implement new programs that can then be offered as part of our tailored workplace training. Comprehensive evaluation of programs is always conducted.

Workplace Training:

The ADC offers training to individual organisations through our workplace training service. This training can be customised to meet the needs of the organisation or can be modelled on the formal training discussed above.

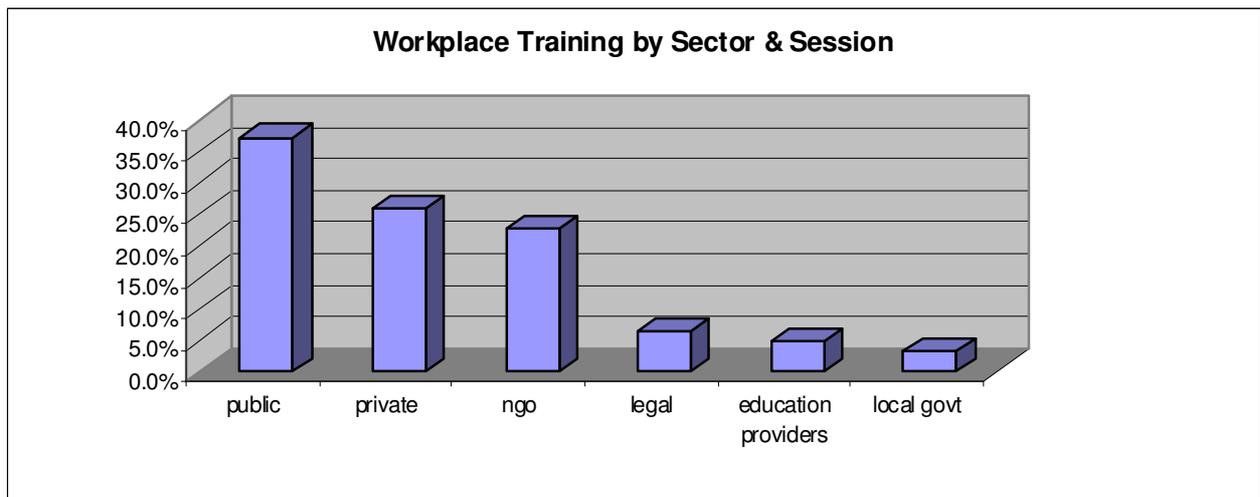
In 2008/09 the ADC delivered 62 workplace training sessions. Whilst this was a decrease on the number of sessions for the 2007/08 financial year, there was a greater emphasis on public awareness events this year as discussed above. A total of 877 people participated in workplace training sessions.

Workplace training sessions can focus on anti-discrimination law; bullying and harassment in the workplace; ways of identifying and avoiding discrimination for managers and supervisors; and dealing with complaints and grievances. The content of these sessions will depend upon the needs of the organisation and the participants.

One of the popular sessions in this format is the Contact Officer training. This course assists participants who have a role as, or wish to utilise, the designated grievance

contact officer in their workplace. As part of the course participants are taught about the role of the contact officer and given information that will allow them to inform, support and refer workers with a grievance.

In 2008/09 workplace training was conducted in six sectors, with the highest level of training delivered, in terms of both sessions and participants, to the public sector, followed by the private and non-governmental sectors.



Students:

2008/09 has seen a focus on anti-discrimination training for students, in recognition of the fact that not only do young people experience discrimination and other unfair treatment - which is often unrecognised as well as unreported – but they are key to the long-term promotion of equality of opportunity in the Northern Territory. Educating young people about equality of opportunity, how to recognise discrimination, and the effects that unfair treatment has on individuals and the community as a whole is essential if we are to build a community where everyone gets a fair go. In 2007/08 the ADC talked with 156 students. In 2008/09 that number nearly tripled to 435.

The ADC visited students from a variety of age groups at the following places, to speak about fairness, the Act, discrimination, sexual harassment, and rights and responsibilities:

- Casuarina Senior College;
- Darwin High School;
- Palmerston High School;
- Marrara Secondary College;
- Batchelor Institute;
- Kormilda College;
- Charles Darwin University; and
- Australian Technical College.

In addition to these visits, the ADC also attended Career Expos in Darwin and Nhulunbuy. The annual expos are designed to give high school students the opportunity to explore career options post-school and to gather other information that may be of use to them as they progress to employment, further education or other options. We were able to speak to more than 400 students, parents and teachers who visited our stands, raising awareness of what constitutes unlawful discrimination and what they can do if they experience it.

Finally, as part of Youth Week the ADC visited Kormilda College to talk about human rights generally in the context of the National Human Rights Consultation.

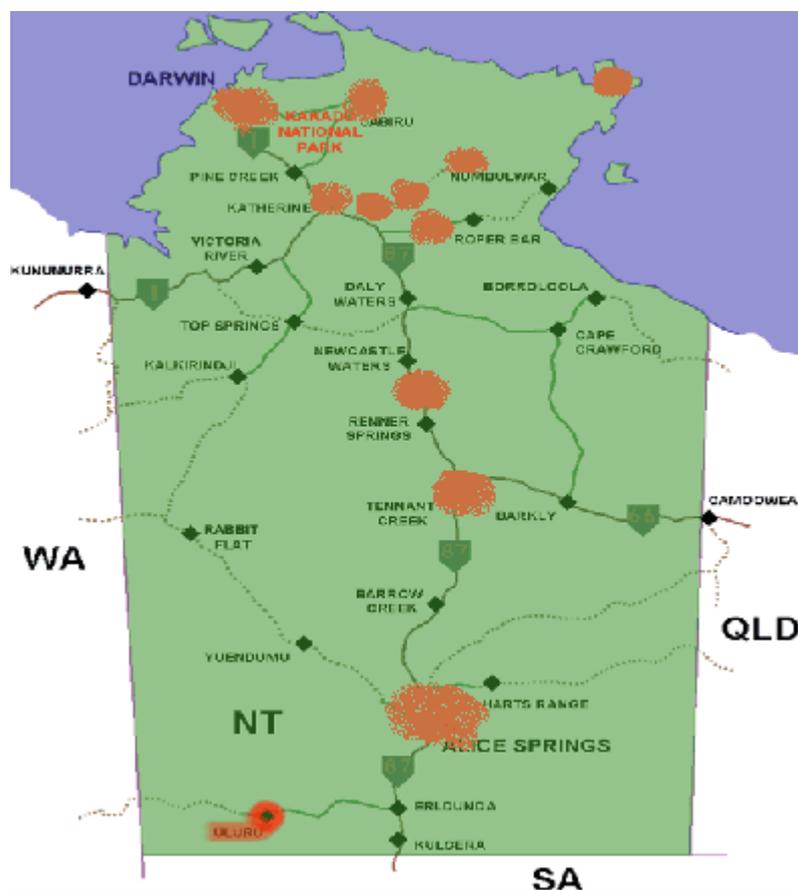
We look forward to continuing to speak to students across the Northern Territory during 2009/10.

Community-Based Events:

The ADC also participated in a number of community-based events as part of our public education campaign in 2008/09. These events are ones in which a variety of organisations get together to deliver information and promote their activities in line with a theme or an occasion. Some of the highlights of these events were the Disability Awareness Week community markets and the Darwin Community Legal Service's Human Rights Week market.

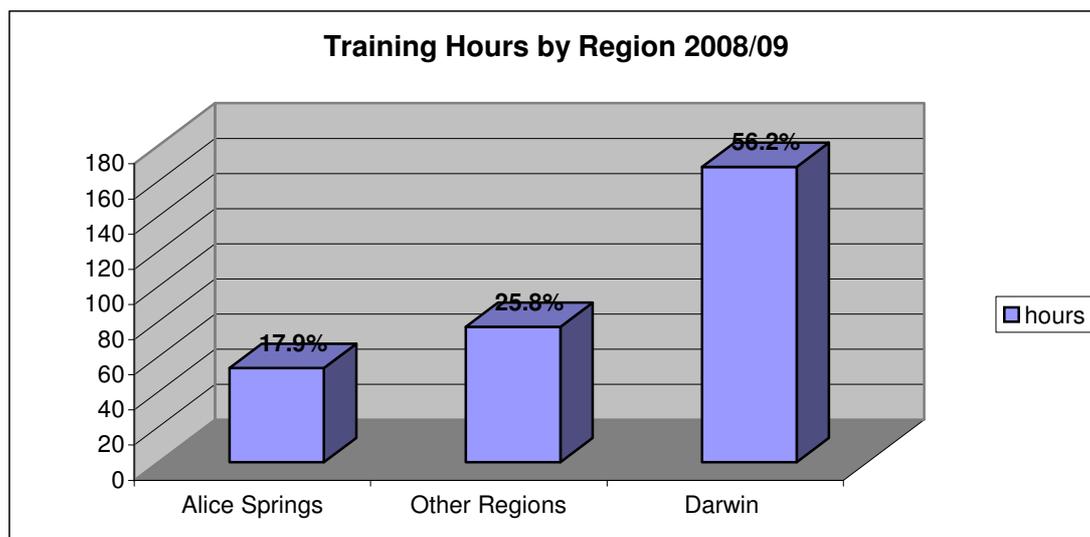
The ADC also had a stall at the Harmony Day Celebrations in Malak Park on 21 March 2009. This was a particularly important occasion for the ADC as the celebrations were dedicated to Tony in recognition of the passion he had for community harmony and the great contributions that he made towards achieving that goal.

Regional Activities:



2008/09 saw the ADC concentrate on getting our message out past the “Berrimah Line” to the regional and remote areas of the Northern Territory. Our training and public education initiatives have travelled throughout the Northern Territory – with the highlight being the Outback Pichas adventure (see below for more details) that took the equal opportunity message to Barunga, Beswick, Bulman, Elliott, Jilkminggan and Tennant Creek. We will be visiting more communities with Outback Pichas in 2009/10.

In addition to the film shows, the ADC delivered training in Alice Springs, Katherine, Nhulunbuy, Jabiru and attended events such as the men’s meeting at Elliott. Our visits to remote and regional Northern Territory provide us with crucial information about discrimination and obstacles to equality that people face in the Northern Territory. These visits and the issues that we discover along the way will remain a priority for the ADC in the coming financial year.



Special Events:

Every year the ADC holds a number of special events to promote the objects of the Act within the Northern Territory community. These events are often held in conjunction with other organisations and we thank them for their efforts and cooperation.

Our 2008/09 special events are outlined below.

International Human Rights Day Celebration – International Human Rights Day is celebrated on 10 December each year to mark the anniversary of the United Nations General Assembly’s adoption of the Universal Declaration of Human Rights. This adoption took place in 1948, making the celebrations organised by the ADC with support from Multicultural Council of the Northern Territory (MCNT) in 2008 particularly important as they marked the 60th anniversary. Former Northern Territory Administrator Ted Egan delivered the keynote address to the 250 guests, and was followed by performances from a number of community groups.

International Women’s Day – The ADC in conjunction with MCNT hosted the International Women’s Day dinner at the Cyprus Community Centre in Darwin on 8th March 2009. Over 340 people attended the event and were entertained by keynote speaker and co-author of the *Little Children are Sacred Report* Pat Anderson who spoke in part about the effect of the Intervention on women, and growing up in Darwin. Performances from local multicultural groups followed, with the evening ending with much singing, dancing and celebration.

Photographic Exhibition – The inaugural “Women with Disabilities” photographic exhibition was staged this year at the Supreme Court in Darwin and the Palmerston Library. The exhibition, co-hosted by ADC and Life Without Barriers, tells the personal stories of 20 successful Territory women who live with disabilities. The exhibition is a beautiful showcase of these amazing women, and a valuable demonstration of the principles that underpin equality of opportunity. The exhibition will travel to Katherine and Alice Springs in 2009/10.

Film night – The ADC was pleased to support the Working Women’s Centre in the screening of the film “North Country” as part of the International Women’s Day celebrations. This night was a great success with over 100 guests enjoying the film and learning a little more about sexual harassment and their rights.

Outback Pichas – the ADC and Consumer Affairs joined forces this year to present Outback Pichas, a travelling film festival aimed at promoting rights in an entertaining context throughout remote Northern Territory. In addition to seeing the messages on film from service providers, communities were entertained with night time movies and had the opportunity to ask questions and find out more about ADC and Consumer Affairs while we were there.

The ADC Website

In January 2009 the ADC launched its new, long awaited website. Much of the material on the site has been updated and it is hoped that it will be a more interesting, engaging and useful site to visit.

Anyone who wants to learn more about discrimination and other unlawful conducts can visit our website and download information brochures and complaint forms. The site will be regularly updated with information on upcoming training and events, and will link into other important sites from around Australia and the world.

Thank you to all of those who worked hard in the upgrade of our website. Please visit the site at: www.adc.nt.gov.au

ADC Website Statistics 2008/09

Total Visits	60,457
Average Visits per Day	166
Average Pages Viewed per Visit	3
Most frequent keywords	“What is Discrimination?”

Newsletters

The ADC newsletter “Fair Go” came out only twice this financial year, and in his last two editions Tony Fitzgerald tackled some pertinent issues with his usual gusto. The September edition focussed on accommodation problems in Central Australia; and in November the focus was on “work-life balance” and the role the Act plays in making this a reality.

Copies of these and earlier editions of “Fair Go” can be downloaded from the ADC website.

Complaint handling

Any person who has been subjected to unfair treatment on the basis of an attribute at work, in education, accommodation, when accessing goods, services and facilities, or in connection with clubs, insurance or superannuation can contact the ADC to discuss their options under the Act.

The complete complaint-handling process, from enquiry through to hearing, is set out in Appendix 2 and detailed below.

A Word on Conciliation

Conciliators at the ADC are well-trained and highly skilled in the art of alternate dispute resolution. In assisting parties to reach a resolution of a complaint, conciliators are impartial, and do not represent either party. Their role is rather to facilitate discussions regarding the dispute. They provide general advice on the operation of the Act and assist parties to identify issues, explore options for resolution, and where possible agree on a resolution to the complaint.

While the terms of conciliated settlements are usually confidential, engaging in the process of conciliation enables the individuals involved to have a better understanding of equality of opportunity and their rights and responsibilities under the Act. Conciliation at the ADC is free and nothing said or done in the course of conciliation proceedings can be taken into account by the hearing Commissioner if the matter does not settle and must instead be determined at hearing. This is one of the great strengths of the process as it allows the parties to participate in an open and frank manner, which in turn is more likely to result in a resolution.

The ADC also uses de-identified examples of conciliated settlements to educate the broader community about the issues that come to the ADC on a daily basis and ways in which they might be resolved. Examples of Conciliated Complaints can be found at Appendix 3.

Enquiries:

For people who are looking to make a complaint under the Act the first point of contact with the ADC is often through an enquiry via telephone, email, mail or in person. Increasingly people are also seeking information via the internet.

In 2008/09 the ADC received 385 enquiries, a decrease of 85 on the previous reporting period, consistent with the trend over the past four years.

Enquiries Received by Year

	2004/05	2005/06	2006/07	2007/08	2008/09
Total Enquiries	794	571	563	468	385

Telephone, email, mail and personal enquiries are generally handled by conciliation / complaint handling officers, who provide free and confidential advice in response to the enquiries. Methods of enquiry have remained largely consistent over the past few years.

Modes of Enquiry 2006/07 – 2008/09

Mode of Enquiry	2006/07 (%)	2007/08 (%)	2008/09 (%)
Telephone	85.3%	86.1%	88.3%
In person	7.3%	8.5%	8.3%
Email	6.7%	4.5%	2.9%
Mail	0.7%	0.9%	0.5%

We continue to receive a substantial number of requests for advice on the operation of the Act from people acting in a professional capacity. These requests come from

government agencies, businesses and non-governmental organisations. In 2008/09 93 of 385 enquiries (24%) were professional enquiries.

Enquiries from Darwin and Palmerston made up 65% of all enquiries.

The amount of time spent on individual enquiries remained consistent with previous years, with officers spending an average of 18.7 minutes on each enquiry.

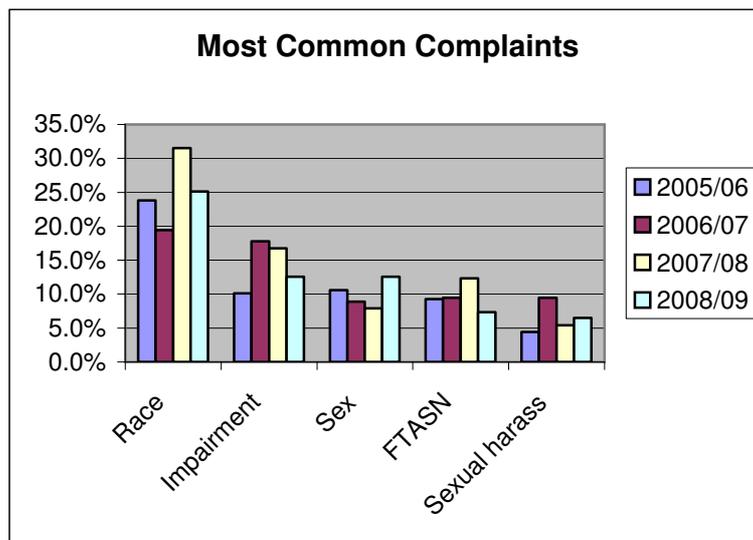
This year's internet statistics (see page 19) demonstrate a high demand for internet-based services, with 60,457 hits recorded on our website in the reporting period. This is an increase of 6,866 hits when compared with the previous reporting period. As the website allows people to download complaint forms as well as find information about attributes, areas and prohibited conduct it is reasonable to assume that people are using the internet resources as an alternative to traditional enquiry means.

Complaints Received:

In 2008/09 155 people made formal written complaints to the ADC. Of those 155 people, 76 made more than one allegation of prohibited conduct, meaning that in total the ADC received a total of 231 complaints, an increase of 70 complaints on the previous reporting period.

Attributes and Other Prohibited Conduct:

During 2008/09 the most common complaint made to the ADC was discrimination on the basis of race, followed by discrimination on the basis of sex and impairment (disability). These three types of complaints, along with allegations of failure to accommodate a special need (FTASN) and sexual harassment, have consistently been the most common types of complaints over the past five years.



The total number of allegations of race discrimination has dropped slightly on 2007/08 levels, to make up 25% of total complaints, and 30% of discrimination and harassment complaints in 2008/09. This was down from 32% and 40% respectively in the previous year.

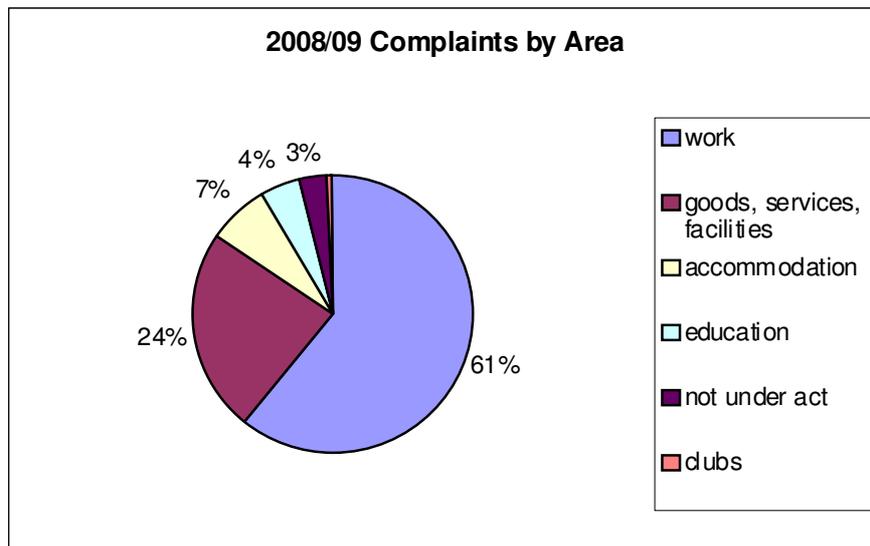
There were 17 complaints of failure to accommodate a special need (under section 24) in 2008/09. This reflects allegations of a failure to reasonably accommodate special needs relating to not only impairment, but also other attributes. Of the total of 17 complaints of failure to accommodate a special need, nine related to impairment; four to pregnancy; two to parenthood; and one each to religion and sex. The total number of complaints alleging a failure to accommodate a special need was down slightly on the previous year.

Complaints of sex discrimination and sexual harassment rose slightly in 2008/09 (see discussion on Women and Work below).

Areas of complaint:

The Act applies to prohibited conduct only if it occurs in one of the following areas of activity: education; work; accommodation; goods, services and facilities; clubs; insurance and superannuation.

In 2008/09 complaints were made in each of the areas as follows:



As illustrated below, work has been the highest area of complaint for many years.

Complaints by Area 2006/07 to 2008/09

Area of Activity	2006/07	%	2007/08	%	2008/09	%
Education	3	1.7	5	2.5	10	4.3
Work	96	53.3	133	65.5	140	60.6
Accommodation	2	1.1	14	6.9	17	7.4
Goods, services and facilities	67	37.2	51	25.1	55	23.8
Clubs	6	3.3	0	0	1	0.4
Insurance and superannuation	1	0.6	0	0	0	0
Not under Act	5	2.8	0	0	8	3.5

Complaints by Grounds and Areas 2008/09

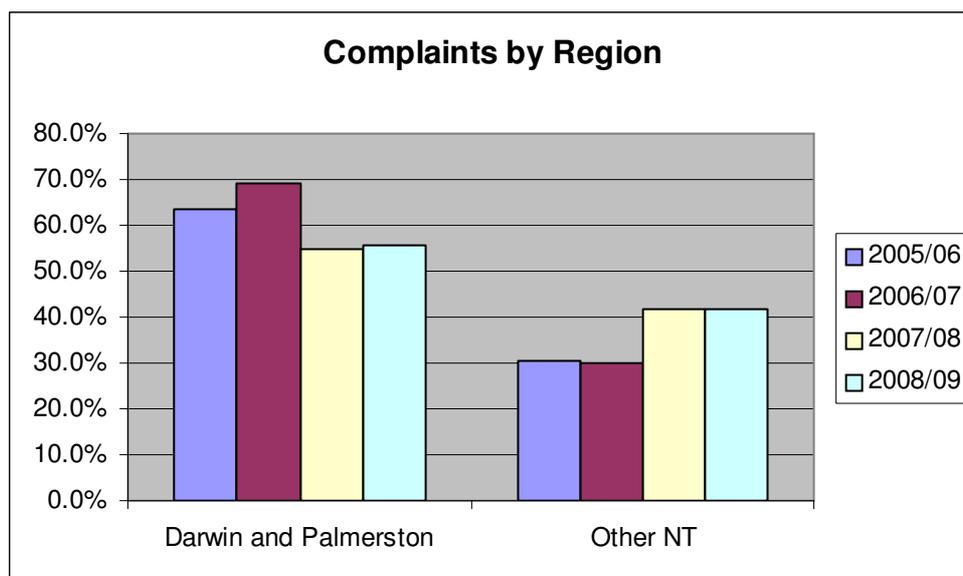
PROHIBITED CONDUCT – DISCRIMINATION Attributes	Education	Work	Accommodation	Goods/ Service/ Facilities	Clubs	Insurance/ Superannuation	Not Under Act	Total
Age		11						11
Association with a Person	2	2		3				7
Breastfeeding	1							1
Impairment	3	15	2	9				29
Irrelevant Criminal Record		6						6
Irrelevant Medical Record		2		1				3
Marital Status		4	3	3	1			11
Parenthood	1	4		1				6
Political Opinion/Affiliation/Activity				2				2
Pregnancy		8						8
Race	1	18	10	29				58
Religious Belief/Affiliation/Activity		7						7
Sex		28		1				29
Sexuality		7						7
Trade Union Affiliation/Activity		1						1
Not Under Act							8	8
Total	8	113	15	49	1	0	8	194
OTHER PROHIBITED CONDUCT								
Aiding Contravention of Act								0
Discriminatory Advertising								0
Failure to Accommodate a Special Need	2	7	2	6				17
Sexual Harassment		15						15
Seeking Unnecessary Information		2						2
Victimisation		3						3
Total	2	27	2	6	0	0	0	37
TOTAL COMPLAINTS FOR 2008/09								231

Identity of Complainant and Respondent:

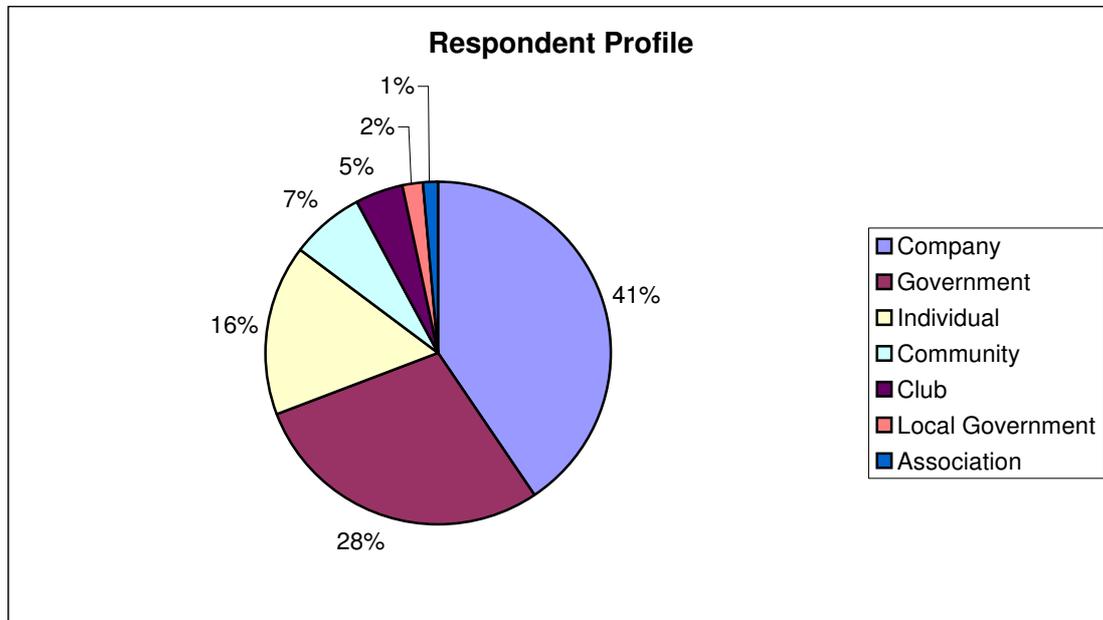
Complainant Profile by Sex

Complainant Profile	Number of complaints	%
Female	78	50.3%
Male	77	49.7%

The ADC records the region that the Complainant comes from each year. These statistics for 2008/09 are remarkably consistent with those in 2007/08, and display an increase on levels of complaints from outside the Darwin/Palmerston area in years previous.



Companies made up nearly 40% of Respondents in 2008/09, down from 54% in 2007/08. Government was the Respondent in just over 28% of complaints, up slightly from 27% in 2007/08.



Complaint Outcomes:

One hundred and thirty four (134) complaints (by Complainant) were finalised in 2008/09, an increase of 33 on 2007/08 figures. Complaints were finalised in a number of ways, each of which is briefly described below.

Rejected (s66): the ADC is required to accept or reject a complaint within 60 days of receipt. A complaint will be rejected at this stage if it is frivolous or vexatious; trivial; misconceived or lacking in substance; or fails to disclose any prohibited conduct. In 2008/09, 25 complaints were rejected.

Dismissed or discontinued (s76; s102): once a complaint has been accepted it is investigated with a view to determining whether there is sufficient prima facie evidence to substantiate the complaint. If there is sufficient prima facie evidence the matter will proceed to conciliation or hearing; if there is not, it will be dismissed. Seventeen complaints were dismissed under section 76 in 2008/09. No complaints were discontinued under section 102 in the reporting period.

Settled: It is open to parties to settle a complaint at any stage during the complaint-handling process. The ADC assists with this process through the use of conciliation (as discussed above). Conciliation can take the form of facilitated negotiation between the parties – either face-to-face or through a conciliator; it can be a shuttle process in which the conciliator moves between the parties in an attempt to resolve the matter; or it can take the form of a conciliation conference with all parties in attendance or attending via telephone.

Whilst the parties can voluntarily partake in a conciliation process at any time after the complaint is accepted, even prior to a response being provided in what is called “early conciliation”, the ADC can also order parties to attend a conciliation after a preliminary determination has been made under section 76 (provided the complaint is not dismissed).

If parties are able to resolve a complaint through conciliation the details of that agreement will generally be recorded in a settlement agreement.

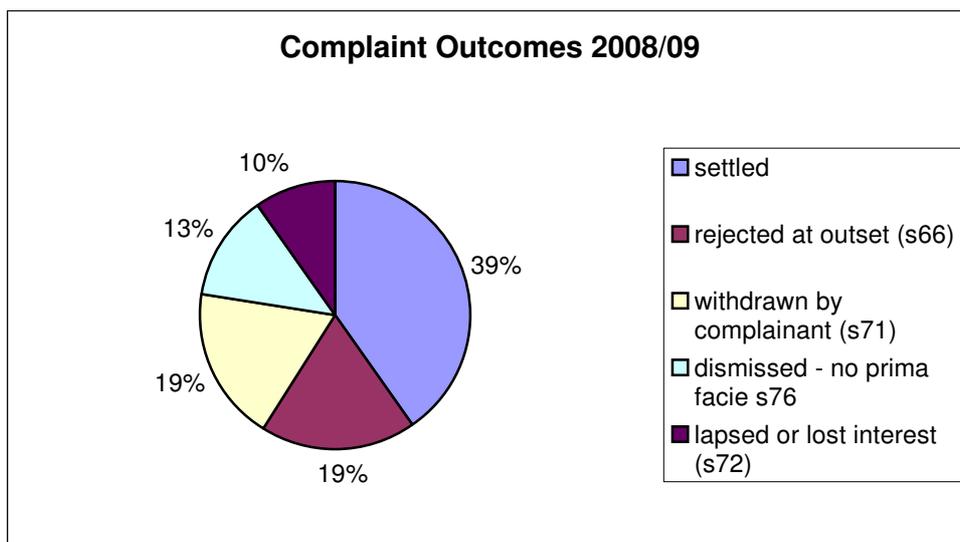
Examples of conciliated settlements can be found at Appendix 3.

In 2008/09, 54 complaints were settled via conciliation.

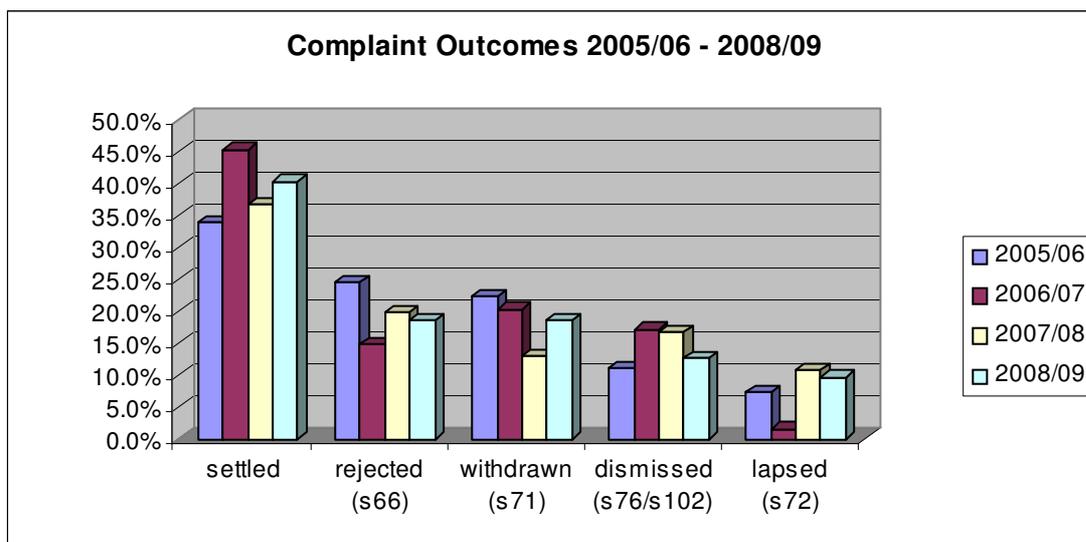
Lapsed (s72): If a complaint-handler is of the view that a Complainant appears to have lost interest in continuing with their complaint, the ADC must advise the Complainant in writing that their complaint will lapse unless they indicate that they wish it to continue. If the Complainant does not give this indication within 60 days their complaint will lapse and the file will be closed. In 2008/09, 13 complaints lapsed.

Withdrawn (s71): A Complainant may apply to the ADC at any time to withdraw their complaint. The ADC must then investigate the circumstances of the application and, if satisfied that the application is made voluntarily, will grant the application and close the file. In 2008/09, 25 complaints were withdrawn by the Complainant.

Determined at Hearing: If a complaint is found to have met the prima facie test and cannot be resolved by conciliation it will be referred to a public hearing before the Commissioner. The Commissioner can also hear matters that have been before the ADC for more than six months if requested to do so by one of the parties (section 84). Five matters were referred to hearing in 2008/09, however none were finally determined via hearing in the reporting period.



Rates of conciliated outcomes/settlements have been consistently high at the ADC over many years, with 40% of all closed complaints (and 51% of accepted complaints) in 2008/09 involving a settlement between the parties.



Appeals (s106):

Either party to a complaint can appeal a final decision of the Commissioner to the Local Court. Appeals can be on questions of fact, law or both. Appeals take the form of a rehearing on material that was before the Commissioner, rather than a new hearing. Fresh evidence can be admitted on appeal with leave of the Court.

In 2008/09 there were no appeals against decisions of the Commissioner heard in the Local Court. Two appeals were lodged in that time but neither of these were determined in the reporting period.

Other Functions of the ADC

In addition to complaint handling and public education and training roles, the ADC also works to promote equality of opportunity and eliminate discrimination and other prohibited conduct through provision of policy advice, advocacy, consultation, research and examination of legislation. Some of these activities are described below and are carried out in line with the broad functions conferred on the Commissioner under section 13 of the Act.

Advice and Dissemination of Information

In 2008/09 the ADC provided policy advice and support to a number of government agencies and divisions. Aside from our training in these divisions we have provided a good deal of advice on the operation of the Act and development of policies - in particular with regards to access to equality of opportunity for people with impairments in the Northern Territory. For the first time this year the ADC conducted a workplace audit of discrimination issues in one agency division. This allowed a cross-section of staff to identify issues they saw as cause for concern in the workplace generally, and in relation to the provisions of the Act. At the conclusion of this exercise a report was prepared for management that identified a number of crucial issues and proposed ways of dealing with those issues.

In addition to our work with government, the ADC continued to engage with other organisations and provide advice on the operation of the Act and equal opportunity generally. It is pleasing to note that businesses in particular continue to have the confidence to come to us for advice on potential discrimination issues rather than waiting for complaints to arrive.

Consultation

In a broader community context the ADC continued to participate in Community Legal Education Network meetings. This valuable forum allows different legal organisations to come together to discuss the delivery of legal education to the community and work out ways to assist each other where possible. The links made

through this group have meant that the ADC now works more closely with legal providers who can provide us with essential information from their work in remote and regional communities, and can promote our services and assist to link complainants in remote Northern Territory to the ADC.

Promotion, Research, Data and Submission

The ADC continued to contribute to the national debate around issues of equality of opportunity and human rights throughout 2008/09. We attended Australian Human Rights Commission (AHRC) consultations on issues of social justice and access to premises, and provided of submissions on a variety of topics. In 2008/09 the National Human Rights Consultation visited the Northern Territory to speak to Territorians about their experiences. The questions asked by the Consultation Committee included what rights should be protected, and whether existing rights are sufficiently protected under the current legal model in Australia.

The ADC believes that rights in Australia are not sufficiently protected at present, a position stated in our submission to the Committee. It appears clear to us that given the suspension of existing human rights protections, namely the Act and the RDA through the NTER, the current system does not provide sufficient protection for the rights of Territorians, Aboriginal or non-Aboriginal. A charter of rights is supported, as although it would likely only go part way to addressing these issues, it would put the focus on human rights in the minds of legislature and decision makers. It would go a long way towards building a culture of rights in this country that will in turn benefit vulnerable and disadvantaged members of society.

As stated in the introduction to this report, the ADC also continued to advocate for the re-instatement of rights for all Territorians in all Northern Territory communities through our submission to the Review of the NTER in August 2008. This ADC submission called for the re-instatement of the Act, and the abandonment of the traditional one-size-fits-all approach to addressing issues affecting remote Indigenous communities in the Northern Territory. The submission recognised that the NTER brought with it many benefits for remote Northern Territory communities,

not least of all a focus on disadvantage suffered in those areas and funding for police, housing and other services. However the absence of consultation and constructive engagement that preceded it, and the lack of attention to particularities of communities were identified as reasons for abandoning the NTER as it was at that time. The submission argued that the NTER should be replaced by agreement to constructively engage with remote communities over the long term, and development of a range of long term initiatives aimed at overcoming remote Indigenous disadvantage and raising Indigenous quality of life.

Other Activities

ADC staff attended various conference and training courses during 2008/09 including cross-cultural training, gender analysis workshop, Department of Justice's First Time Managers training and the Victorian Equal Opportunity and Human Rights Commission's "Everyday People, Everyday Rights" conference in April. The Commissioner and the Acting Commissioner attended meetings of the Australian Council of Human Rights Agencies (ACHRA) in October 2008 and April 2009. These meetings continue to be a valuable opportunity to share experiences and ideas with anti-discrimination and equal opportunity commissions around Australia.

The ADC was pleased to welcome Ms Kamala Chandrakirana, Chair of the Indonesian National Commission for the Prevention of Violence Against Women (Komnas Perempuan). We also attended a number of community functions including Islamic Awareness Week celebrations, Batchelor Institute Graduation, Tribute to Northern Territory Women, the Chief Minister's Harmony Day celebrations, and the annual NAIDOC March.

Issues and Outlook

➤ Women at Work

In 2008/09 the ADC observed an increase in the number of enquiries and complaints connected with pregnancy in the workplace. The complaints took the form of allegations of direct discrimination and of a failure to accommodate a special need that the complainant had because of her pregnancy.

On examination of the overall complaint figures for 2008/09 it became clear that instances of women being treated unfairly in the workplace in ways that were directly related to their sex were disproportionately high. When we added up the complaints made by women in the area of work, discrimination on the basis of sex or pregnancy, allegations of failure to accommodate a special need on the basis of pregnancy, and sexual harassment totalled over 20% of our total complaints for 2008/09.

Of course women make complaints in all areas of activity in connection with all attributes. However it is concerning that 25 years after the passage of the *Sex Discrimination Act 1984*, and 17 years after the Northern Territory Act, we are still seeing allegations of sex and sex-related discrimination at such high levels in the area most directly related to financial security – that is work.

It appears from anecdotal evidence that there is still a significant gap between the law with regards to sexual harassment in particular and the knowledge of employers and employees about that law. In 2009/10 ADC will commence a new training program dealing with sexual harassment in the workplace and continue to work with employers to identify and address issues that give rise to complaints in this area. All employees should be able to work in a safe and respectful environment where they are not subjected to sexual taunts, approaches, innuendo; and where they are not judged by or denied opportunities for development, training or promotion because of their sex or their potential pregnancy.

➤ **The NTER and the Suspension of the Act**

Again the ADC welcomes the belated re-instatement of the Act that is expected to occur in the 2009/10 reporting period, however it is important to highlight the effect that the suspension has had for Territorians in prescribed communities, and Aboriginal Territorians generally. The suspension of the Act removed the right of Aboriginal Territorians in prescribed communities to complain to the ADC of any unfair treatment they may have experienced in connection with any NTER measures, not only on the basis of race, but on the basis of any attribute listed in the Act including sex, impairment (disability) and age. The effect is therefore to leave Aboriginal Territorians in prescribed communities far more vulnerable to discrimination in all aspects of their life than other Territorians.

Many people in communities affected by the NTER remain confused about the status of the Act and the RDA, they simply don't understand why their rights have been taken away; and in some cases individuals report their view that they have no rights at all. This confusion illustrates the need for education campaigns to commence with the re-instatement of the Act and the RDA, to ensure people are aware that their rights have been returned and that they can have confidence that there are systems in place to address any unfairness they may encounter.

These issues will continue to present many challenges for the ADC in the coming year.

➤ **Remote Northern Territory**

Service delivery outside the main Territory centres is as always a challenge. The amount of training conducted outside Darwin this year has been impressive, as have efforts to promote equality of opportunity in other ways. However, even with these efforts, we still have a long way to go before we can be truly confident that the ADC's message is getting out to all Territorians.

In 2008/09 our regional complaints remained on par with the 2007/08 figures, increasing on previous years. It is recognised that the confusion about rights detailed

above is not the only barrier to complaints from remote communities. Other factors may include legislative barriers (such as the need to provide a complaint in writing), language and access barriers. The paper-based complaint process can be daunting and at times drawn out, leading to a number of complaints lapsing due to loss of contact with the Complainant. The ADC will continue to work with other organisations in an attempt to more clearly identify, monitor and overcome some of these issues in 2009/10.

➤ **Impairment**

2008/09 saw some great progress in the area of education with the release of the new Department of Education Policy and Guidelines for students with disabilities. Work also commenced on the new “Willing and Able” strategy for the Northern Territory Government. On a federal level draft Access to Premises Standards under the Commonwealth *Disability Discrimination Act 1992* were released for comment. It is hoped that these standards, which provide valuable guidance for the work of the ADC, will be finalised and become law in 2009/10.

Despite these advances there are still many barriers to equality of opportunity for people with impairments in the Northern Territory. Barriers to physical access remain. In 2008/09 the ADC received complaints about locked “accessible” entry points; accessible toilets being used as storage rooms; shops being inaccessible due to boxes stacked in aisles in 2008/09. High school students with impairments have reported some of the discrimination issues they have faced when seeking part-time employment; and our examples of conciliated complaints (see Appendix 3) demonstrate some of the other barriers that adults face in the workplace.

Although complaints of prohibited conduct related to impairment consistently rank in our top three types of complaint, the ADC suspects that we do not get as many complaints in this area as perhaps we might. Anecdotal evidence indicates that there is a lot of unfair treatment that goes unreported, for a variety of reasons. The ADC will continue to raise awareness of rights and responsibilities in this area in 2009/10.

➤ **Community Harmony**

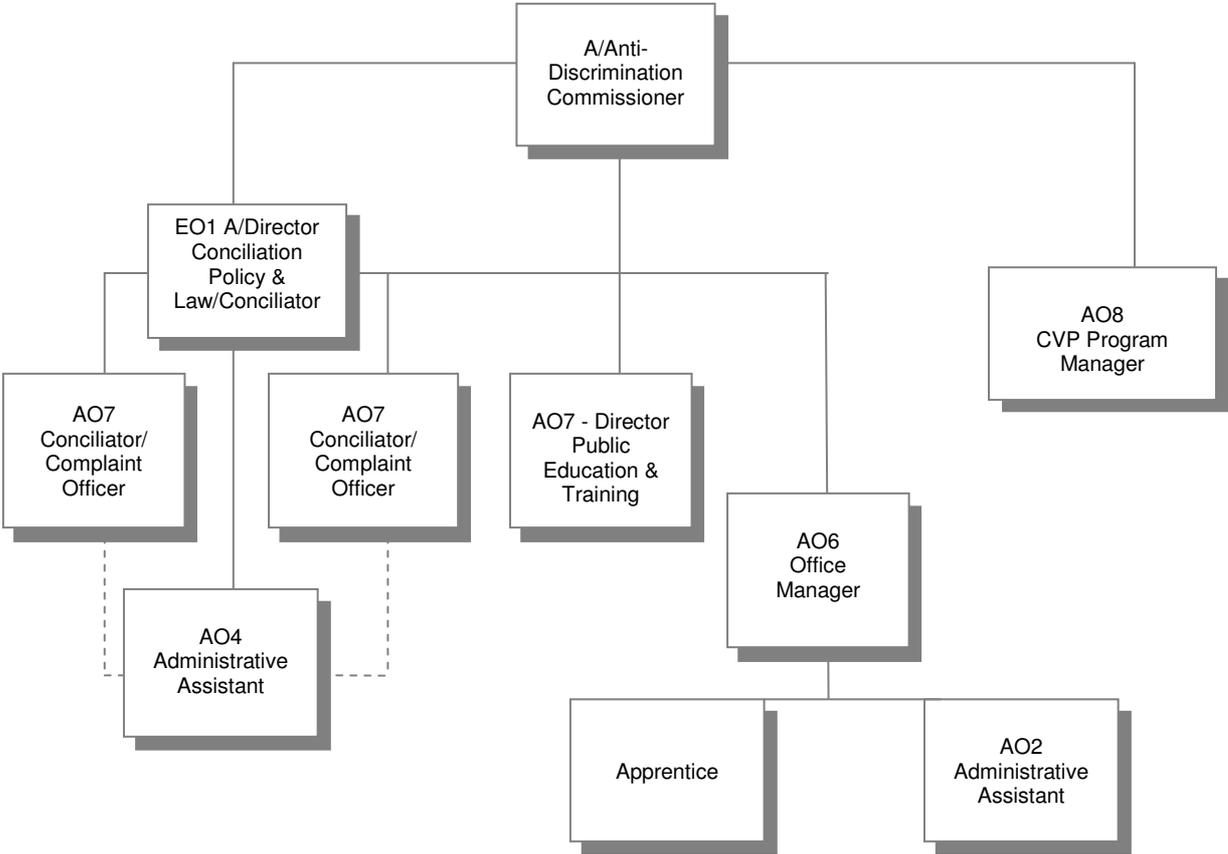
One of the legacies that Tony Fitzgerald has left with the ADC is a focus on community harmony. In carrying out his functions under the Act, Tony was always passionate about the promotion of equality of opportunity and non-discrimination. However he was also of the view that the ADC could do all the work possible to promote the objects of the Act, but unless these goals became goals shared by the community at large, our efforts would be ineffective at best. His view was that the community would need to come together and work harmoniously in order to reach the ideals set out in the Act. This was particularly the case when it came to issues of race.

Tony believed that racism could be eliminated. To quote from a 2006 press release he said that:

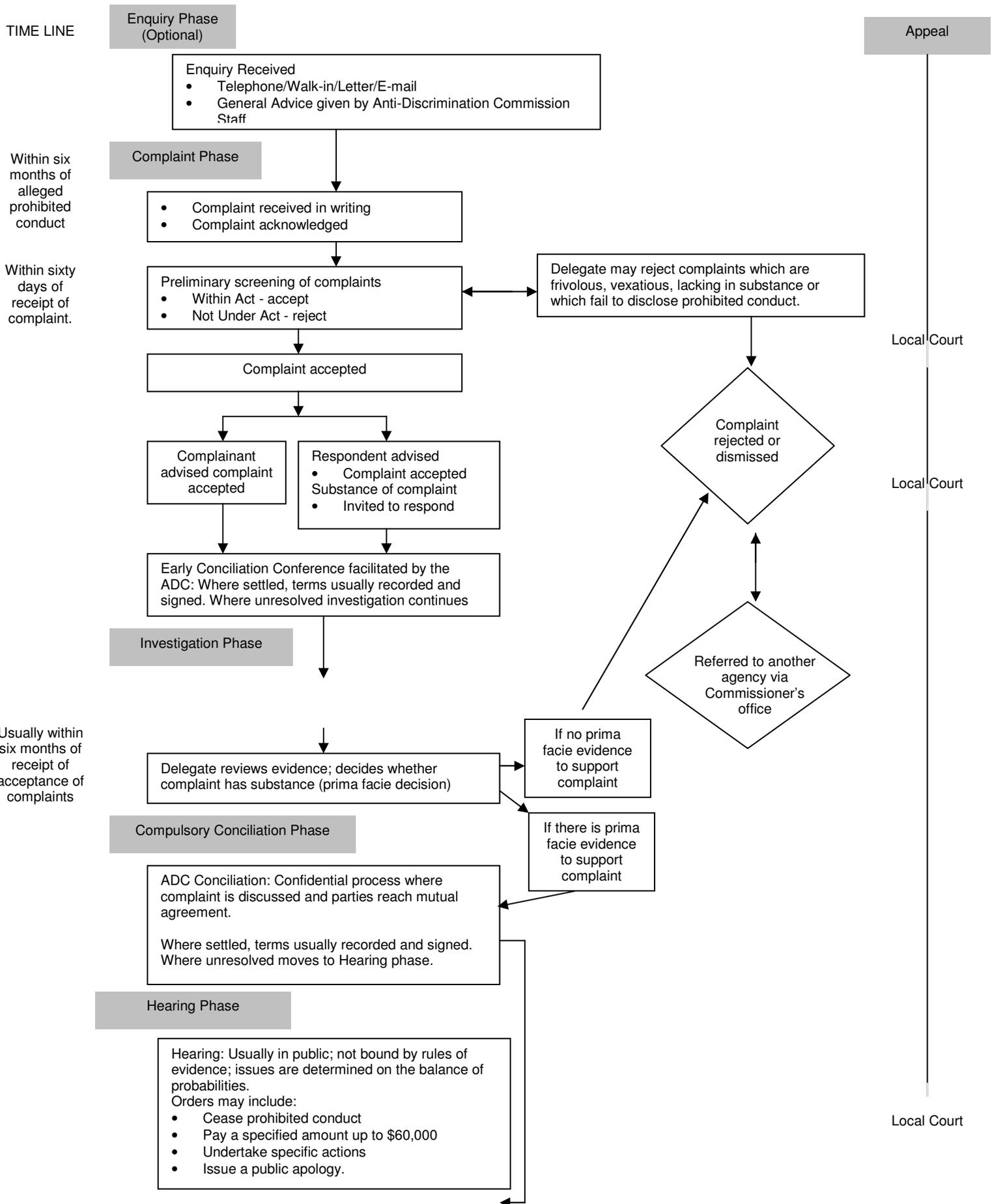
“As a community we must understand and respect fairness and diversity and avoid language or behaviour that is disrespectful. We need to treat people as individuals and judge them on their merits, rather than assuming that a person will act in a particular way because of their race or culture. The diversity of the population in the NT is one of its strengths. We must not allow racism and intolerance to weaken our unique and marvellous society and I urge all Territorians to consider how they may personally contribute to the elimination of racism in the NT...”

We have a long way to go before we achieve the goal of eliminating racism in the Northern Territory as in the rest of Australia. That doesn't mean that we should give up. The key to a harmonious, inclusive society is individual self-awareness that allows us to reflect on our own prejudices; and a commitment to challenge racism and divisiveness whenever we see it in our daily lives. It is a strong message left to us by our former Commissioner, one that the ADC will continue to promote in the year ahead.

Appendix 1: Organisational Structure as at 30 June 2009



Appendix 2: Complaint Processes



Appendix 3: Examples of Conciliated Complaints

The following examples of complaints resolved by conciliation have been de-identified and amended in other ways to ensure the confidentiality of the parties involved. It should be noted that there has been no finding of discrimination in any of these cases and all resolved without admission of liability.

The Complainant alleged that she was treated in a less favourable manner during her employment because of her pregnancy.

The Complainant stated that after the commencement of her employment she unexpectedly discovered she was pregnant. She said she advised her employer of her pregnancy immediately.

The Complainant claimed that following the disclosure of her pregnancy she had little or no access to training opportunities from her employer. She also claimed that a month following her disclosure the Respondent hired a replacement to take over her duties. While she remained employed she said that she was given low-level tasks such as filing and typing, which were not part of her original duties.

The Complainant said her application for maternity leave was rejected on the basis that she had not been employed for a minimum of 12 months. She said the Respondent was not open to discuss any alternative arrangements regarding leave. She stated that her employment was terminated six weeks prior to the birth of her baby.

The parties to the dispute were invited to attend a conciliation conference as a means to attempt resolution of the matter. The Complainant accepted an offer of financial compensation to resolve her complaint.

Failure to Accommodate a Special Need (Impairment) – in the provision of goods, services and facilities

A Complainant, who uses a wheelchair, lodged a complaint alleging that a local shop had failed to provide accessible premises in which she could do her shopping. She

claimed that aisles and exits were blocked with boxes and other display materials which prevented her from accessing all areas of the shop.

The parties to the dispute attended a conciliation conference to discuss practical ways in which the Respondent could improve access in the shop so that it was more accessible to persons who use wheelchairs or have other mobility challenges.

The matter was resolved at conciliation. The Respondent offered the Complainant a verbal apology and a written assurance that a continuous accessible path will be provided in the shop from this point forward. The Respondent also committed to providing ongoing training to staff on access issues.

The Complainant alleged victimisation in the area of work.

Initially the Complainant claimed he was treated less favourably in the workplace because of his race, and following an incident with a colleague, he advised his boss that he would be making a complaint to the ADC unless he received an apology.

The Complainant stated that he was dismissed from his employment the next day. He alleged that this was as a result of the fact that he had indicated that he was going to make a complaint. The Respondent disputed the timing of his dismissal, stating that the Complainant was dismissed before he told his employer he would be lodging a complaint.

The Respondent stated that the reason the Complainant was dismissed from his position was because he was “unable to effectively work within the team”.

Conflicting evidence provided by the parties could not establish when the Complainant was dismissed.

After conciliation conference the complaint was resolved with the Respondent agreeing to pay the Complainant \$5500.

The Complainant made a complaint of race discrimination against his employer.

The Complainant was initially employed as a trainee forklift driver with the Respondent company. Once the probation period was over the Complainant was promoted to a managerial role, however there was no increase in his wage.

The Complainant was able to point to another employee who had followed the same path with the company but had earned substantially more money in the management role. The Complainant was of the view that he had been paid less money to do the same job because of his race.

The Respondent provided a written response outlining the differences in qualifications between the Complainant and the previous manager. They also indicated that they were prepared to assist the Complainant to gain the qualifications that the previous manager had held and would then review the pay rates accordingly. The Complainant was of the view that given they were doing the same job he should be paid the same rate regardless of qualifications.

The complaint was resolved after conciliation conference with the Respondent agreeing to pay the Complainant a sum of money equal to the difference between his salary and that of the previous management over a period of two months.

The Complainant alleged that he was treated in a less favourable manner during his employment because of his physical impairment.

The Complainant explains that he lost an eye as a small child. He said he accepted a job as the manager of a shopping complex and claimed to have been performing the duties required of him without complaint.

The Complainant alleged that once he began his job the Respondent owner regularly made derogatory remarks about his missing eye and micro-managed his performance on a daily basis. The Complainant also alleged that members of staff advised him that the Respondent wanted him dismissed because he did not believe a

man with one eye could “see everything that was going on” and perform the duties required of a manager.

The parties to the dispute were invited to attend a conciliation conference as a means to attempt resolution of the matter. The matter was settled with the Complainant offering his resignation in exchange for \$3000.

The Complainant alleged that she was dismissed from her employment because her employer did not want to accommodate her maternity leave.

The Respondent denied the allegations and provided evidence that the Complainant was underperforming and that the additional training provided for her had not assisted in improving her work output.

The parties to the dispute had an opportunity to discuss appropriate outcomes to resolve this matter at conciliation conference and it was agreed that the Respondent would provide the Complainant with the following:

- Apology;
- Statement of service;
- Written reference; and
- Pay for a training course at TAFE so that the Complainant could better her administration skills in preparation for future employment.

The Complainant alleged that she was dismissed from her employment because of an impairment.

She claimed that she was admitted to hospital and as a result of a medical condition, was unable to attend work. She claimed that her manager phoned her at home the following evening and yelled abuse at her for failing to attend work.

The Complainant said she complained to the Chief Executive Officer (CEO) about the treatment she received from her manager following her inability to attend work due to an illness.

The Complainant claimed that her employment was terminated later that day by her manager. She claimed she was dismissed because of her impairment and because she complained about the manager's behaviour to the CEO. The Complainant explained that she was part way through a traineeship and that this was also terminated as a result of her job loss.

The parties to the dispute were invited to attend a conciliation conference to discuss possible means of resolution.

An internal investigation following her dismissal revealed that the manager had falsified records to justify the Complainant's termination. The Respondent offered the Complainant her job back (which she accepted), back-pay for the period of time she was out of work and a written apology. The complaint was resolved.

Appendix 4: ADC Publications and Posters

Fact sheets

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

Fact sheets are also available in:

- Tagalog
- Indonesian
- Japanese
- Vietnamese
- Mandarin
- Talking tapes/Large type for the visually impaired
- Portuguese
- Thai

Posters

- Anti-Discrimination Commission Poster
- Fair Go – This is what it's really about!
- Fair Go – Creating a Fair Go for everyone!
- Sexual Harassment – Nobody has to put up with it!
- Know Your Rights, Know Your Responsibilities – Top End
- Know Your Rights, Know Your Responsibilities – Central Australia
- Welcome to my Country
- Play by the Rules

DVD

The ADC's "Your Rights Your Responsibilities" DVD featuring Indigenous actors portraying various discrimination scenarios is available in the following languages:

- Burrarra
- Murrinh-Patha
- Djambarrpuyngu/Gupapuyngu
- Kriol
- Kunwinjku
- Modern Tiwi
- Anindilyakwa
- Warlpiri
- Western Arrernte
- Southern Arrernte
- Pitjantjatjara
- Alyawarra
- Warumungu
- Eastern Arrernte

