

# Northern Territory Anti-Discrimination Commission



**ANNUAL REPORT**

**2009 - 2010**



Our Ref: ADC2009/36

30 September 2010

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 2009 to 30 June 2010.

Yours sincerely



EDDIE CUBILLO  
Anti-Discrimination Commissioner

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## From the Commissioner

Firstly I think it's appropriate that I start this report by acknowledging the contribution of my predecessor, Lisa Coffey, who recently left the Anti-Discrimination Commission (ADC) in August 2010 after leading the Commission's team for the past 18 months.

In farewelling Lisa, it should be noted the impact she had in maintaining and building the ADC's standing and influence, extending its networks across different sectors and developing new avenues for people to become aware of the Commission's roles and responsibilities in equity.

Having spent more than four years working interstate, I am excited at the opportunity to take on this important role in the Northern Territory, which is the place of my birth. I also look forward to working closely with my small and dedicated team of staff and with all Territorians in the challenge to stop discrimination. We all play an important role in building opportunities for everyone to participate in, and contribute to, every aspect of the life in the Territory as we spread the message of equality of opportunity.

I am keen to travel around the Territory and hear about concerns in the area of discrimination; what is and isn't working well and seek to discover where things need improving so that we might work together to achieve those improvements.

Over the next few months, one of my priorities is to listen to the views of as many people and organisations as possible, as I set about the task of identifying my major work areas over coming years. Please get in touch with the ADC if you want me to meet with your organisation or group.

This report highlights the hard work the ADC has done over the past year. The steady increase in our statistics demonstrates that the ADC is serious about making a change in the community. The ADC is committed to delivering its message across the Territory so that people are aware of their rights and what constitutes discriminatory practice under the *Anti-Discrimination Act* ('the Act').

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Requests for education programs outside of Darwin continue to increase and the ADC is committed to providing information to regional and remote areas, as required under section 13 of the Act. However, the delivery of education programs to equip people to combat ongoing discrimination practices is a very expensive exercise with travel to remote regions being very costly. In spite of this cost the ADC's educational message must be reinforced. The results achieved to date will not be maintained unless we continue to deliver the equality of opportunity message. The current delivery of our education and training programs throughout the Territory are outlined in the report. The dedication to get the message out to the community about people's rights and responsibilities and their protection under the Act is genuine. This awareness can only enhance a better Northern Territory with a well informed and accepting community.

The work by the ADC's conciliation/complaint officers to handle the increase in complaints has shown dedication by staff to meet the demands. There has been a considerable increase in complaints, up to 186 for the year compared to 155 last year. Staff have creatively developed processes that allow the Commission's capacity to respond in a timely and effective way. Continued high numbers of complaints from Alice Springs necessitates the ADC to provide conciliation and/or conduct Registrar's Conferences there and highlights the requirement for a much greater presence in Alice Springs.

Over the next three years of my term, I envisage that we continue to deliver this message and continue to develop awareness of the Act throughout all of the Northern Territory with particular reference to regional and remote areas.

Lastly, in my short time in the role of Commissioner I have been impressed with the quality of work at the ADC. In our small office where the workload is ever increasing, the ability of staff with their good grace, patience, understanding and creativity has enabled the ADC to maintain its core business functions to a standard of excellence. I would also like to thank those other organisations and individuals who have supported the ADC in delivering its message to the wider communities, for without such collaboration the ADC would struggle to get such information out.

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## 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.
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## ADC Highlights 2009/2010

2009/10 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.

- Beyond the Berrimah Line - Regional and Remote Visits
- ADC Out and About – Listening to the Community
- Public Education and Training
- United Nations International Human Rights Day
- International Women’s Day Dinner
- TWENTY WOMEN - Women with Disabilities Photographic Exhibition
- Outback Pichas
- Workplace Training – Sector Focus
- New Training – Sexual Harassment, Flexible Work Practices
- Timor Leste Office of the Provedoria
- Complaint Numbers and Conciliated Outcomes
- Partnerships and Collaboration
- Trends and Issues.

## About Us

### Vision:

A fair, equal and inclusive Northern Territory.

### Mission

The ADC will 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. The staff at the ADC assists 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.

## ADC Performance Measures 2009/10

	Outputs	Estimate	Actual
<b>Quantity</b>	<b>Education and Training</b>		
	- Hours	300	232 <sup>1</sup>
	- Participants	1700	1688 <sup>2</sup>
	<b>Public Awareness</b>		
	- Events	5	4 <sup>3</sup>
	<b>Complaint Handling</b>		
	- Received	130	186
	- Handled	198	275
	- Closed	130	152
	<b>CVP Site Visits</b>	78	132
<b>Quality</b>	Participant satisfaction with training	85%	99%
	Percentage finalised complaints conciliated	35%	43%
<b>Timeliness</b>	% Complaints closed within 6 months	50%	61%
	CVP contacts within one working day of request	100%	100%

<sup>1</sup> The 300 hours listed here includes both training hours plus public awareness events. The actual hours for training were 232. The actual hours for public awareness events were 116, giving a total of 348 hours. This represents a 15% increase in hours.

<sup>2</sup> Total represents 1688 participants from training.

<sup>3</sup> The four events happened over seven locations, Tennant Creek, Binjari, Minyerri, Ngukurr, Katherine, Alice Springs, Darwin and included 2418 participants. This represents an increase of 142% in participant numbers.

## Public Education and Training

The Anti-Discrimination Commissioner's functions under the Act include promotion of the understanding and acceptance and public discussion of the purposes and principles of equal opportunity; the promotion of the understanding and acceptance of the Act; and the recognition and acceptance of non-discriminatory attitudes, acts and practices. While these functions are carried out through all aspects of the work of the ADC, the primary vehicle for achieving the aims of promotion and acceptance is our Public Education and Training Program.

As part of our public education and training we travel around the Territory promoting equality of opportunity and a fair go for everyone regardless of attribute. During 2009/10 the ADC staff delivered training in a number of communities throughout the Northern Territory; we held film nights and other public awareness events in regional and remote locations; attended meetings to talk about discrimination and how it could be addressed; and participated in expos and many other locally based events.

We have had a busy year with very high numbers of training sessions delivered to workplaces throughout the Northern Territory. In addition to offering programs in Darwin, Alice Springs and Katherine, we have also visited a number of regional and remote locations in the Northern Territory.

2009/10 has also seen some new developments in our public education and training area, with a new Indigenous brochure in 'easy to read' English, and new training sessions reflecting our priorities throughout the year.

## Public Education and Training

Type of event	Number of sessions	Number of sessions
	2008-2009	2009-2010
Formal (calendar-based) Training	8	10
Workplace Training	62	83
School/Education Provider Sessions	17	10
Community Events	10	9
Public Awareness Events	11	12
<b>Total</b>	<b>108</b>	<b>124</b> <b>(13% increase in the number of events)</b>

### Formal/Calendar Training

Our formal training is offered throughout the year and advertised through our bi-annual training calendar. We travel to major centres and offer training sessions on a variety of topics that 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.

One of the great developments for the ADC this year is the transformation from a paper based database to an electronic one. All of our information can now be sent out via email and is available on our website ([www.adc.nt.gov.au](http://www.adc.nt.gov.au)). If you would like to be included on our email list, please contact us at: [administrationadc@nt.gov.au](mailto:administrationadc@nt.gov.au).

Another exciting development in 2009/10 was the roll out of the new training program dealing with sexual harassment in the workplace. As shown by statistics in our 2008/09 Annual Report, women in particular are still most likely to be treated unfairly in the workplace because of factors related to their sex.

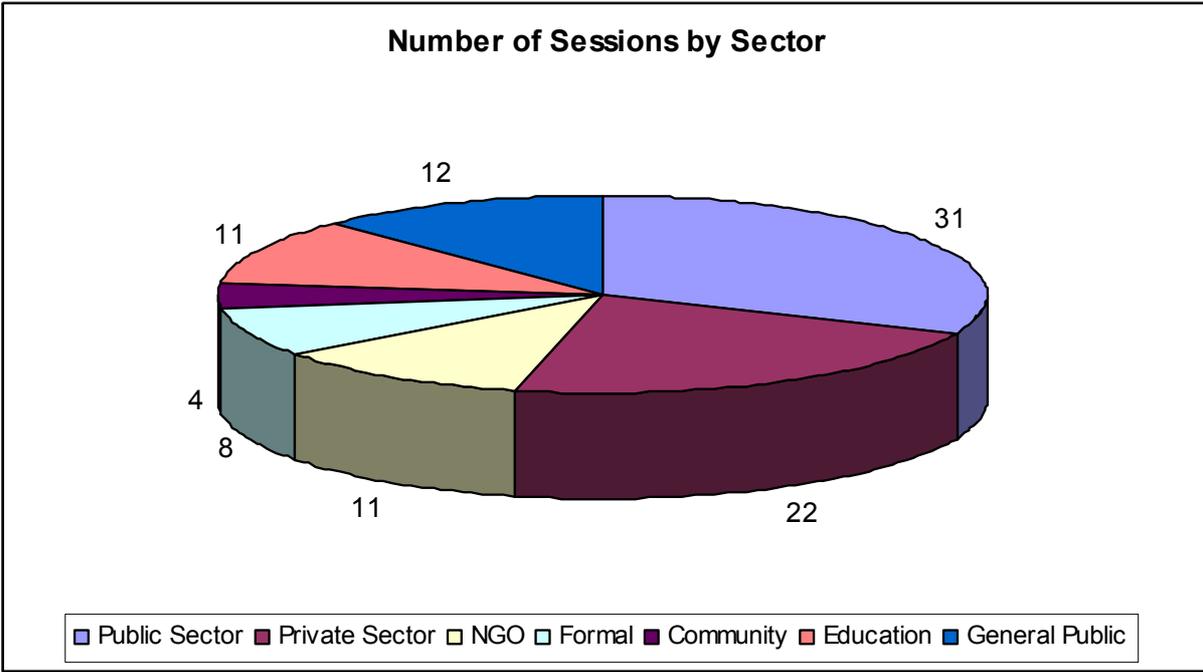
In order to spread the word about what is and what is not acceptable in the modern workplace, the ADC developed "Crossing the Line: Sexual Harassment in 2009", a new course that deals with interactions in the workplace and what may or may not constitute sexual harassment at work. This new course proved very popular and we are looking forward to continuing it in 2010/11.

The other new initiative in 2009/10 was the creation of our latest program "Flexibility in the Workplace". This was initially offered at October Business Month and the ADC worked in partnership with the Chamber of Commerce and the Working Women's Centre to develop this very topical session. "Flexibility in the Workplace" looked at some of the new issues around flexible work that came into play with the new *Fair Work Act 2009* as well as existing obligations under the *Anti-Discrimination Act*. The panel session was a great success with discussions covering both pieces of legislation and the impact on working parents and carers. Kormilda College provided an example of how they are integrating flexible working arrangements and becoming an employer of choice. The ADC thanks all three organisations for the input and collaboration.

### **Workplace Training**

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

In 2009/10 the ADC delivered an impressive 83 workplace training sessions across the Northern Territory. There was a focus on the private and non-government sectors this year, with programs held in workplaces across the Territory including Darwin, Alice Springs, Katherine, Maningrida and Jabiru. Twenty two percent of workplace training was delivered to the private sector; 47% comprised of non-government organisations, community based organisations, education providers, local government and the ADC in-house training, with 31% of workplace training delivered to the public sector.



In a number of instances, both the private and public sector organisations made a major commitment to their staff with the development of a harassment-free, inclusive workplace by engaging the ADC to deliver training to a large number of employees over a number of days. We congratulate these organisations for their initiative and look forward to working with them and other organisations in the year ahead.

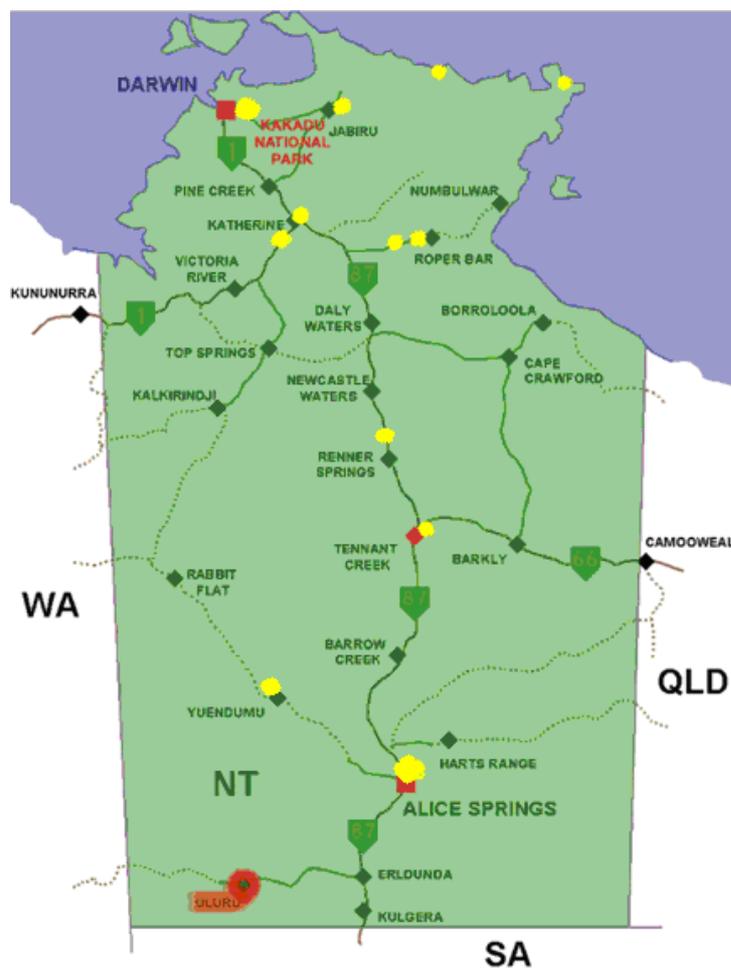
In 2010/11 the ADC plans to work towards the development of a statutory “Train the Trainer” program. This will allow large organisations to deliver in-house training on anti-discrimination, prohibitive and acceptable behaviours that are in-line with both *the Act* and the organisation’s policies, with the ADC providing ongoing support. We are looking forward to this initiative as we hope it will allow us to spread the anti-discrimination message even further.

**Community-Based Events**

The ADC also participated in a number of community-based events as part of our public awareness campaign in 2009/10. These events are designed around a variety of organisations getting together to deliver information and promote their activities in line with a theme or a special occasion.

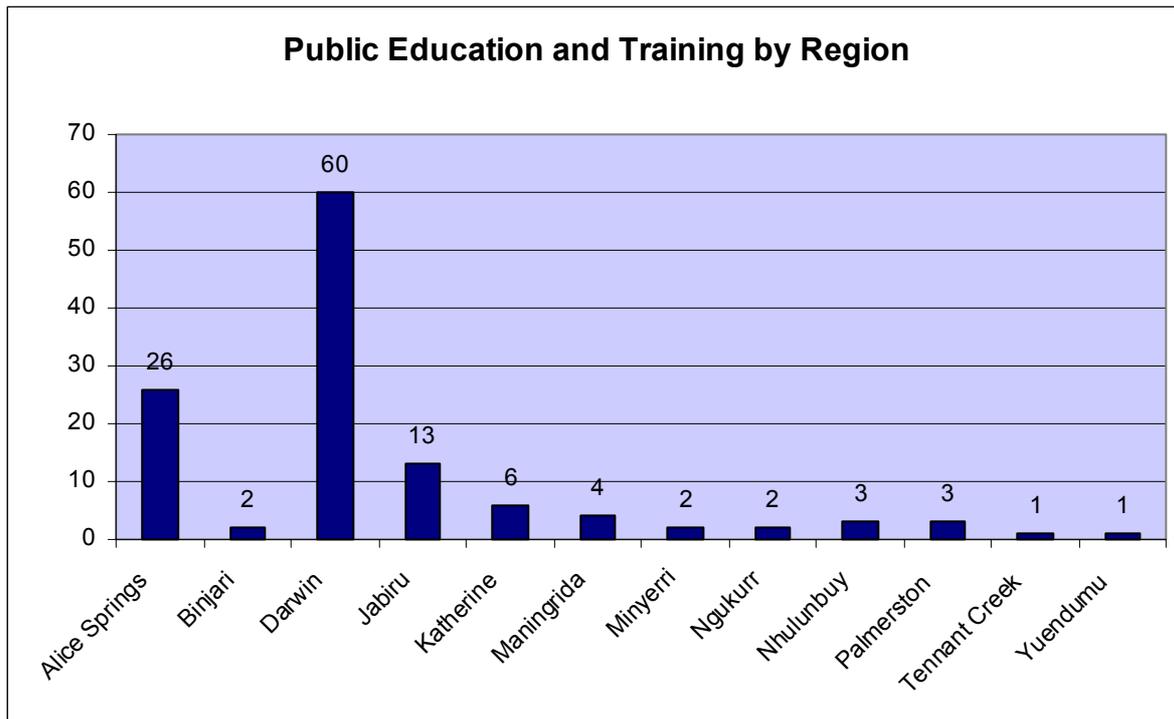
Some of the highlights of these events were: the Garma Festival where the ADC shared an information stall with Consumer Affairs, the NT Legal Aid Commission, Australian Competition and Consumer Commission and the Commonwealth Ombudsman. We also participated in the Disability Awareness Week Community Markets; World Refugee Day Celebrations; NAIDOC Week Celebrations; Homelessness Connect; and Careers Expos held in Katherine and Darwin.

### Regional Activities:



Following on from our very successful 2008/09 financial year, the ADC maintained its commitment to getting out beyond the Berrimah Line this year and in addition to delivering training in Palmerston, Katherine, Alice Springs, Maningrida and Jabiru, we visited Tennant Creek, Elliott, Yuendumu, Nhulunbuy, Minyerri, Ngukurr and Binjari to talk to community groups about discrimination, disability issues, the Intervention and more.

The further we travelled, the more we learnt about the discrimination issues that Territorians face. Listening to these stories is essential, as it assists us to enhance our advocacy and public education strategies. We look forward to more listening time in 2010/11.



## Special Events

Every year the ADC holds a number of special events to promote the objects of the Act within the Northern Territory community. This has been a great year for our special events and the feedback received has reinforced the decisions underpinning our approach. As in previous years, our special events are often held in conjunction with other organisations or through sponsorship for part of the event. We thank our partner organisations and sponsors for their support during this financial year and look forward to establishing more partnerships in the year ahead.

**United Nations International Human Rights Day** – United Nations (UN) International Human Rights Day is celebrated on 10 December each year to mark the anniversary of the UN General Assembly’s adoption of the Universal Declaration of Human Rights. The ADC combined with the UN Association of Australia, NT Branch, for the first time this year to present a breakfast to celebrate the UN International Human Rights Day.

We were honoured to have two very engaging guest speakers from Yirrkala on the day, Djapirri Mununggirritj and Dhanggal Gurruwiwi. These two impressive women spoke to an audience of 100 people about the needs to share learning between communities and to work together across cultural divides to achieve equality in our society. They also spoke of the debilitating effect of racism and reminded us all to look to other communities when searching for ways to overcome fear of difference and discrimination. The ADC thanks the UN Association of Australia, NT Branch, for their partnership in this event and look forward to working with them again next year.

**International Women’s Day (IWD)** – IWD was once more a great highlight of the ADC calendar in 2009/10. In a partnership between the ADC and the Liquor Hospitality and Miscellaneous Union, Unions NT, Industrial Relations Society and the Australian Services Union, a dinner was enjoyed by more than 320 women, partners, friends and families at this great event. The theme for this year was “Strong Women, Strong Leadership, Strong World.

Bilawara Lee welcomed us to Larrakia Country as part of our celebration and reminded us of the place that spirituality plays in the lives of women. The keynote speaker, Her Honour Justice Sally Thomas AM, inspired those present with some of the history of IWD and told stories of the amazing struggles of women throughout time who worked to achieve equality of opportunity. Her Honour encouraged everyone to remember the power of women and their achievements in all aspects of life. She also talked about the environment and entertained the audience with stories of her experiments to save energy. Finally, Her Honour invited the audience to dance their hardest in aid of climate preservation. 2011 will be the 100 Year Anniversary of women’s journey for equality of opportunity, and the ADC is planning to host the dinner.

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**Photographic Exhibition** – The beautiful “TWENTY WOMEN - Women With Disabilities” photographic exhibition continued to make its way around the Northern Territory in 2009/10 and was on display in both Katherine and Alice Springs. The ADC continued the partnership with Life Without Barriers to show the exhibition in Katherine for Disability Awareness Week. The exhibition was well received at the launch and enjoyed by many for the next few weeks as it hung in the Administration Centre of Charles Darwin University (CDU). We thank Life Without Barriers for this very successful partnership and CDU in Katherine for their support.

In December 2009, the ADC worked with The Physical Disability Council NT to show the exhibition in Alice Springs. The launch was held at the Alice Springs Library to commemorate International Day of People with Disabilities and was again very successful and highly acclaimed. We thank the Alice Springs Town Council and General Practice Network for their sponsorship of the event, as well as Michelle Castagna for her dedication and involvement. The exhibition has beautifully demonstrated the principles that underpin equality of opportunity.

**Equal Pay Day Luncheon** – Equal Pay Day is commemorated each year and in 2009 it was held on 1<sup>st</sup> September. Equal Pay Day is the day upon which the total of women’s average yearly earnings reaches that of men’s as at the end of the previous financial year. That is, nationally in 2009 it took women on average two months longer to earn the same amount as a man does in a year. From research carried out by the Office of Women’s Policy, the gender pay gap in the Northern Territory is on par with the national figure with Territory women who work full time earning 83% of male earnings, thus giving a pay gap of 17%.

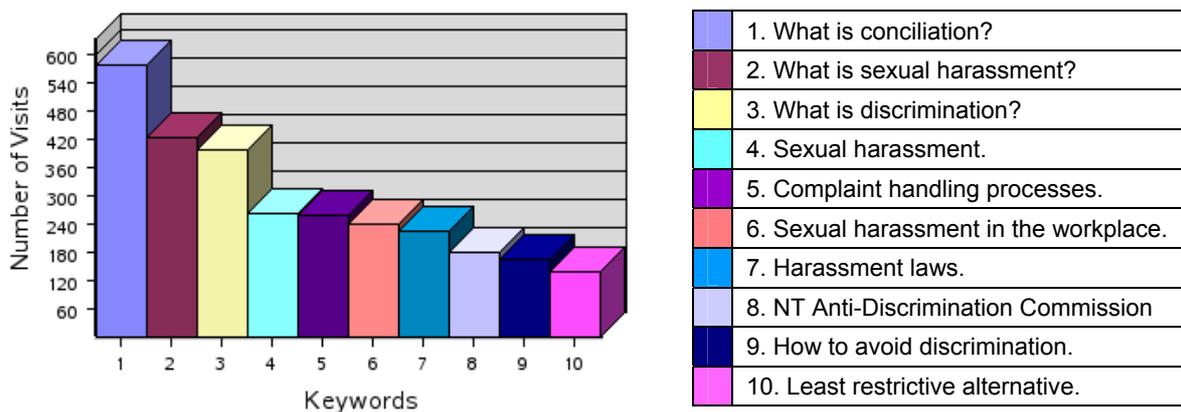
This year, the ADC in conjunction with the Office of Women’s Policy and Working Women’s Centre participated in a lunchtime forum to observe this milestone, discuss the reasons that this gap still exists and propose ways of overcoming the many issues, including discrimination and the lack of equality of opportunity, that result in women continuing to earn far less than men in the workplace.

**Outback Pichas** – the ADC again joined forces with Consumer Affairs to present Outback Pichas; a travelling film festival aimed at promoting rights and providing information to remote communities in the Territory. In addition to seeing the service provider’s messages on DVD, communities had the opportunity to access information stalls, ask questions and find out more about the ADC and Consumer Affairs. At night, they were then entertained with appropriate movies and the obligatory sausage sizzle. Our focus this year took us to Binjari, Minyerri, Ngukurr and Katherine. This has been a highly successful approach in providing services to remote communities, however, the funding for this project was not renewed and the program has now been discontinued.

### The ADC Website

As with all organisations these days, the ADC relies more and more on the internet to deliver our message about non-discrimination issues and equality of opportunity. For up-to-date information about our events, news about discrimination issues generally, hearings and more, please visit our website at: [www.adc.nt.gov.au](http://www.adc.nt.gov.au).

### ADC Website Statistics 2009/10



## 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 complaint-handling process, from the enquiry through to the hearing stages, are set out in Appendix 2 and detailed below.

### Enquiries:

People who consider making a complaint under the Act often contact the ADC through an enquiry via telephone, email, mail or in person. Increasingly, people are also seeking information via the internet.

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 enquiries have remained largely consistent over the past few years.

### Modes of Enquiry 2006/07 – 2009/10

Mode of Enquiry	2006/07 (%)	2007/08 (%)	2008/09 (%)	2009/10 (%)
Telephone	85.3%	86.1%	88.3%	87.1%
In person	7.3%	8.5%	8.3%	11.2%
Email	6.7%	4.5%	2.9%	1.6%
Mail	0.7%	0.9%	0.5%	0%

We continue to receive requests for advice on the operation of the Act from people acting in a professional capacity. In 2009/10, 12.6% of enquiries were professional enquiries from government agencies, businesses and non-government organisations.

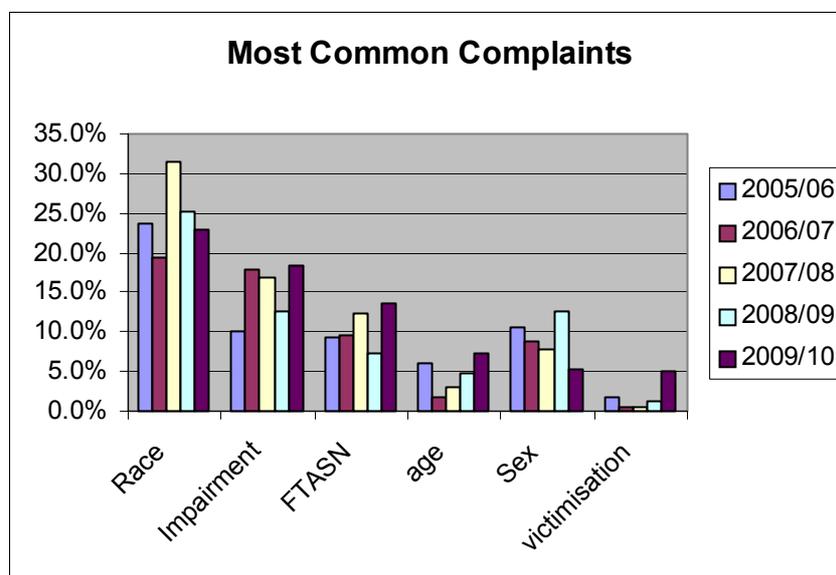
We received 74.4% enquiries from the Darwin/Palmerston areas and 25.6% enquiries from other regions.

### Complaints Received

In 2009/10 there were 186 written complaints of unfair conduct made to the ADC.<sup>4</sup>

### Attributes and Other Prohibited Conduct

During 2009/10 the most common complaint made to the ADC was discrimination on the basis of race, followed by discrimination on the basis of impairment (disability) and complaints of a failure to accommodate a special need<sup>5</sup>. Whilst these three types of complaints have consistently numbered amongst our top allegations of prohibited conduct over past years, this year has seen a significant increase in complaints of age discrimination and victimisation in connection with a complaint.



<sup>4</sup> Total complaint numbers are measured by Respondent.

<sup>5</sup> Note that indicators of complaint grounds are taken as a snapshot at the end of the reporting period. Therefore some complaints may appear in the previous or next reporting year, causing a small variation in the numbers over the years.

In 2009/10 the total number of allegations of race discrimination has increased in terms of numbers (69 complaints, up from 57 in 2008/09) but not in terms of the percentage of overall complaints.

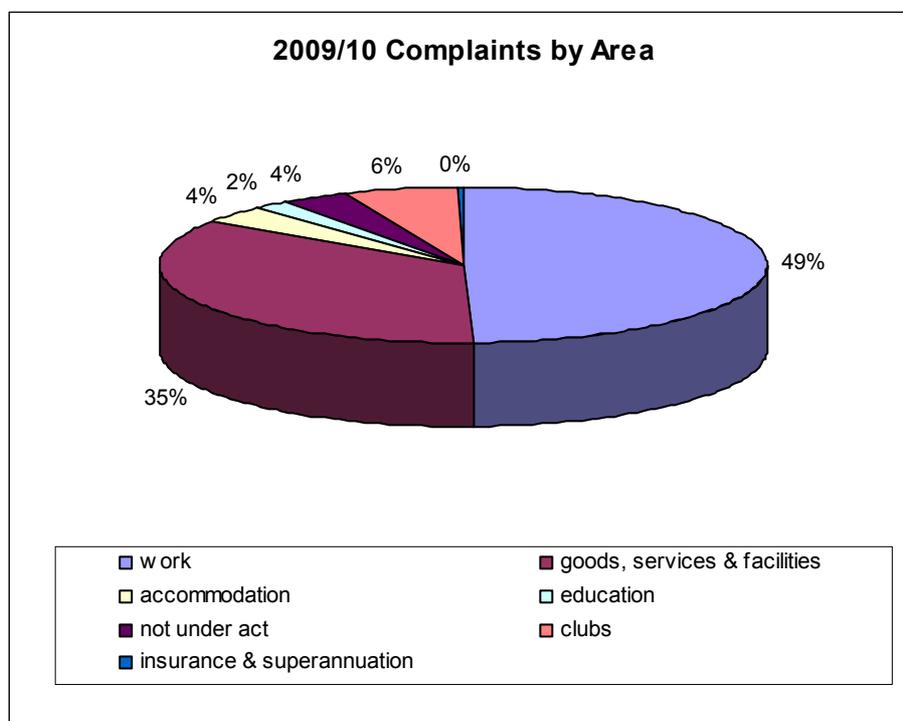
There were 41 complaints of a failure to accommodate a special need (section 24) in 2009/10. Despite the fact that in 2009/10 the majority of complaints under this heading related to impairment, this is a significant increase on the previous year (17 complaints in 2008/09).

Complaints of sex discrimination fell in 2009/10 as did complaints of sexual harassment.

### 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 2009/10 complaints were made in each of the areas as follows:



As illustrated below, work remains the highest area of complaint (measured by grounds). However, goods, services and facilities made up 35% of complaints by ground in 2009/10; bringing complaints of this nature almost in line with complaints of unfair treatment at work (see commentary on Goods, Services and Facilities Complaints in Issues and Outlook).

### Complaints by Area 2007/08 to 2009/10

Area of Activity	2007/08	%	2008/09	%	2009/10	%
Education	5	2.5	10	4.3	6	2.0
Work	133	65.5	140	60.6	148	49.3
Accommodation	14	6.9	17	7.4	11	3.7
Goods, Services and Facilities	51	25.1	55	23.8	105	35
Clubs	0	0	1	0.4	18	6
Insurance and Superannuation	0	0	0	0	1	0.3
Not under Act	0	0	8	3.5	11	3.7

## Complaints by Grounds and Areas 2009/10

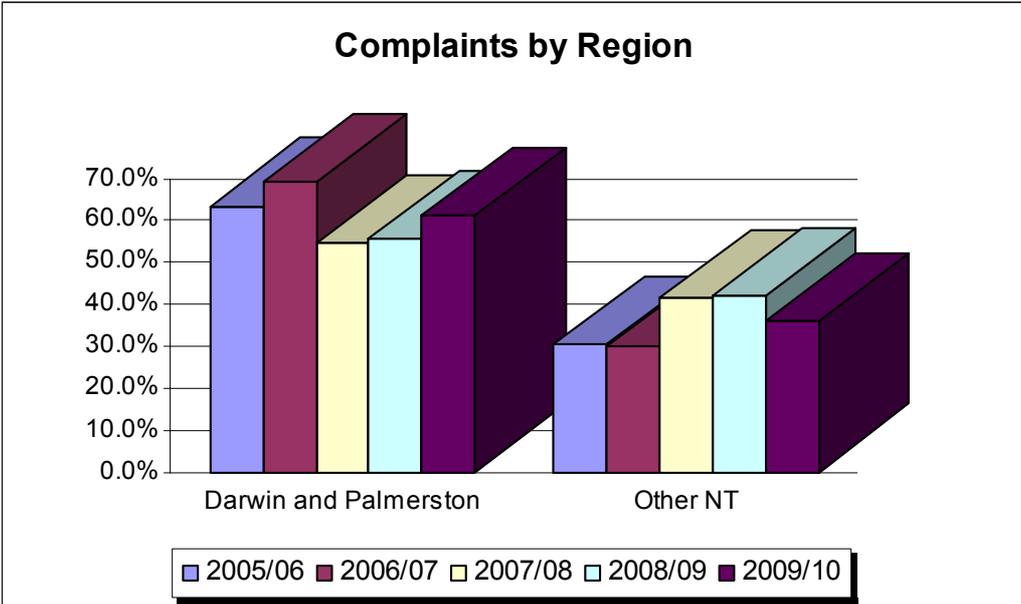
PROHIBITED CONDUCT – DISCRIMINATION Attributes	Education	Work	Accommodation	Goods/ Service/ Facilities	Clubs	Insurance/ Superannuation	Not Under Act	Total
Age		12		6	3	1		22
Association with a Person		2	1	5	1			9
Breastfeeding								0
Impairment	1	20	2	28	4			55
Irrelevant Criminal Record		2	1					3
Irrelevant Medical Record		4		3				7
Marital Status		4					1	4
Parenthood		7					1	8
Political Opinion/Affiliation/Activity				1				1
Pregnancy		1						1
Race	3	26	2	30	7		1	69
Religious Belief/Affiliation/Activity		2						2
Sex		13		3				16
Sexuality	1	5						6
Trade Union Affiliation/Activity		6						6
Not Under Act		4		2	3		7	16
<b>Total</b>	<b>5</b>	<b>108</b>	<b>6</b>	<b>78</b>	<b>18</b>	<b>1</b>	<b>10</b>	<b>226</b>
<b>OTHER PROHIBITED CONDUCT</b>								
Aiding Contravention of Act				1				1
Discriminatory Advertising								0
Failure to Accommodate a Special Need	1	16	2	21			1	41
Sexual Harassment		9		1				10
Seeking Unnecessary Information		5	1	1				7
Victimisation		10	2	3				15
<b>Total</b>	<b>1</b>	<b>40</b>	<b>5</b>	<b>27</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>74</b>
<b>TOTAL COMPLAINTS FOR 2009/10</b>								<b>300</b>

Identity of Complainant and Respondent:

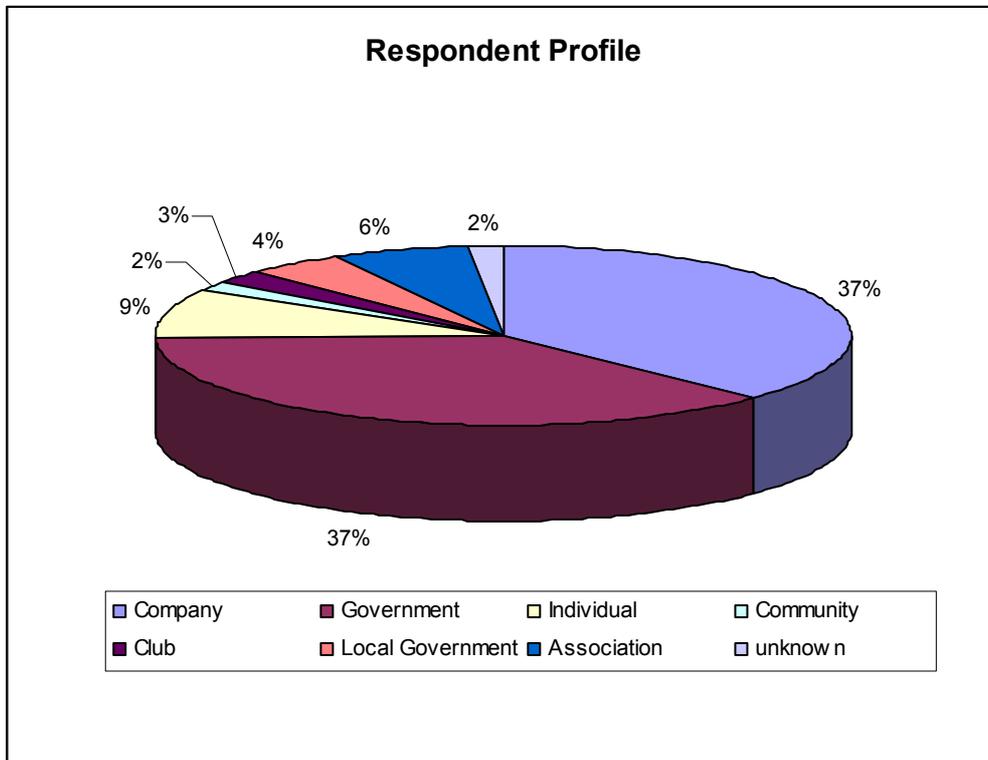
Complainant Profile by Sex

Complainant Profile	Number of Complaints	%
Female	76	40.9%
Male	110	59.1%

The statistics for 2009/10 remain consistent with the previous two years and continue to show a high level of complaints outside the Darwin and Palmerston areas. Regional complaints are recorded separately.



Respondent companies made up 37% of total complaints received in 2009/10, being a decrease on the previous year. Government respondents represented 37% of complaints, a significant increase from 28% of complaints in 2008/09.

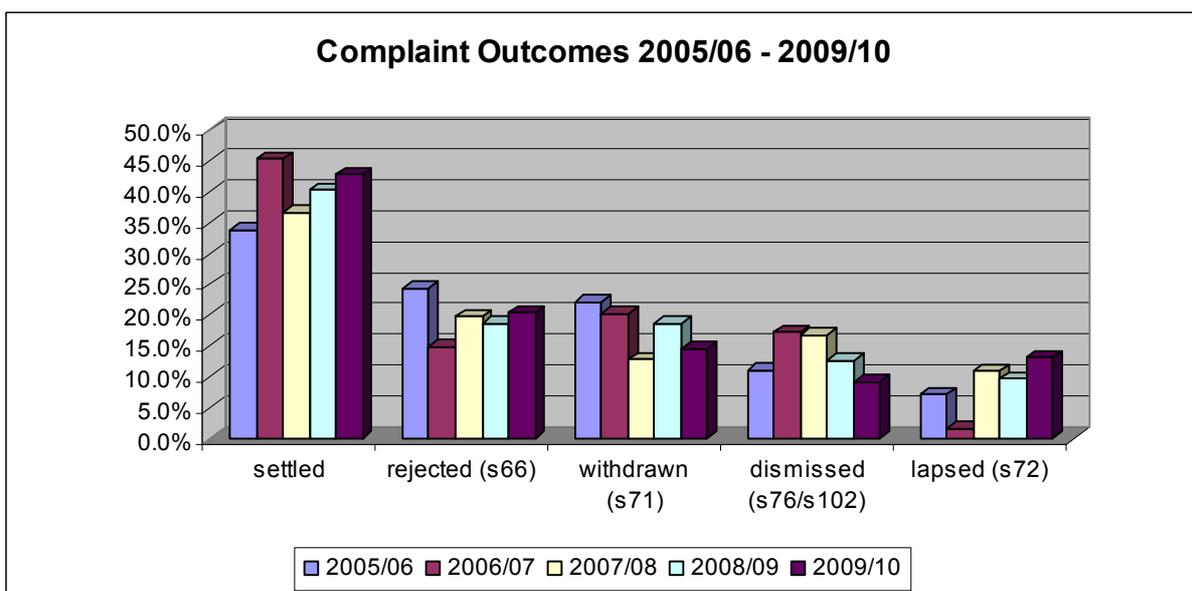
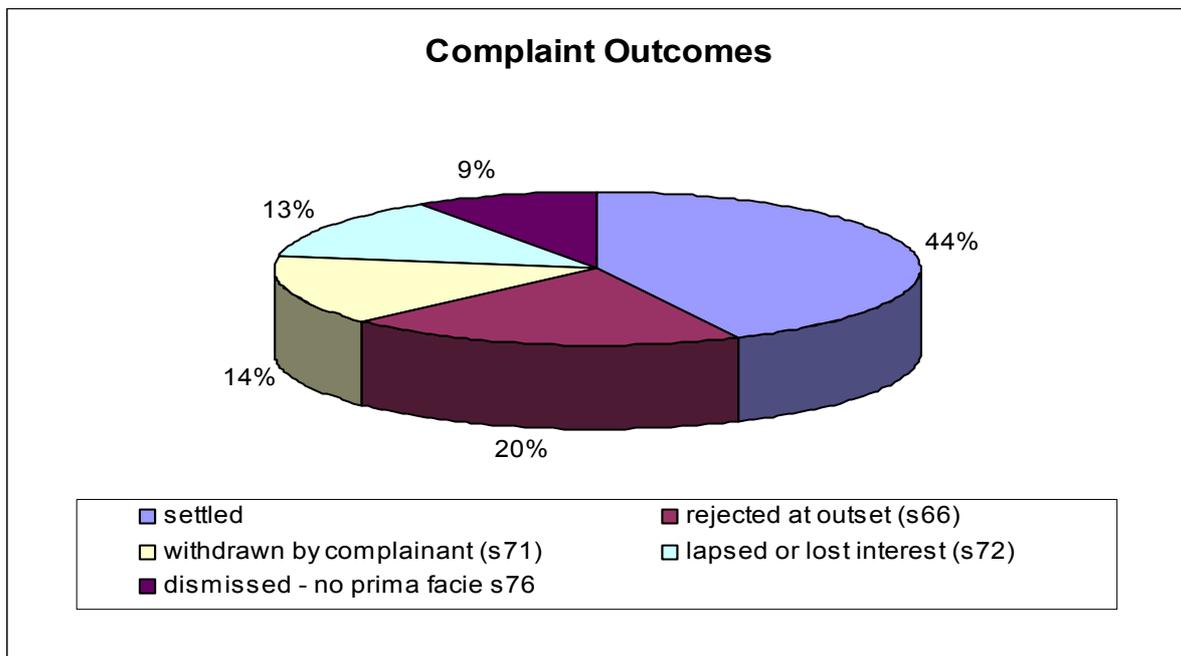


Respondent Profile	2008/2009		2009/2010	
	no	%	no	%
Company	63	40.6%	69	37.1%
Government	44	28.4%	70	37.6%
Individual	25	16.1%	16	8.6%
Community	11	7.1%	3	1.6%
Club	7	4.5%	5	2.7%
Local Government	3	1.9%	8	4.3%
Association	2	1.3%	12	6.5%
unknown			3	1.6%
<b>TOTAL</b>	<b>155</b>		<b>186</b>	

**Complaint Outcomes:**

One hundred and fifty two (152) complaints were finalised in 2009/10, an increase of 18 on 2008/09 figures. Rates of conciliated outcomes/settlements remain high with 43% of all closed complaints in 2009/10 involving a settlement between the parties.

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 2009/10, 31 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. Fourteen complaints were dismissed under section 76 in 2009/10.

If a matter is referred to hearing the Commissioner may discontinue the matter under section 102. 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. 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.

The parties can voluntarily partake in a conciliation process at any time after the complaint is accepted and even prior to a response being provided by the respondent. This is called an “early conciliation”. The ADC can also order parties to attend a conciliation conference following a preliminary determination 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 2009/10, 65 complaints were settled via conciliation.

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**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 2009/10, 20 complaints were 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 2009/10, 22 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 through a conciliation conference, it will be referred before the Commissioner and a public hearing. The Commissioner can also hear matters that have been before the ADC for investigation for more than six months, if requested to do so by one of the parties (section 84). During the reporting period there were 13 matters referred to hearing. Of these matters eight were referred to hearing during the reporting period, five being referred in the previous reporting year and three of the 13 were referred under section 84. Of these 13 matters, one was finally determined, five were settled, one was withdrawn and six remain to be heard in the next reporting period.

The number of matters being referred to hearing continues to increase significantly. The statistics show that the numbers being referred have more than doubled in the reporting period.

**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 2009/10, there was one appeal (see below) against the decisions of the Commissioner determined in the Local Court, and another appeal filed in the previous reporting period was settled.

*Kennedy & Bath v ADC & Northern Territory Government & Territory Housing*  
Little SM 23 October 2009.

The Complainants appealed a decision of the ADC to reject complaints against the Northern Territory Government and Territory Housing on the grounds of failing to accommodate a special need based on age, and in regard to special measures (section 57). The ADC conceded the first ground of appeal and the court ordered that the matter be investigated. The Court dismissed the second ground.

## **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 the provision of policy advice, advocacy, consultation, research and examination of legislation. 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 2009/10 the ADC continued to provide policy advice and support to a number of government agencies and divisions. In addition to presenting our training in these divisions, we have provided a good deal of information 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.

The Acting Commissioner gave presentations at the Police Senior Managers' Forum, the Northern Territory Government's Machinery of Government Course, and the Equity and Diversity Forum for senior staff at Charles Darwin University.

The Acting Commissioner also spoke at 2009/10 LHMU Delegates Conference, the Working Women's Centre Annual General Meeting, Equal Pay Day Luncheon, and the Multi-Cultural Council/Darwin Community Arts Human Rights Day celebration amongst others.

One of the highlights of the year was an invitation to officially launch the Mental Health Association of Central Australia's Report entitled "There's No Place Like Home; There is no Home".

This report looked at the causes and experiences of homelessness for people living with mental illness in Alice Springs and their carers, and made a positive contribution to addressing these issues.

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In launching the report, the Acting Commissioner spoke about the rights of our international human rights obligations including the right to housing, and the new Convention on the Rights of Persons with Disabilities; as well as the issues of stigma and discrimination that all too often contribute to a cycle of ill health and homelessness. The full report can be found at: <http://www.mhaca.org.au>.

In June 2010 the ADC was invited to speak at the launch of an aircraft lift in Darwin. The lift was purchased as part of a joint initiative between the Machado Joseph Disease (MJD) Foundation and Vincent Aviation (along with other partners) to ensure that people living with MJD on Groote Eylandt and in Darwin would be able to travel between the two centres with dignity and on an equitable basis. This project is a great example of equality of opportunity in practice and of the great things that can be achieved through cooperation and innovation. Before we can really claim to be a rights-based society where everyone has the opportunity to reach their potential, more wheelchair accessible flights are required. In some locations, people in wheelchairs cannot access any flights at all.

In addition to our work with government and other organisations mentioned above, the ADC continued to engage with organisations and provide advice on the operation of the Act and equal opportunity generally. We are pleased to note that businesses continue to have the confidence to seek information on potential discrimination issues rather than waiting for complaints to be made.

### **Consultation**

In a broader community context the ADC continued to participate in Community Legal Education Network meetings. This valuable forum allows a variety of legal organisations to discuss the delivery of legal education to the community and strategise about ways to assist each other where possible. The links made through this group have meant that the ADC now works more closely with the legal providers who supply us with essential information obtained from working in remote and regional communities. They also promote our services and assist to link complainants in remote Northern Territory to the ADC.

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Listening to the stories of Territorians is an important part of the ADC role. It is important that every Territorian feels that they can speak up about discrimination that they, or others, may experience and that they feel heard. Their stories assist the ADC in identifying priorities and to have a grasp on what is happening in the general community. This is essential for the Commissioner to achieve the objects set out under the Act.

### **Promotion, Research, Data and Submission**

- The ADC contributed to the universal periodic review reporting through the Australian Human Rights Commission (AHRC).
  - A submission was made to the AHRC draft Income Management Guidelines (1 March 2010). In essence this submission focused on practical issues, the way in which income management has been managed and its impact on those subjected to the measures and shortcomings in the consultation process.
  - A further submission was made in regard to the Alice Springs Draft By-Laws (28 August 2009). This submission highlighted concerns about the divisive nature of the reforms proposed, and the disproportionate impact they would have on some members of the Indigenous community.
  - The ADC continued to advocate for the reinstatement of the *Anti-Discrimination Act* and the *Racial Discrimination Act*, including a submission to the Australian Government about the gross unfairness being experienced by people subject to income quarantining when using BasicsCard in particular. The ADC has been unsuccessful in attempts to have the BasicsCard used for access to the annual Darwin and regional shows. It began discussions with Centrelink in an attempt to have all BasicsCard providers undertake anti-discrimination training so that they are aware of discrimination issues and how to avoid it when dealing with all people, in particular those using a BasicsCard.
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- The ADC looks forward to the implementation of the Premises Standards which will provide clarity in regard to physical access requirements for the physically impaired.
- The ADC also participated in the NT Law Reform Sub-Committee on Same Sex Relationships. We are awaiting the release of the report.
- The ADC is disappointed that despite overwhelming support for a National Charter of Rights, which was a minor recommendation of the National Human Rights Consultation Committee, unfortunately, it was not adopted by the Federal Government

### **Timor Leste Office of the Provedoria**

In 2009/10, the ADC in conjunction with the Community Justice Centre (CJC), embarked on a project with the Provedore's Office in Timor-Leste to provide training on alternative dispute resolution, as well as advice on the development of an appropriate system of Alternate Dispute Resolution (ADR) in the Timorese context. As part of this project, both the ADC and CJC sent officers to Dili to deliver training in conciliation and mediation processes. In the second stage of this project, four Timorese officers spent a week at the ADC to learn about our systems and observe our work and complaint handling processes. They were also fortunate to have the opportunity to meet with local practitioners and officers from the Ombudsman's Office, all of whom generously shared their stories and experiences with our visiting professionals.

### **Other Activities**

The ADC staff attended various conferences and training courses during 2009/10 including the bi-annual Conciliator and Educator Conference for anti-discrimination and equal opportunity agencies across Australia. This conference was a great opportunity to network with people in similar positions across the country and share ideas and knowledge about the elimination of discrimination.

The Acting Commissioner attended meetings of the Australian Council of Human Rights Agencies (ACHRA) in Sydney and Perth, as well as the Race Relations Roundtable hosted by the Australian Human Rights Commission in Sydney in November. The Race Relations Roundtable discussed the issues of violence against Indian students with student representatives, academics and many others from around Australia. The ACHRA and the Race Relations Roundtable meetings continue to be a valuable opportunity to share experiences and ideas with anti-discrimination and equal opportunity commissions around Australia.

The ADC also attended a number of community functions including the Batchelor Institute of Indigenous Tertiary Education Graduation, the Tribute to Northern Territory Women, the Chief Minister's Harmony Day celebrations, the Mental Health Week dinner, the Darwin Community Legal Service Rights on Show Exhibition, the Northern Territory launch of the research paper by Heather Birch entitled "Dementia: Lesbians and Gay Men" and many other activities.

## Issues and Outlook

### ➤ The Intervention

The ADC notes the passage of the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* providing partial reinstatement of the *Racial Discrimination Act* and the *Anti-Discrimination Act* ('the Act'). While we acknowledge and welcome this progress we believe further change is still required.

The ADC continues to deal with issues arising from this intervention, in particular income quarantining and the BasicsCard. We have anecdotal evidence concerning the impact on individuals, a common concern being the discriminatory nature of the blue signs required to be placed outside prescribed areas. Prescribed areas are only in Indigenous communities. We encourage people to keep telling the ADC of their experiences. We will continue to raise these issues and re-tell these stories where appropriate.

We continue to lobby for education for people living in prescribed communities with regard to their right of complaint under the Act. The ADC continues to have a great deal of work ahead in educating people about their rights under the Act.

### ➤ Trends in complaints

Emerging as new priority issues for the ADC through both the complaints process and public education and training, are age discrimination and victimisation. Complaints about age discrimination in the Northern Territory have doubled in 2009/10 from the previous reporting period. This appears to reflect a growing national trend. Age discrimination, as described by Federal Sex Discrimination Commissioner Elizabeth Broderick, primarily affects people over 45. Complaints received in the Northern Territory related mostly to older persons. The ADC is building links with the Council of the Ageing to look at the areas of concern regarding discrimination of older Territorians. We plan to co-develop strategies to address these concerns.

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Victimisation is prohibited conduct under the Act (section 23) and complaints have also increased substantially. Victimisation is when a person suffers a detriment because they have made, or are contemplating making, a complaint to the ADC. It also covers someone who is assisting a person to make a complainant.

The ADC is concerned about the increase of complaints on this ground. It plans to expand its educational component to ensure that a clear message is presented to the general public about this type of behaviour. An information brochure will be developed for future complainants and respondents highlighting rights in this regard.

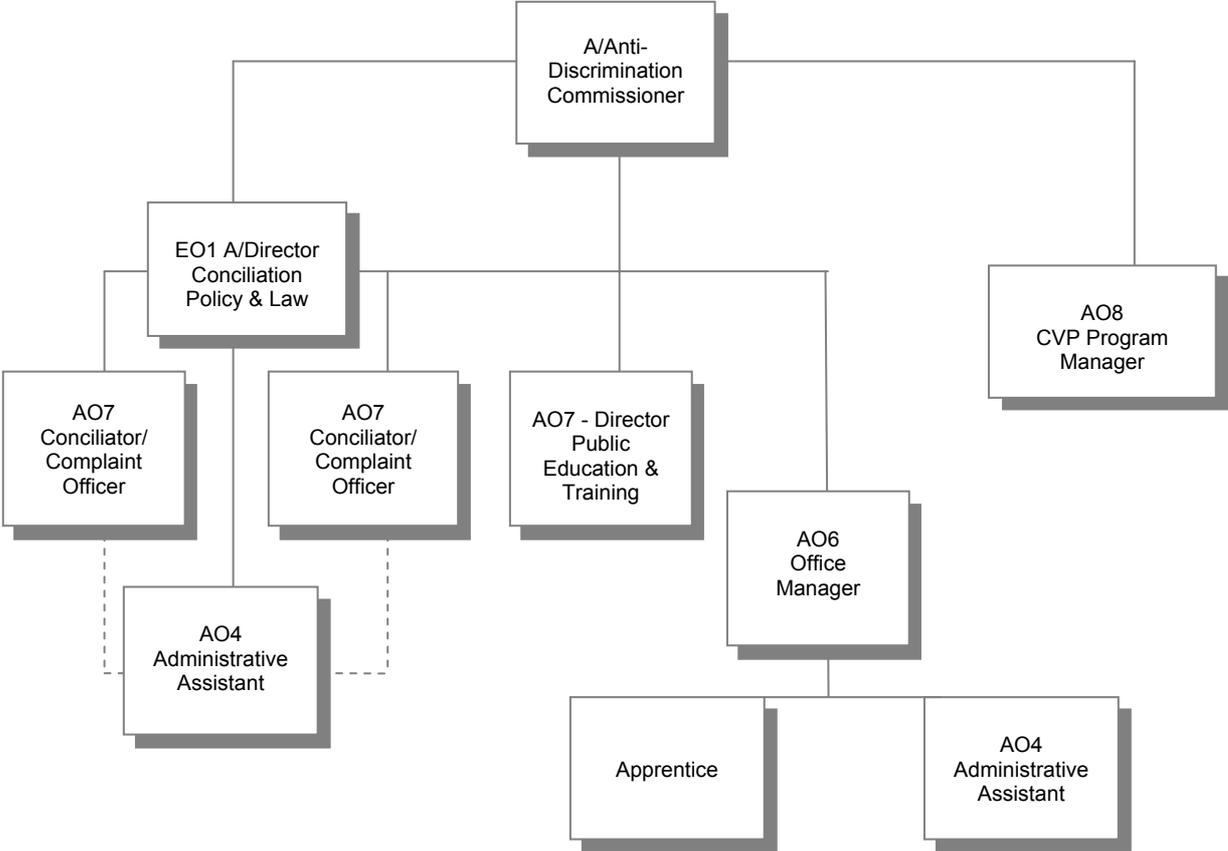
There is also a significant increase in the number of complaints in the area of goods, services and facilities. Goods, services and facilities may cover a range of Respondents including government departments, retail outlets, prisons, service providers amongst others. Most of these complaints were in regard to race or impairment.

In 2010/11 the ADC will increase its contact with relevant consumer organisations to address and further identify the source of this emerging trend. In addition to these emerging trends, race, impairment and sexual harassment will remain high priorities for 2010/11.

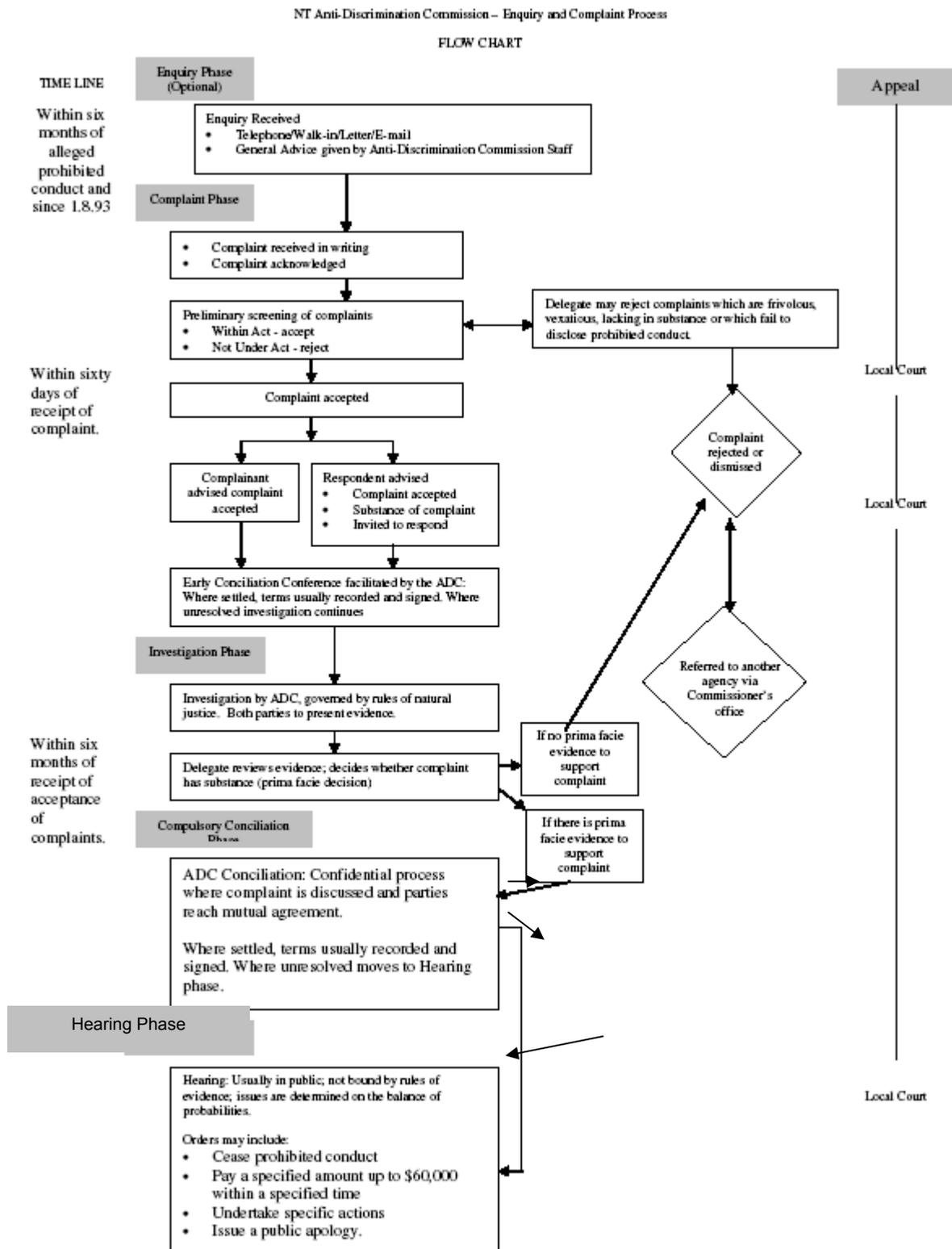
➤ **Resources**

The ADC is pleased that individuals and organisations appear to be taking our message of equality of opportunity more seriously. We welcome the many requests for education and training programs. The confidence placed in our service by the general public is conveyed by the high and ever increasing number of complaints received. However, with the unprecedented levels of demand for services, the ADC faces a significant challenge in the next 12 months to continue to deliver this quality of service to the general public.

Appendix 1: Organisational Structure as at 30 June 2010



## 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.

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

The Complainant was in a wheelchair. She regularly went for a swim at her local pool. Her local pool was closed for repairs one week so she chose to visit another pool nearby. In attending she discovered that the disabled toilet had a unisex symbol and doubled as a change room for parents. In the week that she was required to use the pool she found she continually had to wait to use the toilet because it was being used by parents attending swimming classes for their infants.

She approached the ADC complaining about this set up. She said she was frustrated at the lack of appropriate facilities for disabled people. She said she had to wait an hour one day. She did not have the option to use the other toilets. When she spoke to the pool manager, she was told that she would have to wait and that there was nothing else she could do. She said that such a wait would not be expected of an able-bodied person.

The ADC contacted the Respondent and discussed their obligations under the Act. The Respondent was unaware of their obligations. Following discussions between the parties, the Respondent agreed to:

- arrange for parent change rooms in each of the male and female toilets;
- remove the unisex label from the disabled toilet; and
- make provision for a change table for parents in a wheelchair.

**The Complainant alleged age discrimination in the area of goods, services and facilities.**

The Complainant was a tourist visiting the Northern Territory. He says that he approached a tour company to book a tour and was told that he was too old to join the tour. He was then referred to brochures that indicated an age limit for joining the tour. He asked why there was an age limit and was told that in their experience, older people were unable to meet the rigorous physical requirements of the tour. He told the staff member that he was extremely fit and that he ran marathons. He was advised that he was over the age limit and the company was not prepared to take a risk. He asked to speak further with the manager but was told the same thing. He felt quite exasperated and frustrated at their response.

In response he brought a complaint to the ADC. He said he felt the company's policy was unreasonable and that he would have no problem meeting the physical challenges of the tour. He was angry at their blanket policy and that he was not even given a chance to show that in his case, the assumption was wrong. He was upset that he had missed a chance to go on the tour.

The ADC discussed the issue with the company and explained their obligations under the Act. The company agreed to amend its brochures and to revise its policy to be more flexible in regard to the age of persons using its services.

**The Complainant made a complaint of discrimination on the grounds of marital status in the area of work**

The Complainant alleged that she was treated less favourably because of her marital status.

The Complainant applied for a job with a large retail outlet. She was successful in obtaining the job. A week prior to her start date, she received a letter advising her that the business was no longer able to employ her because it had become apparent that she was married to the bookkeeper.

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The Complainant was furious. She rang the organisation and asked them how her marriage to the bookkeeper was relevant? The organisation said that they had a policy not to employ married couples, particularly where one was dealing with money.

The Complainant lodged a complaint with the ADC. The Respondent said they had done nothing wrong. They said it would be a conflict of interest for them to employ a married couple in the same work place.

The ADC organised a conciliation conference. The matter settled with the Complainant receiving financial compensation and the Respondent agreeing to attend discrimination training.

### **The Complainant made a complaint of race discrimination in the area of goods services and facilities**

The Complainant alleges that he was treated less favourable because of his race while accessing goods, services and facilities.

The Complainant is an Indigenous man who had been out camping with a friend who is non-Indigenous. As they were driving back home after a successful trip out bush, they pulled into a petrol station to fill up the car. They both went inside to ask to use the toilet separately. The Complainant was told that he had to use the outside toilet. His friend a short time later was permitted to use a cleaner inside toilet. His friend asked why he was required to use the outside toilet and was told that it was the petrol station's policy. The assistant said that the petrol station had had trouble with Indigenous people using the toilet.

The Complainant felt insulted and furious at the policy. He said there was no good reason for him to be treated differently.

He lodged a complaint with the ADC. The ADC approached the manager of the business and the manager advised that it was not the policy of the petrol station and that it never would be. An apology was given to the Complainant and the manager advised that the relevant staff member had been dismissed.

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**The Complainant made a complaint of victimisation in the workplace**

The Complainant had previously made a complaint to the ADC regarding discrimination in the workplace.

Following this complaint she said that her boss started reducing her hours, disciplining her in regard to trivial issues and encouraging nasty gossip about her by other staff. She felt stressed going to work and was worried she could not stop this behaviour. She started to regret having ever complained.

She decided to make a further complaint to the ADC.

The ADC arranged a conciliation conference between the parties to discuss these issues. The Respondents agreed to pay the Complainant financial compensation so she could leave the organisation.

## Appendix 4: ADC Publications and Posters

### Factsheets

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

The following factsheets in language are currently being reviewed and updated into the current refugee and migrant groups languages.

The factsheets that are being updated are:

- 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!
- Know Your Rights, Know Your Responsibilities – Central Australia
- Know Your Rights, Know Your Responsibilities – Top End
- Sexual Harassment – Nobody has to put up with it!
- Welcome to My Country.

### DVD

Until this past year, the ADC's DVD "Your Rights Your Responsibilities" featuring Indigenous actors portraying various discrimination scenarios was available in the fourteen languages. Due to the age of the production and the lack of funding to replace this important resource, the ADC DVD is now unavailable for distribution.