

Chapter 4:

Complaint Handling Section

4.1 OVERVIEW OF THE WORK OF THE COMPLAINT HANDLING SECTION

The President of the Human Rights and Equal Opportunity Commission (HREOC) is responsible for the investigation and conciliation of complaints lodged under federal anti-discrimination and human rights law. Staff of HREOC's Complaint Handling Section (CHS) assist the President to investigate and resolve complaints. The CHS also provides information to the public about the law and the complaint process through the Complaint Information Service and a range of community education and training activities.

Complaint Information Officers within the CHS deal with telephone, TTY, post, e-mail and in-person enquiries from around Australia. Enquirers are often seeking information about whether they can lodge a complaint in relation to a particular situation they have experienced. Where the issue raised appears to be a matter that HREOC can deal with, the enquirer is provided with a complaint form or information about how to lodge a complaint via HREOC's on-line complaint facility. Where the issue appears to be outside HREOC's jurisdiction, enquirers are provided with contact details for other organisations that may be able to assist them. Over the past four reporting years HREOC has received, on average, around 10 100 enquiries each year. In 2006–07, 16 606 enquiries were dealt with by the Complaint Information Service.

Investigation/Conciliation Officers within the CHS manage complaints that have been accepted by HREOC. Over the past four reporting years HREOC has received, on average, around 1 250 complaints each year. In 2006–07 HREOC received 1 779 complaints. The CHS aims to handle all complaints in a timely and effective manner. In this reporting year, as in recent years, the CHS exceeded all its stated performance standards. Ongoing actions by the CHS to ensure access to HREOC's complaint process and enable ongoing improvement in service delivery are outlined later in this chapter.

In many cases, the investigation of a complaint involves the President writing to the person or organisation being complained about to obtain their version of events. Where it is considered appropriate, complaints will then proceed to conciliation. In many cases conciliation involves the Investigation/Conciliation Officer facilitating a face-to-face meeting of the parties. Officers travel to various locations throughout Australia, including regional and remote areas, to hold these meetings. Conciliation may also be conducted by other means. For example, officers may have

telephone discussions with the parties and convey messages between them or hold a teleconference. If a matter can be satisfactorily resolved between the parties the complaint is withdrawn and closed.

Where a complaint of unlawful race, sex, disability or age discrimination cannot be resolved through a conciliation process, the complaint is terminated. Complaints may also be terminated where the President is satisfied that an inquiry into the complaint should not be undertaken or continued because, for example, the complaint is lacking in substance or better dealt with by another organisation. Both parties to a complaint are advised in writing of the President's decision regarding a complaint. After a complaint is terminated, the complainant may apply to have the matter heard and determined by the Federal Court of Australia or the Federal Magistrates Court.

Complaints which allege a breach of human rights or discrimination under the *Human Rights and Equal Opportunity Commission Act 1986* cannot be taken to court for determination. Where complaints under this Act have not been declined or resolved and the President is of the view that the subject matter of the complaint constitutes discrimination or a breach of human rights, the President will report the findings to the Attorney-General for tabling in federal Parliament. Information on reports to the Attorney-General is available on HREOC's website at www.humanrights.gov.au/legal/reports_hreoca.html

A diagram of the complaint handling process is provided at Appendix 4.

In summary, in 2006–07:

- 1 779 complaints were received by the CHS;
- 1 656 complaints were finalised by the CHS;
- 38 percent of finalised complaints were conciliated;
- 94 percent of complaints were finalised within 12 months of lodgement; and
- the average time from lodgement to finalisation of a complaint was seven months.

4.1.1 Key performance indicators and standards

The CHS has developed key performance indicators and standards which provide the basis for ongoing assessment of complaint handling performance. These are summarised below.

- *Timeliness* – the section's stated performance standard is for 80 percent of complaints to be finalised within 12 months of receipt. While there was an increase in the number of complaints received in this reporting year, the CHS finalised 94 percent of matters within 12 months. This is a slight improvement on figures for the previous reporting year. A detailed breakdown of timeliness statistics by jurisdiction is provided in Table 12.
- *Conciliation rate* – the section's stated performance standard is for 30 percent of finalised complaints to be conciliated. In 2006–07, the CHS achieved a 38 percent conciliation rate which is consistent with the conciliation rate for the previous three reporting years.

- *Customer satisfaction* – the section’s stated performance standard is for 80 percent of parties to be satisfied with the complaint handling process. Data for the past year indicates that 92 percent of parties were satisfied with the service they received and 55 percent rated the service they received as ‘very good’ or ‘excellent’. Further details of survey results for this reporting year are provided below.

4.1.2 Customer satisfaction survey

The CHS asks for feedback on the complaint process from people lodging complaints (complainants) and people responding to complaints (respondents). This feedback is obtained by means of a customer satisfaction survey which is usually conducted by telephone interview. In 2006–07, 62 percent of those who could be contacted (194 complainants and 236 respondents) agreed to participate in the survey. Survey results for this reporting year are summarised below:

- Ninety-two (92) percent of complainants and 95 percent of respondents felt that staff explained things in a way that was easy for them to understand;
- Ninety-three (93) percent of complainants and 94 percent of respondents felt that forms and correspondence from HREOC were easy to understand;
- Sixty-three (63) percent of complainants and 83 percent of respondents felt that HREOC dealt with the complaint in a timely manner; and
- Ninety (90) percent of complainants and 94 percent of respondents did not consider staff to be biased.

These results are generally equal to or above average results obtained over the past four years.

4.1.3 Service Charter

The CHS Charter of Service provides a clear and accountable commitment to service. It also provides an avenue through which complainants and respondents can understand the nature and standard of service they can expect and contribute to service improvement. All complainants are provided with a copy of the charter when their complaint is accepted by HREOC and respondents receive a copy when notified of a complaint. The Charter of Service can also be downloaded from the CHS page of HREOC’s website at: www.humanrights.gov.au/complaints_information/charter_of_services/index.html

The Commission received two complaints about its service through this mechanism in the last reporting year.

4.1.4 Access to complaint services

The CHS aims to facilitate broad community access to information and services through the following measures:

- **Complaint Information Service.** The Complaint Info line (1300 656 419 – local call charge), which is open Monday – Friday between 9.00 am and 5.00 pm, allows people to call and discuss allegations of discrimination. They can also e-mail: complaintsinfo@humanrights.gov.au
- **CHS webpage:** www.humanrights.gov.au/complaints_information/. The webpage provides information about HREOC's complaint handling service and the complaint process. It includes information about how to lodge a complaint, answers to frequently asked questions and examples of complaints. The website also provides a conciliation register that contains de-identified information about the outcomes of conciliated complaints. The CHS webpage received 202 748 page views during this reporting year.
- **Publications in community languages.** The CHS has a Concise Complaint Guide and an information poster available in 14 community languages. These publications can be ordered from the Complaint Information Service or downloaded from the CHS webpage at www.humanrights.gov.au/languages/index.html and www.humanrights.gov.au/pdf/complaints/translations_poster_A3.pdf
- **Interpreter and translation services.** In the past reporting year the CHS utilised a range of interpretation and translation services. The main language groups assisted in 2006–07 were Mandarin, Spanish, Polish, Cantonese, Vietnamese and Serbian. Auslan interpreters were used on 10 occasions.
- **Service provision in states and territories.** HREOC has formal arrangements with the Victorian Equal Opportunity and Human Rights Commission, the Queensland Anti-Discrimination Commission, the South Australian Equal Opportunity Commission, the Northern Territory Anti-Discrimination Commission and the Western Australia Equal Opportunity Commission whereby CHS publications are displayed by these agencies and CHS staff use agency facilities for conciliation conferences and community education presentations. HREOC has similar informal arrangements with the Tasmanian Anti-Discrimination Commission and the Australian Capital Territory Human Rights Office.
- **DVD on conciliation.** The audio-visual resource, *Pathways to Resolution*, was developed to provide information about conciliation to the general public and those who may be involved in the complaint process. This captioned DVD explains how conciliation is conducted as part of the complaint process, outlines how to prepare for conciliation and demonstrates positive approaches to discussing issues and negotiating resolution outcomes. This resource can be obtained from the Complaints Information Service and sections of the DVD can also be viewed on HREOC's webpage at www.humanrights.gov.au/pathways_to_resolution/index.html
- **Conciliation circuits.** Conciliation officers travel throughout Australia to conduct face-to-face conciliation conferences. Along with conferences conducted in the greater Sydney area, CHS officers conducted 25 conferences in regional NSW (including Wollongong, Newcastle, Orange, Dubbo, Bathurst, Coffs Harbour, Lismore, Ballina, Albury, Taree, Merimbula and Wagga Wagga);

87 in Victoria (including Melbourne, Ballarat, Bendigo, Bairnsdale and Geelong); 70 in Adelaide; 40 in Queensland (including Brisbane, Cairns, Gladstone, the Sunshine Coast and Airlie Beach); 16 in Western Australia (including Kalgoorlie and Albany) and 13 in Canberra.

4.1.5 Community education

The CHS contributes to HREOC's function of promoting an understanding and acceptance of human rights through its community education activities.

In this reporting year, over 100 organisations throughout all states and territories either attended information sessions on the law and the complaint process run by CHS staff or were visited by CHS staff. These organisations included: community legal centres; professional associations and unions; Aboriginal legal centres; multicultural organisations; youth organisations and legal centres; neighbourhood centres and disability groups. Locations visited included: Perth and Kalgoorlie in Western Australia; Melbourne, Ballarat, Bendigo and Geelong in Victoria; Sydney, Taree, Lismore, Bathurst and Wollongong in New South Wales; and Brisbane, Darwin, Adelaide and Canberra.

In 2006–07, information kits about the law and the complaint process were also sent to more than 1 000 organisations around Australia.

4.1.6 Training

HREOC has two specialised training programs which provide knowledge and skills in complaint investigation and resolution. All complaint handling staff are required to undertake these courses. The CHS also provides investigation and conciliation training for other organisations on a fee for service basis.

During 2006–07, the investigation training course was run for HREOC staff on two occasions and a three-day conciliation training course was held for HREOC staff and staff of the Office of the Privacy Commissioner.

In October 2006 CHS staff conducted a two-day investigation training course in Hobart for staff of a Tasmanian state government department. Also in October 2006, CHS staff ran a two-day advanced conciliation training workshop in Sydney for staff of the Office of the Privacy Commissioner.

In this reporting year, HREOC's CHS worked in partnership with the Australian Public Service Commission to provide a two-day investigation training course for federal public servants. Seven such courses were held in various locations around Australia including Brisbane, Sydney, Canberra, Darwin, Townsville and Perth.

During 2006–07, staff of the CHS attended various seminars and training courses relating to their work. These included seminars on employment law conducted by the University of Sydney, Australian Government Solicitor Law Group seminars, the National Conciliators and Legal Officers Conference, the National Investigations Symposium, the National Conference on Women and Industrial Relations, the National Community Legal Centres Conference and the Commonwealth Conference of National Human Rights Institutions. During the year staff in the CHS also attended training in

leadership and management skills run by the Australian Public Service Commission. In November 2006 all CHS staff attended an in-house plain English writing skills course. Additionally, in February 2007 an in-house presentation skills training course was run for CHS staff.

4.1.7 National conference and conference presentations

In September 2006 HREOC hosted the National Conciliators and Legal Officers Conference, *Recognising Difference: Realising Rights* in Sydney. The conference was attended by conciliators and legal officers from HREOC and state and territory equal opportunity/anti-discrimination commissions. Participants also included staff from Human Rights Commissions in New Zealand, Malaysia, Nepal, Fiji, Mongolia, Thailand and South Korea. Five CHS staff presented papers at this conference.

In this reporting year CHS staff also presented papers at the following national and international conferences: the National Conference on Women and Industrial Relations held in Brisbane in July 2006; the Queensland Safety Forum in Brisbane; the National Community Legal Centres Conference in Wollongong in September 2006; the National Investigations Symposium in Sydney in November 2006; and the Commonwealth Conference of National Human Rights Institutions in London in February 2007.

4.1.8 International training and consultation

In 2006–07 HREOC was awarded a tender by the Asia Pacific Forum of National Human Rights Institutions to provide training for staff of the National Human Rights Commission of Malaysia (SUHAKAM). This project involved staff of the CHS developing and presenting a three-day training course in human rights investigation. The training took place in Kuala Lumpur from 15–17 November 2006 and 23 staff from SUHAKAM attended the program.

In early 2007 a CHS staff member participated in a two-week staff exchange program with the National Human Rights Commission of India. This program provided a unique opportunity to share knowledge and skills regarding the management of complaints lodged under human rights law.

The CHS is often called upon to provide placements for staff from overseas human rights institutions and to provide information about HREOC's complaint handling work to visiting delegations. During this reporting year CHS staff provided information to representatives of human rights institutions and government departments visiting from Hong Kong, China, Pakistan and India.

4.2 CONCILIATION CASE STUDIES¹

4.2.1 Racial Discrimination Act

In this reporting year, HREOC received 250 complaints under the Racial Discrimination Act. The majority of these complaints related to employment (42%), the provision of goods and services (26%) and racial hatred (15%). The CHS finalised 269 complaints under this Act and 22 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Racial Discrimination Act are provided later in this chapter.

1. Complaint of race discrimination and racial hatred in employment

The complainant, who is Indigenous, stated that during his employment as a labourer with the respondent engineering company he was regularly harassed and vilified because of his race. He claimed that co-workers would call him names such as “black”, “dark”, “half cast” and “coon”. He said the company did not have policies in place to deal with racial abuse and claimed he was not given adequate support to resolve the issues in the workplace.

In reply, the engineering company said that the first time they became aware of the complainant’s concerns was when he walked out of the premises and abandoned his employment. The company advised that it has anti-discrimination policies in place and is of the view that these are adequate. The company provided statements from its employees who agreed that they had referred to the complainant as “black” or “dark”, but said that the comments were made in jest and the complainant had laughed when the comments were made.

The complaint was resolved by the respondent agreeing to review and improve its anti-discrimination and harassment policies. This included nominating harassment contact officers and holding regular team meetings in which discrimination issues could be raised. The respondent also agreed to pay the complainant \$7 400 in general damages.

2. Alleged race discrimination and racial hatred in the provision of accommodation

The complainant, who is Kenyan, rented a unit from a company through a real estate agency. The complainant claimed that the real estate agent told him that the company wanted him to vacate the property. The complainant said that even though he had negotiated a date on which he would vacate the premises, the company changed the locks on the unit without telling him. The complainant said that as he had nowhere else to go, he had to sleep in a nearby park. The complainant alleged that the next week when he went to the unit to collect his property, he was racially abused by the company director’s son who said comments such as “Go back to your country you black bastard” and “f*** off you black c***”. The complainant also claimed that his bed and some of his furniture was missing from the unit.

The company agreed that it had changed the locks on the unit but said that it only did this because the complainant’s rent was in arrears. The company director’s son denied racially abusing the complainant.

¹ *Complaints are generally resolved at conciliation on the basis of ‘no admission of liability’ by the respondent.*

The complaint resolved through a conciliation process with the individual respondent agreeing to pay the complainant \$4 500 in compensation and attend anti-discrimination training.

3. Complaint of race discrimination in employment

The complainant had immigrated to Australia from Zimbabwe four years ago. The complainant alleged discrimination because of his race during employment as a tradesperson with the respondent car repair company. He alleged that two of his co-workers made unwelcome remarks about his skin colour and general appearance. He said they referred to him as a “burnt chop” and said white girls were just after him for his “big black c**k”. He also alleged that his work colleagues made an object that resembled a black male penis and placed this object in his toolbox.

In response to the allegations, the owner of the company advised HREOC that he had taken steps to rectify the situation. In particular, he stated that the staff members responsible were informed that if remarks or behaviour of this nature continued, they would face the prospect of dismissal. He also provided the complainant with a letter of acknowledgement which outlined that he understood the seriousness of the complaint.

The complainant advised HREOC that the actions taken by the respondent resolved his complaint.

4. Allegation of race discrimination, racial hatred and sexual harassment in employment

The complainant, who is of Lebanese background, claimed that she resigned from her employment as a receptionist with the respondent management services company because she had been discriminated against on the basis of her race and subjected to racial hatred and sexual harassment. She alleged that the director of the company sexually harassed her by touching her, propositioning her and making sexually suggestive comments. She also claimed that another manager made negative comments about people from Lebanese or Arabic backgrounds such as “If it was up to me, I would not have hired you. I hate Arabs, I always have” and “I hate Lebanese and I hate Arabs”. She also said that this manager made disparaging remarks about the Lebanese food she ate for lunch. The complainant also claimed that soon after the Cronulla riots, an e-mail was circulated to all company employees vilifying people of Lebanese background. She said that she complained about these events to her employer but no sufficient action was taken to address her concerns.

The company advised that the complainant made a written complaint about sexual harassment which was investigated. The company said the director denied the sexual harassment allegations but agreed to have no further contact with the complainant. The company confirmed that the complainant had also raised concerns about race discrimination by another manager but claimed the complainant resigned before the company could investigate the matter. The manager alleged to have racially discriminated against the complainant denied the allegations.

The parties resolved the complaint through a conciliation process with an agreement that the respondent company would pay the complainant \$21 000 compensation.

4.2.2 Sex Discrimination Act

In this reporting year HREOC received 472 complaints under the Sex Discrimination Act. The majority of complaints related to employment (81%). Nineteen percent of complaints alleged sexual harassment and 17 percent of complaints alleged pregnancy discrimination. The CHS finalised 452 complaints under this Act and 46 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Sex Discrimination Act are provided later in this chapter.

1. Alleged sexual harassment in employment

The complainant, who was employed as a receptionist with the respondent real estate company, alleged that she was sexually harassed by the general manager of the company. She claimed that the general manager would send her pornographic and sexually suggestive e-mails and make comments of a sexual nature. The complainant also claimed that the general manager put his hand up her skirt and touched her thighs, kissed her and exposed his penis to her.

The general manager denied the allegations. However, he acknowledged that he had sent the complainant e-mails. He claimed that the e-mails were not unwelcome as she was flirtatious in some of her replies. The company claimed that the complainant did not raise any allegations during her employment. The company advised that it has a sexual harassment policy in place and that the policy is discussed at monthly staff meetings.

A conciliation conference was held and the complaint was resolved with the respondent agreeing to pay the complainant \$18 000 compensation.

2. Complaint of discrimination in employment after return from maternity leave

The complainant was employed as a planning manager in an advertising agency. She claimed that while she was on maternity leave, there was a restructure of management positions and when she returned to work, she was advised that her former position had been filled on a permanent basis. The complainant said she was offered a new position in the same department which was fundamentally different from, and not comparable to, the position she held prior to going on leave. She alleged that while she kept her job title, she did not maintain any of her management responsibilities. She claimed that this amounted to sex and pregnancy discrimination and constructive dismissal and she advised that she subsequently accepted a position with another employer. The complainant also alleged that the work environment at the respondent agency was hostile to working mothers.

The respondent agency denied that it had discriminated against the complainant on the basis of her sex and/or pregnancy and claimed that the work role the complainant returned to after her maternity leave was essentially the same as the role she held before going on leave. The agency also denied that the work environment was hostile to working mothers.

The parties agreed to resolve the complaint at a conciliation conference with the respondent agreeing to pay the complainant \$15 000 general damages and \$20 000 as a termination payment.

3. Allegation of sex discrimination on the basis of breastfeeding

The complainant was breastfeeding her baby while in a court room watching proceedings. The complainant claimed that a staff member of the respondent government department asked her to leave the courtroom because she was breastfeeding.

The respondent department confirmed that the complainant was asked to leave the courtroom because she was breastfeeding. The department advised that this was an error and the individual staff member concerned had been counselled. The department apologised to the complainant in writing and offered to meet with the complainant to apologise in person.

The complaint was resolved by the department providing a personal apology to the complainant. The department also agreed to display a "Breastfeeding welcome here", sticker at the courthouse.

4. Complaint of sex and family responsibilities discrimination in casual employment

The complainant worked in a winery as a food and beverage attendant. The complainant was employed on a casual basis and worked both weekday and weekend shifts. The complainant's family responsibilities changed and she advised the company that while she could still work weekday shifts, she could only work every second weekend. The complainant claimed that the number of shifts she was allocated was then reduced and she was ultimately dismissed. She said that when she was dismissed, her employer told her that her unavailability to work weekends meant that she was unsuitable to work in the hospitality industry.

In reply, the respondent company denied the allegations and advised that the hours worked by casual employees are at its discretion. The company stated that its inability to offer continuing work to the complainant was due to its financial position.

The complaint was resolved through a conciliation process. The company agreed to develop and implement an anti-discrimination policy and train managers in this policy. It also agreed to provide the complainant with a letter of apology and \$6 000 compensation.

5. Alleged sex, pregnancy and family responsibilities discrimination in employment

The complainant was employed on a permanent basis as a pre-school teacher at a private school. The complainant said there was an agreement that she would return to work part-time in her former position after taking 12 months maternity leave. The complainant claimed she returned to work part-time for one term on a temporary basis but was advised that her position would not be available on a part-time basis in the following school year.

As the parties were in a continuing employment relationship, conciliation was attempted within a few days of HREOC receiving the complaint. The complaint resolved at a conciliation conference. The respondent school agreed that the complainant would return to a comparable position on a permanent part-time basis. The complainant was able to return to work in the 2007 school year and retain her leave and other entitlements.

4.2.3 Disability Discrimination Act

In this reporting year, HREOC received 802 complaints under the Disability Discrimination Act. The majority of these complaints concerned employment (46%) and the provision of goods, services and facilities (29%). The CHS finalised 682 complaints under this Act and 44 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Disability Discrimination Act are provided later in this chapter.

1. Complaint of disability discrimination in recruitment

The complainant applied for a customer service position with a Commonwealth Government department through a private recruitment agency. The complainant has a slight hearing loss in one ear and underwent a pre-employment medical examination. The complainant said that the recruitment agency subsequently advised her that she did not meet the medical standard for employment and she would not be able to do telephone work which was an inherent requirement of the job. The complainant was not employed in the customer service role and alleged disability discrimination.

When HREOC advised the Commonwealth department of the complaint, the department expressed a desire to attempt conciliation.

The complaint was resolved by the department offering the complainant a customer service position with a three-month probationary period.

2. Allegation of disability discrimination in secondary education

The complainant's daughter is in year 12 at a public secondary school and has a physical disability which is characterised by chronic pain. The complainant alleged that her daughter was not provided with reasonable adjustment in the form of an extension for a specific assignment. The complainant further alleged that her daughter had been verbally harassed on the basis of her disability by a teacher and the principal of the school had failed to respond appropriately to complaints about the harassment.

The teacher and school stated that reasonable adjustment had been provided to accommodate the effects of the student's disability. The teacher denied that she had harassed the student and said that any comments she made were in the context of providing advice and guidance to the student. The principal denied responding inappropriately to complaints regarding lack of provision of reasonable adjustment and/or harassment.

The complaint was resolved through conciliation, with the school agreeing to pay the complainant's daughter the sum of \$5 000 in general damages, brief staff on the needs of the student, provide reasonable adjustment for future assessments and issue the student and her family with an apology.

3. Complaint of disability discrimination in the provision of goods and services

The complainant has tetraplegia and uses a customised electric wheelchair. The complainant advised that she has previously travelled on the respondent airline when

needing to go from her regional community to the city for medical treatment. The complainant alleged that two weeks before she was due to travel to the city again, the airline told her that her wheelchair did not comply with their new policy and they would not carry her wheelchair. The complainant claimed that due to her disability she cannot travel without her own wheelchair.

The airline advised HREOC that the complainant's wheelchair was too large for staff to place in the aircraft hold in accordance with its new occupational health and safety (OH and S) policy.

The matter was resolved through a conciliation process. The complainant agreed to have her wheelchair modified so that it could be loaded onto the aircraft in accordance with the airline's OH and S policy. The airline agreed to organise extra staff to load the wheelchair onto the aircraft for the trip to the city so that the modification of the wheelchair could occur.

4. Alleged disability discrimination in employment

The complainant was employed in a senior management position with a wholesale company. The complainant was diagnosed with cancer and applied for, and was granted, leave for surgery. The complainant subsequently advised the company that he would require four days off per month for further treatment and recovery. The complainant claimed he was demoted to a management position with fewer responsibilities and a lower salary, and then dismissed because of his disability.

The respondent company agreed that the complainant was offered a lesser management role because of his disability. The company said that the complainant was offered a different position to accommodate the effects of his disability and to place him in a position where his disability did not impair his ability to perform the inherent requirements of the position. The respondent claimed that the complainant's employment was terminated because of poor performance.

The complaint was resolved through conciliation with the respondent agreeing to pay the complainant \$45 000 in general damages.

5. Complaint of disability discrimination in the administration of Commonwealth laws and programs

The complainant, who is deaf, claimed that the respondent Commonwealth agency funds the development of Australian films but does not require them to be captioned. The complainant claimed that he wanted to watch two specific Australian films but these films were not captioned.

The respondent agency advised HREOC that it currently did not require the films it funds to be captioned. The agency said that it regretted that the complainant could not enjoy the two films. However, it denied that this constituted unlawful disability discrimination.

The matter resolved through a conciliation process with the agency agreeing that from 1 July 2007 it will require all feature films it finances to be captioned for cinema and DVD release. It was agreed that the agency will pay for the cost of captioning

each feature film and will quarantine the cost from the film's budget. The agency will also require feature film producers to use their best endeavours to ensure that all Australian distribution agreements include access for the hearing impaired via captioning for cinema and DVD.

6. Alleged discrimination in employment due to psychiatric disability

The complainant had worked as a property manager for the respondent property management company for two years. The complainant became unwell and required hospital treatment for bi-polar disorder. The complainant's case manager contacted the respondent company to advise that the complainant would require two weeks sick leave. The complainant claimed that the company then finalised his employment and provided him with an ex-gratia payment of \$15 000.

The respondent company advised HREOC that the complainant's employment was finalised due to unsatisfactory work performance.

A conciliation conference was convened and the parties resolved the complaint with the respondent agreeing to pay the complainant general damages in the sum of \$6 500.

4.2.4 Age Discrimination Act

In this reporting year, HREOC received 106 complaints under the Age Discrimination Act. The majority of these complaints concerned employment (68%). The CHS finalised 115 complaints under this Act and 32 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Age Discrimination Act are provided later in this chapter.

1. Complaint of age discrimination in the provision of services by a nightclub

The complainant, who is 19 years of age, said that he was told by a nightclub and entertainment complex that only people 20 years of age and over are allowed to enter the premises. He claimed this was also stated on the nightclub's website and that because of this rule he could not enter the nightclub.

The nightclub confirmed that it only allowed people who were 20 years of age or over to enter the club and advised that this was for commercial reasons.

The complaint was resolved after the nightclub agreed to change its rule and allow people who are 18 years of age or over to enter the club and to update its website information to reflect this.

2. Alleged age discrimination in recruitment

The complainant was 40 years of age and had worked at a community-based welfare centre as a volunteer for a two-year period when she applied for the position of centre co-ordinator. She claimed that her application was not successful because of her age. She alleged that the chairman of the centre's management committee said, *"It's really that we are looking for a young fresh face and the lass who got the job already knows everything about it."*

The respondent welfare centre advised HREOC that the successful applicant was selected on the basis of merit. The centre claimed that in comparison with the complainant, the successful applicant had broader experience which included staff supervision and relevant qualifications, and also gave better answers to questions at interview. The centre said that age was not a selection criterion and was not mentioned or discussed during the interview. The centre also provided a statement signed by all members of the selection panel indicating that all interviewees were asked the same questions, that the decision was unanimous and that age was not a consideration at any stage of the recruitment process.

The parties attended a conciliation conference and the complaint was resolved by the respondent agreeing to pay the complainant \$680.

3. Alleged termination of employment on the basis of age

The complainant, who is 54 years of age, was employed by a small retail company as a full-time sales assistant. She alleged that she was dismissed when the business was taken over by a new owner and she claimed that the new owner told her this was because she was too expensive to retain. The complainant claimed that at the same time, the business advertised for a full-time junior sales assistant. The complainant alleged her employment was terminated because she was too old.

The respondent company denied that it dismissed the complainant because of her age. The company claimed that it urgently needed to employ another staff member in a production role. However, as it is a small business it could not afford to employ both a new person in production and a full-time senior sales assistant.

The complaint was resolved through telephone discussions with the parties. The business agreed to pay the complainant financial compensation representing three weeks wages.

4. Complaint of age discrimination in termination of employment

The complainant was 65 years of age and the general manager of an export company with a parent company in Kuwait. The complainant claimed that the company told him he must retire on turning 65 year of age as the law in Kuwait requires that people over 65 do not remain in employment. The complainant said that he told his employer that he did not want to retire. However, the company proceeded to terminate his employment.

The company advised HREOC that the complainant's employment was not terminated because of his age but because the company wanted new blood and new vision.

The complaint was resolved between the parties through a conciliation process. The respondent agreed to pay the complainant \$150 000 in compensation.

4.2.5 Human Rights and Equal Opportunity Commission Act

In this reporting year, HREOC received 149 complaints under the Human Rights and Equal Opportunity Commission Act. The majority of these complaints concerned discrimination in employment based on criminal record (34%) and alleged breaches of the International Covenant on Civil and Political Rights (21%). The CHS finalised 138 complaints under this Act and 20 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Human Rights and Equal Opportunity Commission Act are provided later in this chapter.

1. Complaint of criminal record discrimination in employment

The complainant worked as a casual locum caseworker at a youth justice service run by a state government department. He said that when he commenced employment he disclosed his criminal record and gave information about the circumstances surrounding his conviction. He stated that he subsequently applied for a permanent caseworker position but was told that due to his criminal record, and in particular, a conviction for supplying heroin 16 years ago, he would not be appointed to the position. He claimed that he was also told that he could no longer have one-on-one contact with clients of the service and his employment was terminated due to his criminal record.

The respondent department advised that the complainant's criminal record meant that he was unable to perform the inherent requirements of the caseworker position and could not meet departmental standards. The department submitted that it has a duty of care to its clients who are aged between 10 and 17 years and usually vulnerable because of their personal circumstances.

The complaint was resolved at a conciliation conference with the respondent agreeing to pay the complainant \$10 000 in general damages.

2. Alleged discrimination on the ground of sexual preference in casual employment

The complainant was employed by the respondent cleaning company as a casual cleaner. She stated that her supervisor terminated her employment about one week after new management took over the company. She said that no reason was given for her dismissal and the correct procedures were not followed. The complainant alleged that a few days prior to her dismissal she had a conversation with her supervisor in which she disclosed she was in a same-sex relationship. The complainant claimed that after this conversation, the supervisor's attitude towards her changed. She claimed that she was dismissed because of her sexual preference.

The respondent company denied that the complainant had been discriminated against because of her sexual preference. The company said it was aware of the complainant's sexual preference prior to the conversation referred to in the complaint. The company claimed that the complainant was dismissed because of the quality of her work during the probationary period.

The complaint was resolved through a conciliation process. As a result of this process, the company agreed to pay the complainant \$1 000 compensation and provide her with a statement of service and an apology.

3. Complaint of trade union discrimination in employment

The complainant was employed as an administrative assistant in a public hospital and was a union delegate. She claimed that when she approached her manager to pass on a message from the union regarding the change of a meeting time, her manager shouted abuse at her, shook her finger at her and said words to the effect '*you people do not want to get the dispute resolved*'.

As the complainant was still employed by the respondent hospital, the parties agreed to attend a conciliation conference prior to any investigation being undertaken by HREOC. The complaint was resolved to the satisfaction of both parties. The respondent agreed to: provide the complainant with a written apology and allow her to show the apology to her co-workers who allegedly overheard the comment; provide the complainant with a reference; clarify the role of union delegates at the next all-staff meeting; and re-credit the complainant's sick leave entitlements for leave taken subsequent to the incident.

4. Alleged criminal record discrimination in employment

The complainant was employed as a casual teacher's aide in a public primary school. She alleged that from the time she commenced employment with the school until she made the complaint to HREOC, she was provided with less work than other teacher's aides who were employed at the same time as her or after her. The complainant claimed that she was treated this way because during the recruitment process, the school principal became aware of her criminal record. The complainant claimed that her criminal record was not relevant to the position as she had obtained the 'working with children' clearance that was required in order to be employed as a teacher's aide.

In response, the school denied that it had discriminated against the complainant because of her criminal record. The school claimed that the complainant had been provided with work in accordance with her ranking on an order of merit list.

Both parties agreed to resolve this complaint at a conciliation conference. The school agreed to provide the complainant with a statement of regret and a letter clarifying the process for appointing permanent part-time staff. The respondent also agreed to pay the complainant \$3 600 in general damages.

4.3 COMPLAINT HANDLING STATISTICS

4.3.1 Preliminary comments

The following statistical data provides information on enquiries handled by HREOC this reporting year, an overview of complaints received and finalised and specific details on complaints received and finalised under each of the Acts administered by HREOC.

When comparing complaint data between different agencies and across reporting years, it is important to consider that there may be variations in the way the data is counted and collected. Some additional information explaining HREOC's approach to statistical reporting is footnoted. Further clarification about complaint statistics can be obtained by contacting the CHS.

4.3.2 Summary

(i) Enquiries received and complaints received and finalised

Over the previous four reporting years, HREOC received an average of approximately 10 100 enquiries per year. In the 2006–07 reporting year HREOC received 16 606 enquiries which represents a 64 percent increase on the previous average number received. In the previous four reporting years on average, 18 percent of the issues raised by enquirers related to employment. In 2006–07, 32 percent of issues raised by enquirers related to employment.

Over the previous four reporting years, HREOC received an average of approximately 1 250 complaints per year. In the 2006–07 reporting year, HREOC received 1 779 complaints which represents a 42 percent increase in comparison with the previous average number received. In the 2006–07 reporting year 45 percent of complaints received were lodged under the Disability Discrimination Act, 27 percent under the Sex Discrimination Act, 14 percent under the Racial Discrimination Act, eight percent under the Human Rights and Equal Opportunity Commission Act and six percent under the Age Discrimination Act. For the past four reporting years, the majority of complaints received have been lodged under the Disability Discrimination Act and the Sex Discrimination Act.

As in previous years, employment was the main area of complaint under all federal anti-discrimination legislation. In 2006–07 complaints regarding employment constituted: 42 percent of complaints under the Racial Discrimination Act; 81 percent of complaints under the Sex Discrimination Act; 46 percent of complaints under the Disability Discrimination Act; and 68 percent of complaints under the Age Discrimination Act.

The majority of complaints received under the Human Rights and Equal Opportunity Commission Act related to discrimination in employment on the ground of criminal record and alleged breaches of the International Covenant on Civil and Political Rights. These have been the main subject areas of complaint for the past four years.

(ii) Conciliation of complaints

Of the complaints finalised in 2006–07, 38 percent were conciliated. This is consistent with the conciliation rate for the previous three reporting years. Of those matters where conciliation was attempted in 2006–07, 69 percent were able to be resolved. This represents a two percent increase in the conciliation success rate in comparison with the previous reporting year. The conciliation success rate has consistently increased over the past four reporting years.

Complaints under the Sex Discrimination Act had the highest conciliation rate (46%) and a conciliation success rate of 69 percent. Complaints under the Disability Discrimination Act had the second highest conciliation rate (44%) and a conciliation success rate of 71 percent. Complaints under the Age Discrimination Act had a conciliation rate of 32 percent and a high conciliation success rate of 76 percent, while complaints under the Racial Discrimination Act had a conciliation rate of 22 percent and a conciliation success rate of 52 percent. In this reporting year, 20 percent of finalised complaints under the Human Rights and Equal Opportunity Commission Act were successfully resolved and these complaints had the highest conciliation success rate (87.5%).

(iii) Demographic data

Information on the geographical location and ethnicity of complainants is provided in Tables 7, 9 and 10 below.

Demographic data obtained during the complaint process indicates that 54 percent of complaints were lodged by individual females, 45 percent by individual males and one percent by other categories, for example, multiple complainants.

Forty-eight percent of complainants reported that they knew about HREOC prior to lodging their complaint. The main sources of information for others were legal centres and lawyers (10%) and family members, friends or support people (8%).

The majority of complainants (52%) indicated that their main source of income at the time of the alleged act was from full, part-time or casual employment.

Approximately 33 percent of complainants were represented in the complaint process. Of this group, 40 percent were represented by privately funded solicitors. Other forms of representation were other advocate groups such as working women’s centres or disability advocacy services (20%), community legal centres such as Indigenous or disability legal services (16%), family members or friends (14%) and trade unions or professional associations (10%).

Data collected on respondent categories indicates that in the last reporting year approximately 46 percent of complaints were against private enterprise, 12 percent were against Commonwealth departments/statutory authorities and 11 percent were against state departments/statutory authorities. These have been the main respondent organisation categories for the last four reporting years. Complete information on respondent categories is provided in Table 11.

4.3.3 Complaint Information Service

| Table 1: Website enquiries | |
|--|---------|
| Complaint Handling Section webpage views | 202 748 |

| Table 2: Telephone, TTY, e-mail, in-person and written enquiries received | |
|--|---------------|
| <i>Enquiry type</i> | <i>Total</i> |
| Telephone | 14 078 |
| TTY | 16 |
| E-mail | 1 653 |
| In-person | 104 |
| Written | 755 |
| Total | 16 606 |

| Table 3: Enquiries received by issue | |
|---|--------------|
| <i>Issue</i> | <i>Total</i> |
| Race | 1 725 |
| Race – racial hatred | 587 |
| Sex – direct | 696 |
| Sexual harassment | 762 |
| Sex – marital status, family responsibilities, parental status, carers responsibilities, breast feeding | 384 |
| Sex – pregnancy | 635 |
| Sexual preference, transgender, homosexuality, lawful sexual activity | 157 |
| Disability – impairment | 2 438 |
| Disability – HIV/AIDS/Hepatitis | 44 |
| Disability – workers compensation | 189 |
| Disability – mental health | 658 |
| Disability – intellectual/learning disability | 201 |
| Disability – maltreatment/negligence | 37 |
| Disability – physical feature | 101 |
| Age – too young | 163 |
| Age – too old | 496 |

| Table 3: Enquiries received by issue (con't) | |
|---|---------------|
| Age – compulsory retirement | 21 |
| Criminal record/conviction | 302 |
| Political opinion | 24 |
| Religion/religious organisations | 231 |
| Employment – personality conflicts/favouritism | 279 |
| Employment – union/industrial activity | 119 |
| Employment – unfair dismissal/other industrial issues | 6 367 |
| Employment – workplace bullying | 1 097 |
| Human rights – children | 177 |
| Human rights – civil, political, economic, social | 737 |
| Immigration – detention centres | 102 |
| Immigration – visas | 207 |
| Prisons/prisoners | 192 |
| Police | 205 |
| Court – family court | 198 |
| Court – other law matters | 291 |
| Privacy – data protection | 134 |
| Neighbourhood disputes | 60 |
| Advertising | 44 |
| Local government – administration | 103 |
| State government – administration | 416 |
| Federal government – administration | 451 |
| Other | 3 207 |
| Total* | 24 237 |

* One enquiry may have multiple issues.

| Table 4: Enquiries received by state of origin | | |
|---|----------------------|-----------------------|
| <i>State of origin</i> | <i>Total</i> | <i>Percentage (%)</i> |
| New South Wales | 6 389 | 38 |
| Victoria | 3 429 | 21 |
| South Australia | 1 315 | 8 |
| Western Australia | 969 | 6 |
| Queensland | 2 608 | 16 |
| Australian Capital Territory | 366 | 2 |
| Tasmania | 329 | 2 |
| Northern Territory | 335 | 2 |
| Unknown/overseas | 866 | 5 |
| <i>Total</i> | <i>16 606</i> | <i>100</i> |

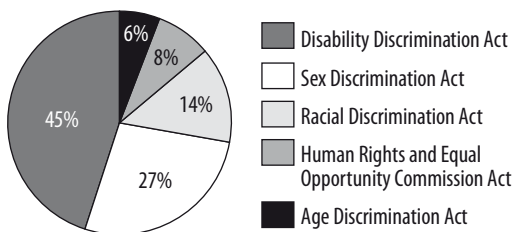
4.3.4 Complaints Overview

| | 2003–04 | 2004–05 | 2005–06 | 2006–07 |
|-----------|---------|---------|---------|---------|
| Received | 1 113 | 1 241 | 1 397 | 1 779 |
| Finalised | 1 229 | 1 233 | 1 205 | 1 656 |

| | 2003–04 (percent) | 2004–05 (percent) | 2005–06 (percent) | 2006–07 (percent) |
|------------------------|----------------------|----------------------|----------------------|----------------------|
| Terminated/declined | 51 | 46 | 44 | 48 |
| Conciliated | 38 | 38 | 39 | 38 |
| Withdrawn | 10 | 16 | 16 | 14 |
| Reported (HREOCA only) | 1 | – | 1 | – |

| <i>State of origin</i> | <i>Total</i> | <i>Percentage (%)</i> |
|------------------------------|--------------|-----------------------|
| New South Wales | 767 | 43 |
| Victoria | 356 | 20 |
| South Australia | 204 | 12 |
| Western Australia | 114 | 6 |
| Queensland | 256 | 14 |
| Australian Capital Territory | 37 | 2 |
| Tasmania | 12 | 1 |
| Northern Territory | 26 | 2 |
| Unknown/overseas | 7 | – |
| Total | 1 779 | 100 |

| <i>Act</i> | <i>Received</i> | <i>Finalised</i> |
|--|-----------------|------------------|
| Racial Discrimination Act (RDA) | 250 | 269 |
| Sex Discrimination Act (SDA) | 472 | 452 |
| Disability Discrimination Act (DDA) | 802 | 682 |
| Age Discrimination Act (ADA) | 106 | 115 |
| Human Rights and Equal Opportunity Commission Act (HREOCA) | 149 | 138 |
| Total | 1 779 | 1 656 |

Chart 1: Complaints received by Act

| | <i>RDA (%)</i> | <i>SDA (%)</i> | <i>DDA (%)</i> | <i>ADA (%)</i> | <i>HREOCA (%)</i> | <i>Total (%)</i> |
|---------------------------|----------------|----------------|----------------|----------------|-------------------|------------------|
| Born in Australia | 31 | 57 | 55 | 40 | 43 | 50 |
| Born outside of Australia | 60 | 12 | 15 | 33 | 27 | 24 |
| Unknown | 9 | 31 | 30 | 27 | 30 | 26 |

| | <i>RDA (%)</i> | <i>SDA (%)</i> | <i>DDA (%)</i> | <i>ADA (%)</i> | <i>HREOCA (%)</i> | <i>Total (%)</i> |
|------------------------|----------------|----------------|----------------|----------------|-------------------|------------------|
| Aboriginal | 23 | 3 | 3 | 2 | 1 | 6 |
| Torres Strait Islander | 2 | – | – | – | – | – |
| None of the above | 75 | 97 | 97 | 98 | 99 | 94 |

| | <i>RDA (%)</i> | <i>SDA (%)</i> | <i>DDA (%)</i> | <i>ADA (%)</i> | <i>HREOCA (%)</i> | <i>Total (%)</i> |
|--|----------------|----------------|----------------|----------------|-------------------|------------------|
| Individual male | 18 | 23 | 9 | 8 | 16 | 15 |
| Individual female | 9 | 10 | 8 | 5 | 4 | 8 |
| Private enterprise | 43 | 46 | 48 | 55 | 35 | 46 |
| Commonwealth government department / statutory authority | 8 | 10 | 12 | 15 | 23 | 12 |
| State government department / statutory authority | 13 | 4 | 15 | 5 | 12 | 11 |
| Local government | 1 | – | 3 | 1.5 | 2 | 2 |
| Government Business Enterprise | 1 | 1 | 1 | 3 | 1.5 | 1 |
| Educational institution | 2 | 2 | 1 | 2 | 2 | 2 |
| Trade union / professional association | 1 | – | – | 1.5 | 1 | – |
| Not for profit organisation / non government | 2 | 2 | 1 | 1.5 | 1 | 1 |
| Clubs/incorporated associations | 1 | 1 | 1 | 1 | 1 | 1 |
| Other | 1 | 1 | 1 | 1.5 | 1.5 | 1 |

| | <i>RDA (%)</i> | <i>SDA (%)</i> | <i>DDA (%)</i> | <i>ADA (%)</i> | <i>HREOCA (%)</i> | <i>Cumulative Total (%)</i> |
|---------------------|----------------|----------------|----------------|----------------|-------------------|-----------------------------|
| 0 – 3 months | 21 | 20 | 17 | 25 | 17 | 19 |
| 3 – 6 months | 38 | 35 | 36 | 27 | 18 | 53 |
| 6 – 9 months | 24 | 25 | 29 | 33 | 23 | 80 |
| 9 – 12 months | 12 | 15 | 13 | 9 | 22 | 94 |
| More than 12 months | 4 | 5 | 5 | 6 | 17 | 100 |
| More than 24 months | 1 | – | – | – | 3 | – |

4.3.5 Racial Discrimination Act

| Table 13: Racial Discrimination Act – complaints received and finalised | |
|--|--------------|
| | <i>Total</i> |
| Received | 250 |
| Finalised | 269 |

| Table 14: Racial Discrimination Act – complaints received by ground | | |
|--|--------------|-----------------------|
| <i>Racial Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| Colour | 25 | 7 |
| National origin/extraction | 70 | 18 |
| Ethnic origin | 47 | 12 |
| Descent | 6 | 2 |
| Race | 172 | 45 |
| Victimisation | 3 | 1 |
| Racial hatred | 51 | 13 |
| Aids, permits or instructs | – | – |
| Association | 9 | 2 |
| Total* | 383 | 100 |

* One complaint may have multiple grounds.

| Table 15: Racial Discrimination Act – complaints received by area | | |
|--|--------------|-----------------------|
| <i>Racial Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| Rights to equality before the law | 5 | 1 |
| Access to places and facilities | 12 | 3 |
| Land, housing, other accommodation | 8 | 2 |
| Provision of goods and services | 97 | 26 |
| Right to join trade unions | – | – |
| Employment | 160 | 42 |
| Advertisements | – | – |
| Education | 5 | 1 |
| Incitement to unlawful acts | 1 | – |
| Other – section 9 | 39 | 10 |
| Racial hatred | 56 | 15 |
| Total* | 383 | 100 |

* An area is recorded for each ground, so one complaint may have multiple and different areas.

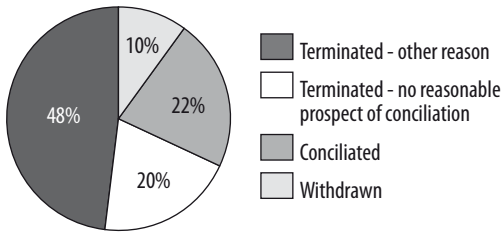
| Table 16: Racial hatred complaints received by sub-area | | |
|--|--------------|-----------------------|
| <i>Racial Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| Media – press/TV/radio | 2 | 5 |
| Disputes between neighbours | 5 | 11 |
| Personal conflict | 8 | 18 |
| Employment | 14 | 32 |
| Racist propaganda | – | – |
| Internet – e-mail/webpage/chat room | 8 | 18 |
| Entertainment | – | – |
| Sport | 1 | 2 |
| Public debate | – | – |
| Provision of goods and services | 6 | 14 |
| Total* | 44 | 100 |

* One sub-area is recorded for each racial hatred complaint received.

| Table 17: Racial Discrimination Act – outcomes of finalised complaints | |
|---|--------------|
| <i>Racial Discrimination Act</i> | <i>Total</i> |
| Terminated | 176 |
| At complainants request – section 46PE | – |
| Not unlawful | 7 |
| More than 12 months old | 6 |
| Trivial, vexatious, frivolous, misconceived, lacking in substance | 107 |
| Adequately dealt with already | 2 |
| More appropriate remedy available | 2 |
| Subject matter of public importance | – |
| No reasonable prospect of conciliation | 52 |
| Withdrawn | 25 |
| Withdrawn, does not wish to pursue, advised the Commission | 24 |
| Withdrawn, does not wish to pursue, settled outside the Commission | 1 |
| Conciliated | 56 |
| Administrative closure* | 12 |
| Total | 269 |

* Not an aggrieved party, state complaint previously lodged.

Chart 2: Racial Discrimination Act – outcomes of finalised complaints



4.3.6 Sex Discrimination Act

| Table 18: Sex Discrimination Act – complaints received and finalised | |
|---|--------------|
| <i>Sex Discrimination Act</i> | <i>Total</i> |
| Received | 472 |
| Finalised | 452 |

| Table 19: Sex Discrimination Act – complaints received by sex of complainant | | |
|---|--------------|-----------------------|
| <i>Sex Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| Female | 412 | 87 |
| Male | 60 | 13 |
| Joint/multiple | – | – |
| Total | 472 | 100 |

| Table 20: Sex Discrimination Act – complaints received by ground | | |
|---|--------------|-----------------------|
| <i>Sex Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| Sex discrimination | 449 | 45 |
| Marital status | 30 | 3 |
| Pregnancy | 170 | 17 |
| Sexual harassment | 186 | 19 |
| Parental status/family responsibility | 39 | 4 |
| Victimisation | 118 | 12 |
| Aids, permits, instructs – s. 105 | 3 | – |
| Total* | 995 | 100 |

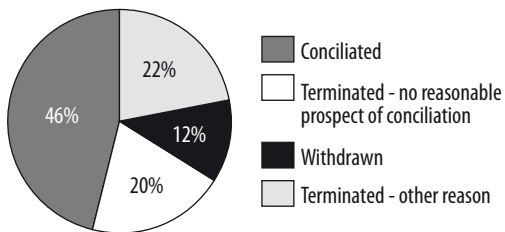
* One complaint may have multiple grounds.

| <i>Sex Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
|--|--------------|-----------------------|
| Employment | 805 | 81 |
| Goods, services and facilities | 95 | 9 |
| Land | – | – |
| Accommodation | 11 | 1 |
| Superannuation, insurance | 6 | 1 |
| Education | 6 | 1 |
| Clubs | – | – |
| Administration of Commonwealth laws and programs | 72 | 7 |
| Application forms etc. | – | – |
| Trade unions, accrediting bodies | – | – |
| Total* | 995 | 100 |

* An area is recorded for each ground, so one complaint may have multiple and different areas.

| <i>Sex Discrimination Act</i> | <i>Total</i> |
|--|--------------|
| Terminated | 181 |
| At complainants request – section 46PE | – |
| Not unlawful | 2 |
| More than 12 months old | 5 |
| Trivial, vexatious, frivolous, misconceived, lacking in substance | 82 |
| Adequately dealt with already | 2 |
| More appropriate remedy available | 2 |
| Subject matter of public importance | – |
| No reasonable prospect of conciliation | 88 |
| Withdrawn | 52 |
| Withdrawn, does not wish to pursue, advised the Commission | 48 |
| Withdrawn, does not wish to pursue, settled outside the Commission | 4 |
| Conciliated | 197 |
| Administrative closure* | 22 |
| Total | 452 |

* Not an aggrieved party, state complaint previously lodged.

Chart 3: Sex Discrimination Act – outcomes of finalised complaints

4.3.7 Disability Discrimination Act

Table 23: Disability Discrimination Act – complaints received and finalised

| <i>Disability Discrimination Act</i> | <i>Total</i> |
|--------------------------------------|--------------|
| Received | 802 |
| Finalised | 682 |

Table 24: Nature of complainant's disability

| <i>Disability Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
|---|--------------|-----------------------|
| Physical disability | 176 | 21 |
| A mobility aid is used (e.g. walking frame or wheelchair) | 86 | 10 |
| Physical disfigurement | 13 | 2 |
| Presence in the body of organisms causing disease (e.g. HIV/AIDS) | 21 | 2 |
| Presence in the body of organisms causing disease (other) | 8 | 1 |
| Psychiatric disability | 134 | 16 |
| Neurological disability (e.g. epilepsy) | 50 | 6 |
| Intellectual disability | 24 | 3 |
| Learning disability | 25 | 3 |
| Sensory disability (hearing impaired) | 30 | 4 |
| Sensory disability (deaf) | 20 | 2 |
| Sensory disability (vision impaired) | 37 | 4 |
| Sensory disability (blind) | 31 | 4 |
| Work related injury | 62 | 7 |
| Medical condition (e.g. diabetes) | 74 | 9 |
| Other | 49 | 6 |
| Total* | 840 | 100 |

* One complainant may have multiple disabilities.

| <i>Disability Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
|--|--------------|-----------------------|
| Disability of person(s) aggrieved | 1 692 | 88 |
| Associate | 37 | 2 |
| Disability – person assisted by trained animal | 34 | 2 |
| Disability – accompanied by assistant | 9 | – |
| Disability – use of appliance | 8 | – |
| Harassment | 10 | 1 |
| Victimisation | 133 | 7 |
| Aids, permits or instructs | 8 | – |
| Total* | 1 931 | 100 |

* One complaint may have multiple grounds.

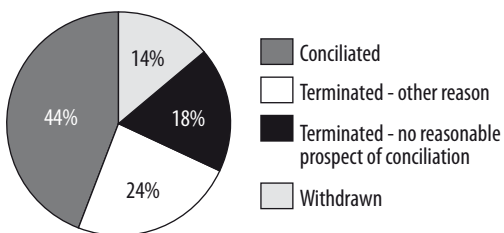
| <i>Disability Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
|--|--------------|-----------------------|
| Employment | 888 | 46 |
| Goods, services and facilities | 561 | 29 |
| Access to premises | 68 | 4 |
| Land | 2 | – |
| Accommodation | 44 | 2 |
| Incitement to unlawful acts or offences | – | – |
| Advertisements | – | – |
| Superannuation, insurance | 22 | 1 |
| Education | 137 | 7 |
| Clubs, incorporated associations | 13 | 1 |
| Administration of Commonwealth laws and programs | 144 | 8 |
| Sport | 6 | – |
| Application forms, requests for information | 6 | – |
| Trade unions, registered organisations | – | – |
| Unlawful to contravene Disability Standard | 40 | 2 |
| Total* | 1 931 | 100 |

* An area is recorded for each ground, so one complaint may have multiple and different areas.

| Table 27: Disability Discrimination Act – outcomes of finalised complaints | |
|---|--------------|
| <i>Disability Discrimination Act</i> | <i>Total</i> |
| Terminated | 285 |
| At complainants request – section 46PE | – |
| Not unlawful | 13 |
| More than 12 months old | 2 |
| Trivial, vexatious, frivolous, misconceived, lacking in substance | 141 |
| Adequately dealt with already | 3 |
| More appropriate remedy available | 5 |
| Subject matter of public importance | – |
| No reasonable prospect of conciliation | 121 |
| Withdrawn | 91 |
| Withdrawn, does not wish to pursue, advised the Commission | 86 |
| Withdrawn, does not wish to pursue, settled outside the Commission | 5 |
| Conciliated | 295 |
| Administrative closure* | 11 |
| Total | 682 |

* Not an aggrieved party, state complaint previously lodged.

Chart 4: Disability Discrimination Act – outcomes of finalised complaints



4.3.8 Age Discrimination Act

| Table 28: Age Discrimination Act – complaints received and finalised | |
|---|--------------|
| <i>Age Discrimination Act</i> | <i>Total</i> |
| Received | 106 |
| Finalised | 115 |

| Table 29: Age Discrimination Act – complaints received by age group of complainant | | |
|---|--------------|-----------------------|
| <i>Age Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| 0 – 14 years | 2 | 2 |
| 15 – 24 years | 10 | 9 |
| 25 – 34 years | 5 | 5 |
| 35 – 44 years | 13 | 12 |
| 45 – 54 years | 18 | 17 |
| 55 – 64 years | 31 | 29 |
| > 65 years | 21 | 20 |
| Unknown | 6 | 6 |
| Total | 106 | 100 |

| Table 30: Age Discrimination Act – complaints received by area | | |
|---|--------------|-----------------------|
| <i>Age Discrimination Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| Employment | 135 | 68 |
| Goods, services and facilities | 37 | 19 |
| Access to premises | – | – |
| Land | – | – |
| Accommodation | 13 | 6 |
| Incitement to unlawful acts or offences | – | – |
| Advertisements | 4 | 2 |
| Superannuation, insurance | 4 | 2 |
| Education | – | – |
| Clubs, incorporated associations | – | – |
| Administration of Commonwealth laws and programs | 6 | 3 |

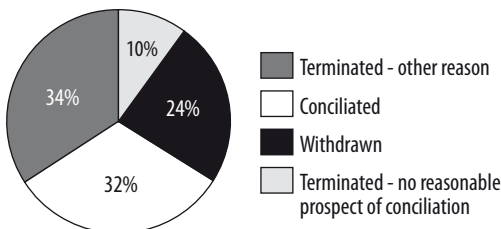
| Area | Count | Total |
|---|------------|------------|
| Sport | – | – |
| Application forms, requests for information | – | – |
| Trade unions, registered organisations | – | – |
| Total* | 199 | 100 |

* One complaint may have multiple and different areas.

| Age Discrimination Act | Total |
|--|------------|
| Terminated | 48 |
| At complainants request – section 46PE | – |
| Not unlawful | 3 |
| More than 12 months old | 1 |
| Trivial, vexatious, frivolous, misconceived, lacking in substance | 33 |
| Adequately dealt with already | – |
| More appropriate remedy available | – |
| Subject matter of public importance | – |
| No reasonable prospect of conciliation | 11 |
| Withdrawn | 27 |
| Withdrawn, does not wish to pursue, advised the Commission | 25 |
| Withdrawn, does not wish to pursue, settled outside the Commission | 2 |
| Conciliated | 35 |
| Administrative closure* | 5 |
| Total | 115 |

* Not an aggrieved party, state complaint previously lodged.

Chart 5: Age Discrimination Act – outcomes of finalised complaints



4.3.9 Human Rights and Equal Opportunity Commission Act

| Table 32: HREOCA – complaints received and finalised | |
|---|--------------|
| <i>Human Rights and Equal Opportunity Commission Act</i> | <i>Total</i> |
| Received | 149 |
| Finalised | 138 |

| Table 33: HREOCA – complaints received by ground | | |
|--|--------------|-----------------------|
| <i>Human Rights and Equal Opportunity Commission Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| Race (ILO 111) | – | – |
| Colour (ILO 111) | – | – |
| Sex (ILO 111) | – | – |
| Religion (ILO 111) | 20 | 13 |
| Political opinion (ILO 111) | 5 | 3 |
| National extraction (ILO 111) | – | – |
| Social origin (ILO 111) | – | – |
| Age (ILO 111) | 2 | 1 |
| Medical record (ILO 111) | 2 | 1 |
| Criminal record (ILO 111) | 54 | 34 |
| Impairment (including HIV/AIDS status) (ILO 111) | – | – |
| Marital status (ILO 111) | – | – |
| Disability (ILO 111) | – | – |
| Nationality (ILO 111) | 1 | 1 |
| Sexual preference (ILO 111) | 17 | 11 |
| Trade union activity (ILO 111) | 16 | 10 |
| International Covenant on Civil and Political Rights | 34 | 21 |
| Declaration on the Rights of the Child | 4 | 3 |
| Declaration on the Rights of Mentally Retarded Persons | – | – |
| Declaration on the Rights of Disabled Persons | – | – |
| Convention on the Rights of the Child | – | – |
| Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief | 2 | 1 |
| Not a ground within jurisdiction | – | – |
| Not a human right as defined by the Act | 1 | 1 |
| Total* | 158 | 100 |

*One complaint may have multiple grounds.

| Table 34: HREOCA – complaints received by area | | |
|--|--------------|-----------------------|
| <i>Human Rights and Equal Opportunity Commission Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| Acts or practices of the Commonwealth | 37 | 23 |
| Employment | 115 | 73 |
| Not act or practice of the Commonwealth (not employment cases) | 6 | 4 |
| Total* | 158 | 100 |

* An area is recorded for each ground, so one complaint may have multiple and different areas.

| Table 35: HREOCA – non-employment complaints received by sub-area | | |
|--|--------------|-----------------------|
| <i>Human Rights and Equal Opportunity Commission Act</i> | <i>Total</i> | <i>Percentage (%)</i> |
| Prisons, prisoner | 4 | 9 |
| Religious institutions | – | – |
| Family court matters | – | – |
| Other law court matters | 5 | 12 |
| Immigration | 30 | 70 |
| Law enforcement agency | – | – |
| State agency | 1 | 2 |
| Other service provider (private sector) | – | – |
| Local government | – | – |
| Education systems | 1 | 2 |
| Welfare systems | – | – |
| Personal or neighbourhood conflict | – | – |
| Health system | – | – |
| Other | 2 | 5 |
| Total | 43 | 100 |

| Table 36: HREOCA – Outcomes of finalised complaints | |
|--|--------------|
| <i>Human Rights and Equal Opportunity Commission Act</i> | <i>Total</i> |
| Declined | 106 |
| Does not constitute discrimination | 14 |
| Human rights breach, not inconsistent or contrary to any human right | 8 |
| More than 12 months old | 2 |
| Trivial, vexatious, frivolous, misconceived, lacking in substance | 50 |
| Adequately dealt with already | 1 |
| More appropriate remedy available | 4 |
| Withdrawn, does not wish to pursue, advised the Commission | 27 |
| Withdrawn, does not wish to pursue, settled outside the Commission | – |
| Withdrawn or lost contact | – |
| Conciliated | 28 |
| Referred for reporting* | 4 |
| Administrative closure** | – |
| Total | 138 |

* Complaints in this category were not conciliable and therefore transferred from HREOC's Complaint Handling Section to Legal Services for further inquiry and possible report.

** Not an aggrieved party, state complaint previously lodged.

Chart 6: Human Rights and Equal Opportunity Commission Act – outcomes of finalised complaints

