



Annual report 2010 - 2011

equal opportunity



Government of South Australia
Equal Opportunity Commission

| [Contents](#) | [Messages](#) | [Highlights](#) | [Complaints](#) | [Programs](#) |

Details

Equal Opportunity Commission

Address	Level 10, 30 Currie Street Adelaide SA 5000
Phone	(08) 8207 1977
E-mail	eoc@agd.sa.gov.au
Website	www.eoc.sa.gov.au

Document version

Status	Final
Date	29 November 2011
Reference	n/a

Availability

Confidentiality	Public
Copies	n/a
Do not publish until	n/a

Contents

Annual report 2010 - 2011	1
1. Message from the Commissioner	5
2. Highlights	7
2.1. Skilled Migrants - Barriers to Employment.....	8
2.2. Mature Age Employment.....	9
2.3. Conciliation Video	11
Case study - Disability discrimination in insurance	12
2.4. Disability and Ageing Expo	13
Case study - identity of spouse discrimination in employment	15
2.5. Early Resolution	16
2.5.1. Case Study 1	16
Case study - downgraded after maternity leave	17
2.6. E04 Schools Re-development	18
3. Complaints.....	19
3.1. Complaints received.....	20
3.1.1. Complaints lodged 2010 -2011	21
3.1.2. Complaints - types of discrimination	22
3.1.3. Complaints - where discrimination occurs	22
Case study - reasonable accommodation for cancer patient.....	23
Case study - seeking hotel accommodation with children	24
3.2. Complaint outcomes	25
3.2.1. Percentage of complaints resolved through conciliation	26
3.3. Our service	27
3.3.1. Satisfaction rates - complainants and respondents	28
3.3.2. Impartiality rates - complainants and respondents	28
Case Study - No Way Home	29
3.4. Enquiries	30
3.4.1. Enquiries - types of discrimination	31
3.4.2. Enquiries - where discrimination is reported.....	31
3.5. Whistleblowers	32
Case study - Victimization for whistleblower.....	33
3.6. The Equal Opportunity Tribunal	34
3.7. Exemptions from the Act.....	35
3.7.1. SA Minister for Education	35
3.7.2. Aboriginal Legal Rights Movement Inc.	35
3.8. Complaints referred to the Tribunal with assistance.....	36

| [Contents](#) | Messages | Highlights | Complaints | Programs |

3.8.1. Mysko v Gibbons - Sexual Harassment.....	36
3.8.2. Paine v Lyberopolous - Sexual Harassment.....	36
3.8.3. Jaber v Thomadakis - Sexual Harassment.....	36
3.9. Complaints referred to the Tribunal without assistance	37
3.9.1. Rankine v DTEI	37
3.9.2. Price v Equal Opportunity Commission	37
3.9.3. Ingham v DTEI	37
3.9.4. Douglas v SA Legal Practitioners' Registry Board.....	37
3.9.5. Deng v SA Ambulance Service.....	37
3.9.6. Hanrahan v Woolworths.....	37
3.9.7. Estafanos v Tiger Airways Australia Pty Ltd	37
3.9.8. Cakouros v Capgemini.....	37
3.9.9. Pope v Invicta Services Ltd.....	38
3.9.10. Rana v University of South Australia	38
3.9.11. Hobby v Ambrose & Associates.....	38
3.9.12. Sloan v SA Youth Arts Board.....	38
3.9.13. May v Central Districts Football Club, Starkey & Stewart.....	38
3.9.14. Somasundaram v Adelaide Health Service	38
3.10. Equal Opportunity Tribunal decisions	39
3.10.1. Rankin v State Electoral Commissioner [2010] SAEOT 3 -	39
Disability discrimination.....	39
3.10.2. Rana v SkyCity Adelaide Pty Ltd [2010] SAEOT 4 - Disability/Race discrimination	39
3.10.3. Pearce v Charles Parletta Real Estate T/A LJ Hooker - Glynde [2011] SAEOT 1 - Disability discrimination	39
3.10.4. Mysko v Gibbons.....	40
DCCIV-10-1751.....	40
3.10.5. Deng v SA Ambulance Service DCCIV-10-1496	40
4. Programs	41
4.1. Training with the Commission	42
4.2. E-Learning Program - Making Training Sustainable	43
4.3. Case study - Racial preference.....	44
4.4. The top 20 hits of 2010-11	45
4.5. The Commissioner and the community	47
4.6. Freedom of information	48

1. Message from the Commissioner



I am pleased to report that 2010-11 has been a busy and productive year for the Equal Opportunity Commission.

The benefits of changes made to the Commission's legislative base have been evident. 2010-11 was the first full year during which the new grounds, brought in by amendments to the *Equal Opportunity Act 1984* in October 2009, have been in force.

Of the new grounds established by the legislative amendments, caring responsibilities attracted the most enquiries and complaints, primarily in the area of employment. Complaints were received from both men and women with parental responsibilities or who are carers for a disabled child, relative or elderly parent.

The most common complaint heard in regard to this in 2010-11 was from women returning to work after having a child. Women can experience difficulty when employers are unwilling to consider requests to return to work on a part time basis, or will not allow for increased flexibility in working arrangements or conditions, or do not wish the female employee to return at all.

At a time when skilled employees are in short supply and the rates of men and women participating in the workforce are relatively low, employers should be aware that losing trained staff can come at significant cost. Enabling staff to return to work with increased flexibility, while keeping in mind the needs of the business, seems to make good financial sense as well as promoting a positive workplace culture.

In addition to the highlights noted throughout this report, it is also worth mentioning that this year we have:

- responded to over 1500 enquiries and requests for information
- achieved one of the best resolution rates in the country by resolving 56% of complaints.

| Contents | [Messages](#) | Highlights | Complaints | Programs |

- redeveloped and launched our new 'EO4 Schools' website, with an immediate increase in website views.

The Commission has also continued to collaborate with a range of agencies and advocates to increase our reach into the community. Notable partnerships include joint project work with SafeWork SA and other South Australian statutory authorities, as well as rights protection agencies. With many common goals and messages, these groups have been combining resources to inform more South Australians about their rights and avenues of complaint. This is a particularly important strategy in times of budget constraints and staff reductions, and can simplify access to information and services for members of the community.

I am also pleased to report, that despite our size and capacity, the Commission has continued to improve the service that can be offered. We have seen a record level of client satisfaction

amongst people who access our services, including both complainants and respondents. In addition complaints are being assessed and resolved in line with our time frame targets, with over 70% of complaints dealt with within four months and 90% within six months.

My thanks to our small group of highly skilled staff for their continued enthusiasm and commitment to achieving high service standards.



Anne Burgess

Acting Commissioner for Equal Opportunity

2. Highlights

[2.1 Skilled Migrants](#)

Barriers to employment

[2.2 Mature Age Employment](#)

Tackling the issue of age discrimination in employment

[2.3 Conciliation DVD](#)

Understanding the process

[2.4 Disability and Ageing Expo](#)

Raising awareness in the community

[2.5 Early Resolution of Complaints](#)

Negotiating outcomes before issues escalate

[2.6 EO4 Schools re-development](#)

Informing young and new workers of their rights and responsibilities at work

2.1. Skilled Migrants

New arrivals to South Australia who are entering the workforce can often be unaware of their rights and as a result can be particularly vulnerable to exploitation and prejudice.

As part of the continuing New Workers program, the Commission provides information at monthly Immigration SA new arrival information sessions for skilled migrants. Through the Interlink program, the Commission has also continued to present information sessions to new migrants at TAFE who have English as a second language.

During these sessions participants are given a brief introduction to their rights and responsibilities in the Australian workplace. Topics such as wages, safety, recruitment practices, bullying, harassment and unfair dismissal are also covered.

Through the Commission's interaction with new migrants, it became apparent that many face considerable difficulties in finding employment. Barriers are often experienced and reported when employers cite a requirement of 'local

knowledge or experience', or have reservations about hiring workers who are on visas.



As a result of anecdotal feedback in these sessions, the Commission decided to run a survey in July 2011, with the assistance of Skills Recognition Services, in order to gather further information surrounding skilled migrants' experiences when job hunting. The Commission plans to use this information to design future work in this area that targets systemic discrimination.

2.2. Mature Age Employment

Under-utilising mature South Australian workers is not only discriminatory, it could also lead to future skill shortages in a state with a relatively high ageing population.

Following the Age Discrimination Survey of 2010, the Commission found that gaining and retaining employment was still a significant issue for older South Australians. Many people reported problems in recruitment, feeling pressure to retire, noticing promotion and training opportunities ceasing, and being generally bullied at work by younger co-workers or managers.

As a result, the Commission partnered with SafeWork SA's Work Life Balance Strategy to deliver the 'Age Matters' project. SafeWork SA and the Commission received funding from the Office for the Ageing (now Disability, Ageing and Carers) to run the project which will provide:

- written resources to assist employers and employees to understand their rights and responsibilities
- short videos to be used as training and awareness-raising tools
- a training module to be used by employers.

As part of the process of developing these tools, SafeWork SA and the Commission have brought key figures together for consultations and workshops, and will be facilitating focus groups in 2011 to gain further feedback and input into the project's outcomes.

The Commission's work comes at a time when other jurisdictions are also recognising the importance of tackling age discrimination. Recent changes to the federal *Age Discrimination Act 2004* (Cth) provided for the appointment of an Age Discrimination Commissioner, who will work towards increasing the profile of this issue nationally. The Commission will collaborate with partners nationally on this important work.



Case study - mature age recruitment

Harry contacted a regional labour hire agency about gaining work as a grapevine pruner. He was asked how old he was. Harry answered: "A very fit sixty year old." The agency then told him that he was too old to apply, and hung up.



Harry made a complaint to the Equal Opportunity Commission. When approached for a response, the labour hire agency said that the telephone advisor did not recall the conversation, but they agreed that the alleged behaviour was inappropriate.

Through conciliation, the company agreed to interview him, and Harry got the job.

2.3. Conciliation Video

Many people making and responding to complaints at the Commission are not familiar with the conciliation process, unsure about its purpose and apprehensive about what is required of them. While complaint handlers are happy to answer any questions they may have, some are still unsure of how the conciliation conference will operate.

With this in mind, the Commission engaged Short Focus Films to produce a short video showing a sample conciliation conference, the roles and expectations of the parties and the different outcomes that are possible. This visual representation of the conciliation process is another tool for the Commission to put complainants and

respondents at ease, and assist them to get the most out of the process.

A video version is now on the Commission's website. DVDs are provided to complainants and respondents before conciliation.



You can watch the video here:

<http://www.eoc.sa.gov.au/eo-resources/videos/conciliation-video>

Case study - Disability discrimination in insurance

Adam uses a portable machine to assist his breathing because he has sleep apnoea. Planning to travel overseas, he tried to obtain travel insurance that covered his machine as additional luggage. He was informed that the policy covered laptops, notebooks, handheld computers, cameras and video cameras up to \$4,000, but all other items up to a value of only \$700.



Adam felt this was disability discrimination, and complained to the Commission. The insurer was contacted, and at first they replied that they would not respond to the complaint because

their company is based overseas, is owned by another company who is the underwriter, acts only as a wholesaler for its travel insurance and in any case doesn't distribute this product any more.

The Commission asked the insurer to explain why the decision had been made in the first place.

A representative from the insurer agreed to attend a conciliation conference. As a result, the insurer committed to review its policy requiring an additional premium for insuring items used for medical purposes, and reimbursed Adam the cost of the premium paid for the sleep apnoea machine.

2.4. Disability and Ageing Expo

In 2010-11 the Commission attended the 2010 Disability and Ageing Expo to collect information about the public's experiences of discrimination. Held at Wayville Showgrounds, several thousand people attended, with many stopping to pick up printed information, to talk about issues, and fill in a questionnaire that was developed for the event. The questionnaire was developed to find out where discrimination is experienced, people's knowledge of the Commission and the services and assistance it can offer.

Seventy-six questionnaires were completed, with the number and the breadth of responses and disabilities represented, making it a valuable opportunity to collect qualitative data.

Nearly half of the respondents were carers for a person with a disability; with the rest being people with disabilities or workers in the health care industry.

A wide range of disabilities were represented, including: mental health issues and depression, neurological and brain injury, cancer and hearing impairments. Carers who responded were caring for people with disabilities including: cerebral palsy, ADHD, asperger's syndrome, autism, intellectual disabilities such as dementia

and alzheimers, as well as various physical disabilities.

The most common reported place of discrimination related to public transport: buses, taxis, trains and airplanes. 'Getting a job' came a close second. 'Finding accommodation' was the third-most frequent problem for people with a disability.

When asked about whether people had heard of the Commission, over three-quarters said they had. However, only 63% of carers were aware of the Commission, which means we have more work to do informing carers of their rights.

It is concerning that despite most having heard about the Commission only about one-quarter of people with a disability said they used the Commission's services. Few have accessed the Commission's information, but when they did, the most commonly-used resource was the Commission's website.

The questionnaire also asked about how the Commission's services could be improved. Education, 'awareness,' and effective provision of information were the chief responses. Other comments included enforcing or strengthening equal opportunity laws, and better acceptance of people with disability.

In the experience of staff of the Commission, people with a disability or experiencing age discrimination are often reluctant to make a complaint. Throughout this year the Commission

will continue to explore ways to ensure that services are known and accessible to best assist the South Australian Community.

Case study - identity of spouse discrimination in employment

Mandy worked as a café assistant. Her boss heard that her husband had been charged by police over growing an illegal drug, and shortly after this her employment was terminated for misconduct. A Centrelink employee, however, told her that she was dismissed because of "guilt by association."



Mandy lodged a complaint alleging that she had been discriminated against because of the identity of her spouse. The café manager denied that there had been any unlawful discrimination, but felt that Mandy herself had been implicated in illegal activity which affected the image of their business.

The Commission liaised with the parties to explore a conciliated outcome, and eventually the café manager agreed to provide Mandy with a positive job reference and to pay her \$1,000.

2.5. Early Resolution

The Commission is often able to assist in resolving issues without the need to follow a formal complaints process. Two such examples are below:

2.5.1. Case Study 1

Jane saw an advertisement for a job in a restaurant window, but it was only in Chinese. She felt offended by this, and made a complaint to the Equal Opportunity Commission: she believed that this could be discrimination on the basis of a person's race, as it would prevent a non-Chinese speaking person from applying for the job.

The Commission confirmed to Jane that the Equal Opportunity Act has a specific section that makes it an offence to publish an advertisement that indicates an intention to be unlawfully discriminatory.

The Commissioner wrote a letter to the owners of the business, advising them of Jane's complaint and that they may be in breach of this section of the Act. The business replied with a letter of apology and an undertaking to also advertise in English in future. Jane was happy with this course of action.



2.5.2 Case Study 2

Mick is a member of a large sports association, and sometimes he orders drinks from the bar before or after matches. Because he is gluten intolerant, he asked the association to stock gluten-free beer or cider. They refused; so he asked that he be allowed to bring his own, but they also refused to let him do this.

Mick contacted the Equal Opportunity Commission. He explained that 1% of the population are gluten intolerant, and he felt they should be allowed to provide their own suitable drinks if gluten-free drink options are not provided by the vendor.

The Commissioner contacted the association, who replied with an apology for Mick's inconvenience, and an undertaking that they will be offering gluten-free drinks at their next major event. Mick was satisfied with this response, and the matter was closed.

Case study - downgraded after maternity leave

Deborah worked for a building company as a manager for several years before falling pregnant. She took maternity leave, but upon returning to work was told that her position had changed. All management responsibilities had been removed from her job description. Deborah felt that this was unfair, and spoke to her manager about it. She was told not to take it personally but they thought her priorities had changed.

She lodged a complaint with the Commission. After learning of the complaint, Deborah's employer entered into discussions with her, and they negotiated a new description for her role. This looked acceptable to Deborah,

and better suited to her original position responsibilities. The matter was thus resolved.



2.6. E04 Schools Re-development

One ongoing strategy to combat discrimination in the South Australian community is to educate young people about equal opportunity and human rights. To help achieve this goal, since 2006 the Commission has maintained a website specifically for school-aged students.

In 2010, the website *E04 Schools* was redeveloped in consultation with educational bodies and users. Consultation showed that there was a need to modernise the site to make it more engaging and relevant for both students and teachers.

As well as reflecting a fresh and colourful look, the new *E04 Schools* site now has improved accessibility and more interactive content, including videos, quizzes and crosswords. The site also contains resources to assist teachers to incorporate discrimination topics into the curriculum. These include debating, discussion and essay topics.

The new site went live in August 2010, and was officially launched in December 2010. Prior to the launch the site

received approximately 10,000 visits per year from students and teachers. Since the redevelopment launch date visits have more than doubled to over 23,000 visits in just 6 months.

As most popular features of the website are the interactive quizzes, videos and crosswords, the Commission plans to add more interactive content in the future. This will include contributions from South Australian school students in the form of video, animations and online game entries from our annual *Rights, Camera, Action!* competition.



3. Complaints

[3.1 Complaints received](#)

Statistical information on complaints received

[3.2 Complaint outcomes](#)

Rates and trends

[3.3 Our service](#)

Feedback from people making and responding to complaints

[3.4 Enquiries](#)

Who doesn't lodge a complaint?

[3.5 Whistleblowers](#)

Complaints received this year

[3.6 Equal Opportunity Tribunal](#)

Referrals to the Tribunal and Tribunal decisions



3.1. Complaints received

When people complain to the Commission, they must identify that an act of discrimination occurred for one of the reasons listed in the *Equal Opportunity Act 1984* (SA). A complainant must also identify that the discrimination occurred in an area of public life, as described in the Act.

In 2010-11, 246 complaints were received, a figure that is consistent with trends over the past few years. While a marginal increase on 2009-10 complaint numbers of 244 complaints, it is a 17% reduction of the ten-year average of 285.

For the fifth consecutive year, the highest number of complaints relate to disability and race. The more recent ground of caring responsibilities accounted for 6% of lodged complaints in 2010-11. This year there were reductions in the number of sexuality and marital status complaints.

The majority of complaints received involve discrimination in the workplace. In 2010-11, over 60% of complaints lodged related to employment. The area of employment is extensive and covers

recruitment, treatment during employment and termination of employment.

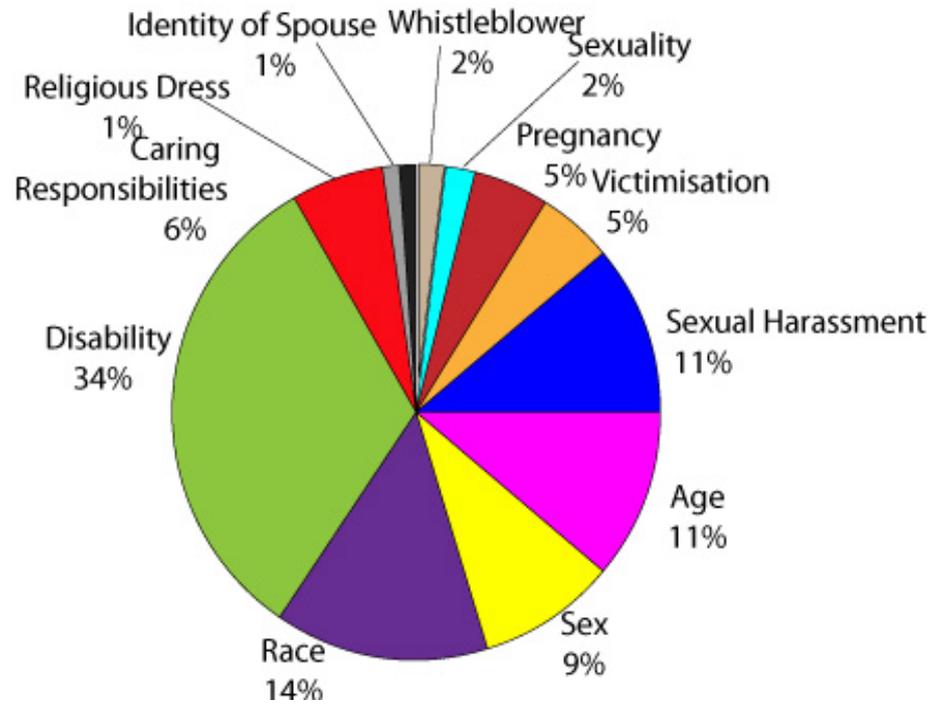
Some behaviours in public life seem unfair but are not covered by the Act. Where complaints fall outside of the Commission's jurisdiction, the Commission refers people to other avenues that may be available to assist. Despite amendments to the Act in 2009, there are still areas only covered at the Commonwealth level – such as discrimination on the grounds of religion and irrelevant criminal record. These complainants are referred to the Australian Human Rights Commission.

3.1.1. Complaints lodged 2010 -2011

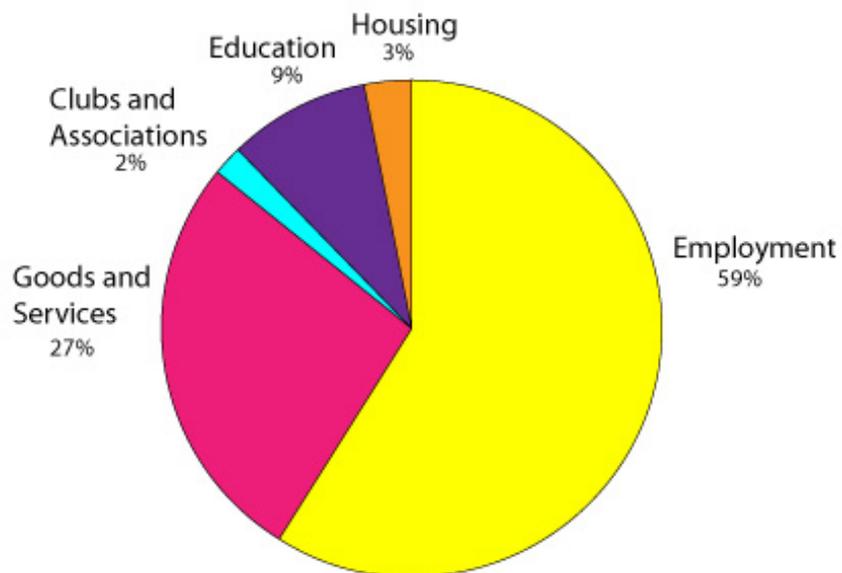
	Employment	Customer Service	Education	Clubs	Housing	Total
Disability	38	36	13	1	4	92
Race	19	14	5	1	2	41
Sexual Harassment	22	2	0	0	1	25
Sex	18	5	0	1	0	24
Age	21	3	4	0	2	30
Victimisation	9	3	1	0	1	14
Caring responsibilities	14	2	0	0	0	16
Pregnancy	12	0	0	0	0	12
Sexuality	1	4	0	0	0	5
Marital Status	0	0	0	0	0	0
Association with a child	0	0	0	0	1	1
Whistleblower	4	0	1	0	0	5
Identity of spouse	1	2	0	0	0	3
Religious dress	1	1	0	0	0	2

Note: some people complained of more than one type of discrimination resulting in a total of 265 separate types of discrimination complaint lodged.

3.1.2. Complaints - types of discrimination



3.1.3. Complaints - where discrimination occurs



Case study - reasonable accommodation for cancer patient

Simon worked on a contract basis for a telecommunications company. He told his manager that he had a lump in his neck tested and it was found to be cancer. After this, he felt that the employer treated him differently. To accommodate his chemotherapy, he required one day off a fortnight - but his manager said that this was not possible. He added that Simon would be a risk to himself or others, and told him he could only return to work after the end of his treatment.

Simon felt that his employer had not provided reasonable accommodation for his condition, so made a complaint to the Commission of disability

discrimination. Before the conciliation conference, the company was given Simon's settlement proposal, which requested that the company pay him \$15,000 in compensation for lost income, and provide a written apology and job reference. The complaint was resolved with the employer agreeing to this proposal.



Case study - seeking hotel accommodation with children

Cecilia was looking for accommodation in the south-east of South Australia on the internet. She chose a place, checked the rates, but then noticed the hotel said they catered only "for children of eight years of age and older." Cecilia rang the hotel and asked them to clarify the statement; they said that children under the age of eight years could not stay there.

Cecilia made a complaint to the Commission, arguing that it is discrimination on the grounds of age and possibly association with a child.

Conciliation was proposed, and it was explained to Cecilia that if the complaint could not be conciliated the Commissioner may recommend that the

complaint be referred to the Tribunal. It was also explained to her that the Tribunal could only deal with the individual business complained about and not other businesses that had a similar a restriction. Cecilia's response was to withdraw her complaint and write to the Minister of SA Tourism, as she wanted the practice stopped everywhere.



3.2. Complaint outcomes

The Commission has a legislative duty to endeavour to resolve complaints of discrimination through conciliation. Over the past year 56% of complaints covered by our Act were resolved through conciliation. This is consistent with an increasing trend seen in 2009-10, and 7% above the ten-year average.

A Conciliation Officer's role is to remain impartial and encourage the parties to reach an agreement during a conciliation conference. A variety of outcomes can be negotiated.

In 2010-11 42% of complaints settled with a financial component; this is an increase of 7% compared to last year. Five agreements were for amounts over \$10,000. The average settlement amount was under \$4,000.

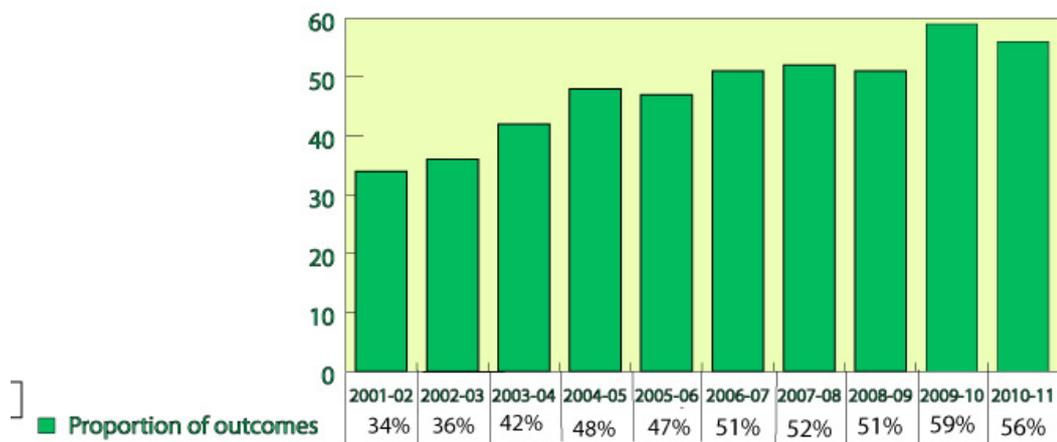
A common misconception is that the people responding to a complaint will be required to pay a large sum of money to the person making the complaint. Although there is often a financial

component to an agreement, some of the most successful outcomes involve alternative undertakings.

For example, complainants often seek an agreement which makes it a requirement that the respondent review its equal opportunity policies or undertakes staff training. This can result in long term changes to workplace culture and an increased awareness of discrimination issues. In 2010-11 35% of conciliated outcomes involved an agreement to review policies or undertake training.

Other common outcomes include respondents agreeing to apologise or to give an undertaking to the complainant. For example, an employer may agree to provide a former employee with a reference, or a business might agree to change the practice that led to a complaint. During the last financial year, 53% of conciliated outcomes involved the respondent making an apology to the complainant.

3.2.1. Percentage of complaints resolved through conciliation



3.3. Our service

The Commission aims for the highest standard in the ways it communicates with people who make and respond to complaints. It is crucial in resolving a complaint that the parties see the Commission as providing an impartial service.

As part of the Commission's commitment to continuous improvement of services, complainants and respondents are asked to complete an evaluation form after complaints are finalised. Broadly, the questions address four issues: communication of information, impartiality, timeliness and overall satisfaction.

A sample of responses follows:

"Thank you so much for giving me a voice. It was highly appreciated"

Complainant

"...Special thanks to the conciliator for his courtesy, his patience, his thoroughness and his professionalism."

Complainant

"Your conciliator was very pro-active in calling the matter to conciliation very early (before requiring a formal response), and this and their handling of

the conciliation led to a very efficient and effective resolution of the matter to the benefit of the complainant and ourselves."

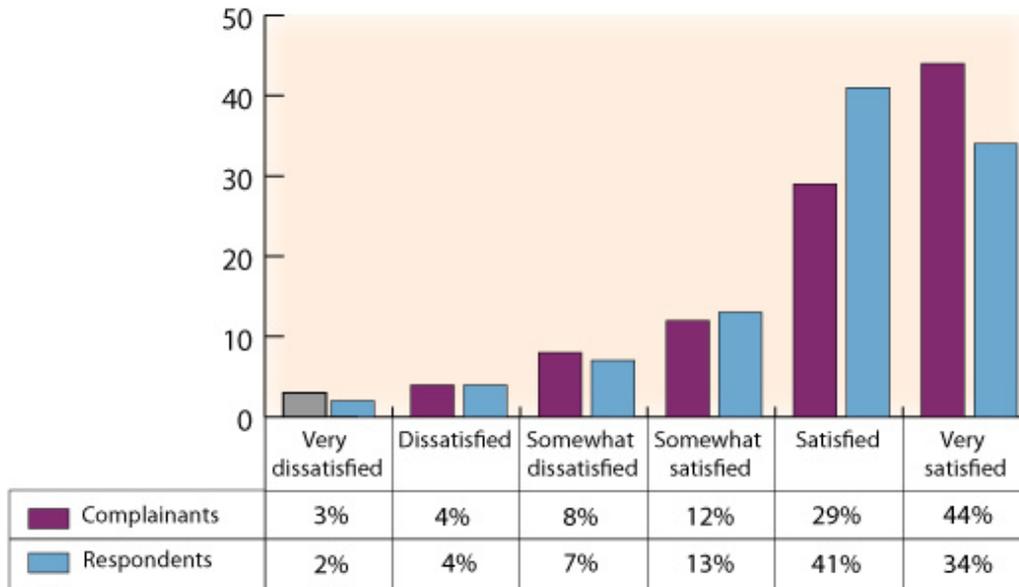
Respondent

Of those who filled in evaluations, 96% of complainants and 94% of respondents agreed that they were well-informed throughout the process. This includes the provision of fact sheets, general information and keeping parties up to date. In addition conciliation officers often spend time explaining complex discrimination issues to parties and answering queries about the process.

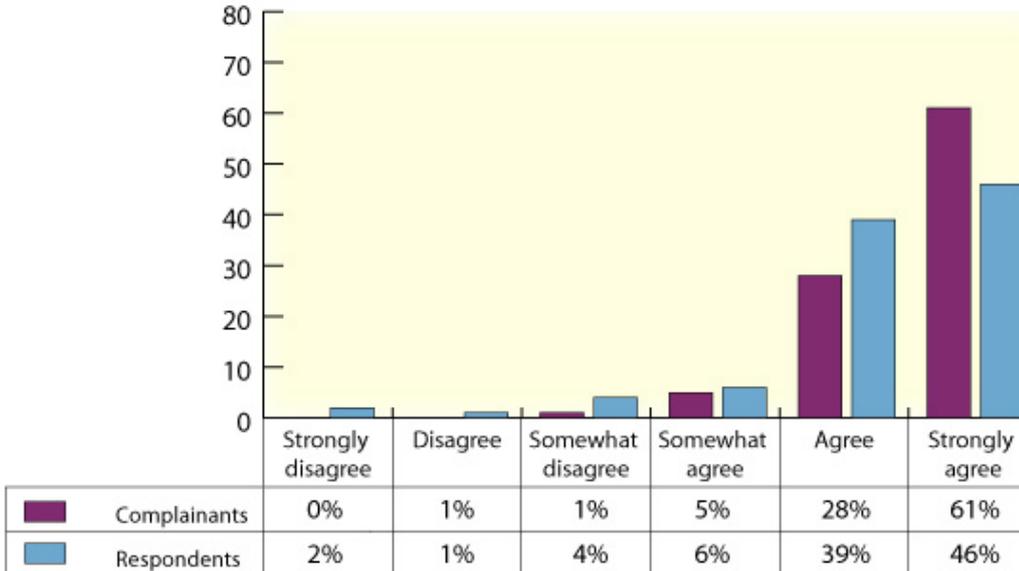
The vast majority of complainants and respondents felt that the Commission remained neutral in the way their complaint was handled. Also, 88% of complainants and 80% of respondents were satisfied with the timeliness of the Commission's service.

In terms of overall satisfaction, 84% of complainants were satisfied with the outcome and the complaint handling process, and 88% of respondents said they were satisfied overall with the process.

3.3.1. Satisfaction rates - complainants and respondents



3.3.2. Impartiality rates - complainants and respondents



Case Study - No Way Home

Corinna and her carer Bill, claimed discrimination on the grounds of disability and caring responsibilities. They arranged for their local council to perform work on the street and footpath outside their house, but the council provided minimal notice of the commencement of work. Due to Corinna's disability she was unable to walk long distances, and could not walk to the end of the street where the only car parking was available for the duration of council works. As a result she and Bill were forced to stay in a

hotel for the duration of the work being carried out by the council.

Bill and Corinna came to the Commission and claimed discrimination. When asked for a response, the council denied treating the complainants unfavourably because of a disability or caring responsibilities. Nevertheless, they agreed to reimburse Bill and Corinna's hotel expenses of \$1350. The council also gave an assurance that their practices would be reviewed.

3.4. Enquiries

The Commission receives a large number of telephone and email enquiries from individuals who believe they have been discriminated against, and from businesses seeking information about discrimination issues.

An enquiry is often a first step prior to a formal complaint being lodged in writing and is a useful opportunity for information to be exchanged and options to be explored.

In 2010-11, enquiries were most frequently about allegations of disability, sex, sexual harassment and race discrimination.

Over a quarter of enquiries received were issues that the Commission could not assist with as the issues did not fall within the *Equal Opportunity Act 1984* (SA). Typically, these were occupational health and safety, industrial relations or legal issues – such as workplace

bullying, unfair dismissal and underpayment of wages. When such enquiries are made, the Commission refers the client on to the most appropriate agency to assist with the issue.

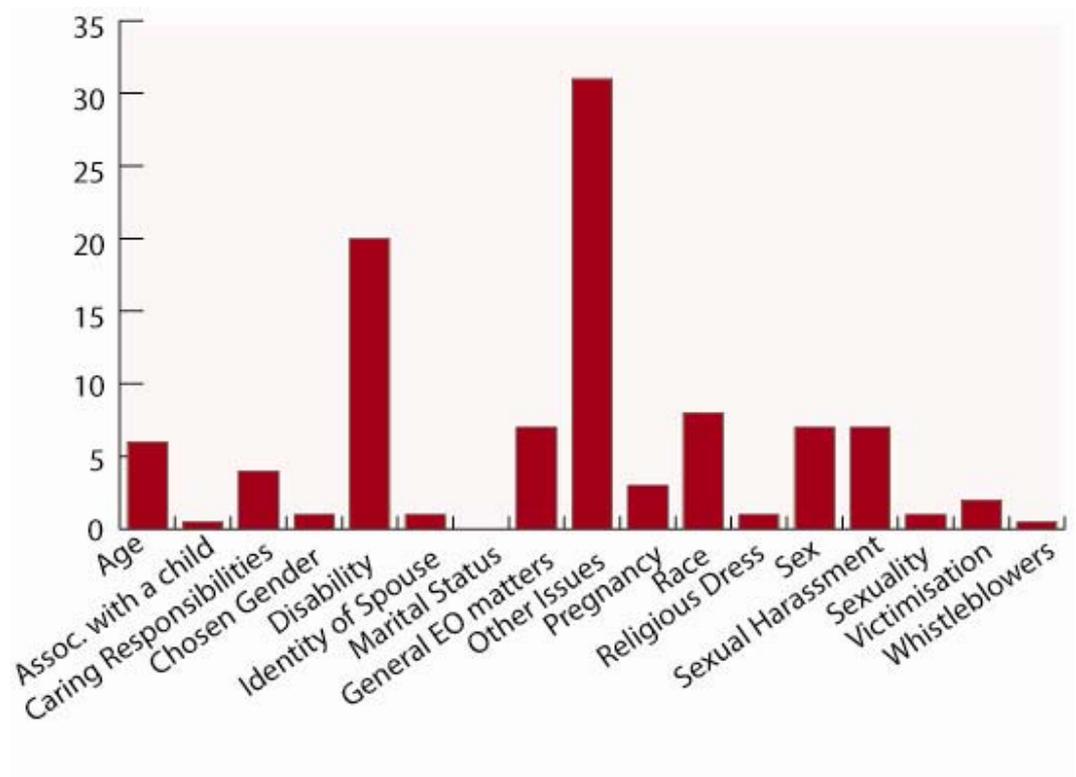


Enquiry officer taking a call

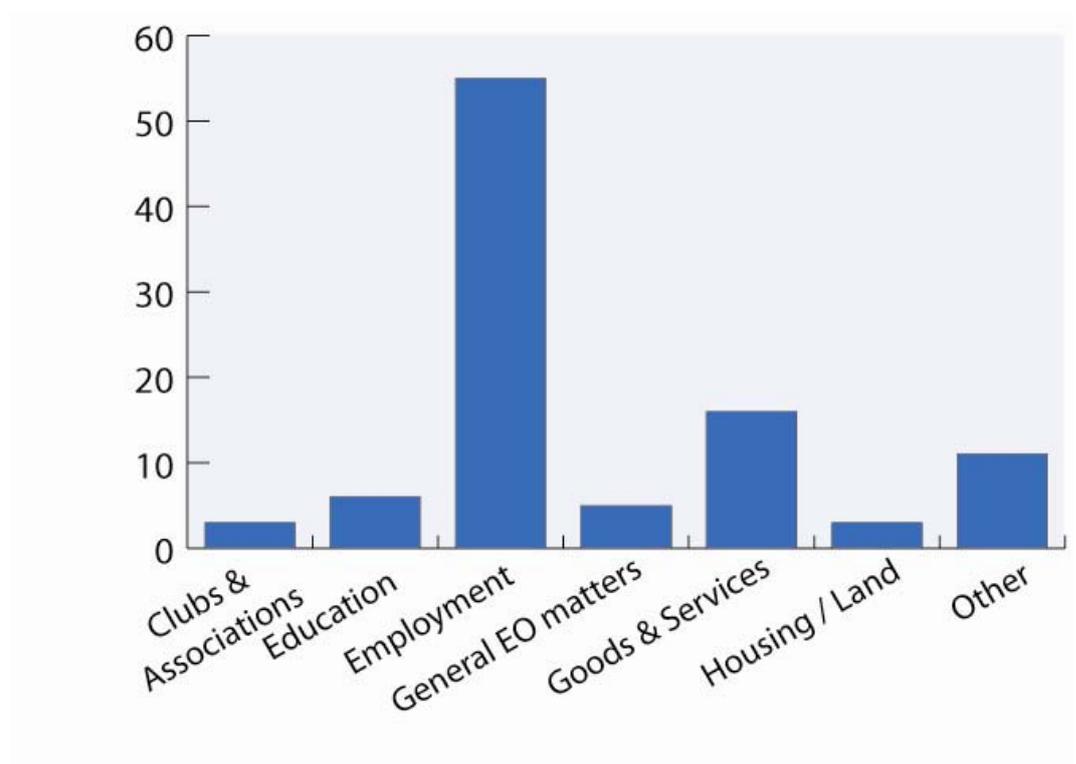
Over the years, the number of enquiries have declined as visits to the Equal Opportunity Commission website have increased. In 2010-11 EOC saw a 21% decrease in enquiries from the previous year.

For more information about our website statistics in 2010-11, see page 45.

3.4.1. Enquiries - types of discrimination



3.4.2. Enquiries - where discrimination is reported



3.5. Whistleblowers

The *Whistleblowers Protection Act 1993* (SA) exists to facilitate the disclosure, in the public interest, of significant maladministration and waste in the public sector and corrupt or illegal conduct generally. It does this by providing a disclosure process and legal protection for those who make disclosures.

This Act does not protect all disclosures of suspected misconduct, and not everyone who makes a disclosure is a whistleblower. Only a disclosure of 'public interest information' is protected. This means a disclosure of illegal activity, an irregular and unauthorised use of public money, substantial mismanagement of public resources or conduct that causes a substantial risk to public health, safety or the environment. Alternatively, public interest information can be maladministration by a public officer in performing official functions.

A disclosure is only protected if it is made to someone to whom it is reasonable to make the disclosure, such as an appropriate authority. That includes a disclosure to the police, the Ombudsman, the Auditor-General, the Commissioner for Public Employment, and others.

It is unlawful to treat the whistleblower less favourably because he or she has made a disclosure that is protected by the Act. This includes harm, intimidation, harassment, threats of reprisal or any other disadvantage. If someone does this, then the whistleblower can either sue the person for damages in the civil courts or can make a complaint of victimisation to the Commission.



Over the past year, the Commission received five complaints from people who believed that they were whistleblowers protected by the Act and who alleged victimisation after making disclosures. The Commissioner examined the complaints but, in the Commissioner's view, only three of these complaints met the requirements of the Whistleblowers Protection Act. One of these settled at conciliation, the two others have the option of a Tribunal hearing.

Case study - Victimisation for whistleblower

Matilda was employed by a tertiary institution. While working on a research project, she thought that the lecturer overseeing the project was misappropriating grant money. She disclosed her discovery to senior staff at the tertiary institution and later to the Ombudsman. When her contract ended, she was not offered further work, and also suffered loss of her tertiary supervision.

Matilda made a complaint of whistleblowing to the Commission. The institution refuted the allegations. They

said funding was not available for an extension to Matilda's contract, and she chose not to recommence her tertiary studies. The institution did not wish to conciliate the matter, so Matilda withdrew her complaint and pursued it in the Equal Opportunity Tribunal.

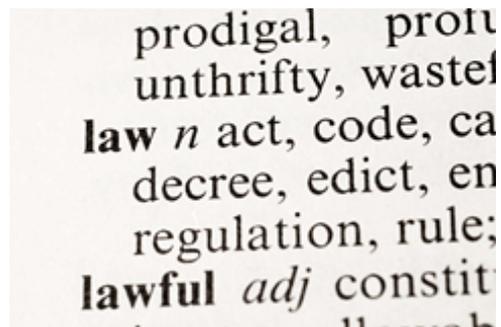


3.6. The Equal Opportunity Tribunal

The Equal Opportunity Tribunal has two main roles under the *Equal Opportunity Act 1984* (SA). Firstly, the Tribunal hears applications for exemptions; secondly, the Tribunal hears complaints referred to it by the Equal Opportunity Commissioner.

The Tribunal is a separate body from the Commission. It comprises a Presiding Member, who is a District Court Judge,

and two assessors, who are lay people chosen for their skills and experience.



3.7. Exemptions from the Act

The *Equal Opportunity Act 1984* (SA) provides a way for organisations to apply to the Equal Opportunity Tribunal for a temporary exemption from the Equal Opportunity Act. The Tribunal can order an exemption of up to three years, and an organisation can lawfully discriminate according to the conditions of the exemption.

The Tribunal granted two applications for an exemption in the reporting period, as detailed below:

3.7.1. SA Minister for Education

The SA Minister for Education applied for an exemption from sex discrimination so that a new multi-campus school could include one campus for girls only. The multi-campus school intended to absorb the existing Gepps Cross Girls School, and wished to maintain this single sex education option.

The Tribunal granted the exemption for three years, enabling the Minister to continue offering single-sex education to girls in the Gepps Cross area, with the added advantage of allowing access to the resources of a larger school with new facilities.

<http://www.austlii.edu.au/au/cases/sa/SAEOT/2010/5.html>

3.7.2. Aboriginal Legal Rights Movement Inc.

The Aboriginal Legal Rights Movement (ALRM) applied for an exemption from race discrimination so they could put in place a requirement that the position of Chief Executive Officer only be open to Aboriginal persons.

ALRM is an independent Aboriginal community-controlled legal aid organisation, and has a policy of actively encouraging the employment of Aboriginal people. ALRM relies upon its Aboriginal employees to provide a culturally-sensitive environment for Aboriginal clients to interact with non-Aboriginal solicitors and other employed officers and volunteers. The Tribunal agreed that it was appropriate in the circumstances that the Chief Executive be an Aboriginal person, and authorised the exemption for a period of three years.

<http://www.austlii.edu.au/au/cases/sa/SAEOT/2011/2.html>

3.8. Complaints referred to the Tribunal with assistance

If parties fail to reach agreement through the Commission's conciliation process, the Commissioner can either decline a complaint or refer it to the Tribunal. If the Commissioner refers a complaint to the Tribunal, the complainant can ask the Commissioner to provide them with legal assistance. The Commissioner can then decide whether or not to fund legal assistance for the complainant. Criteria to make that assessment are set out in the Act. If the Commissioner declines the complaint, the complainant can still take their complaint to the Tribunal but they will not receive assistance from the Commissioner.

In 2010-11, four complaints were referred to the Tribunal with the Commissioner's assistance.

3.8.1. Mysko v Gibbons - Sexual Harassment

Ms Mysko alleged she was sexually harassed by a chef at the hotel she was employed at. The parties reached a

settlement prior to the Tribunal hearing, and the Tribunal subsequently made an order enforcing that agreement. See 3.14.4 for more details.

3.8.2. Paine v Lyberopolous - Sexual Harassment

As at 30 June 2011, the complaint had yet to be heard.

3.8.3. Jaber v Thomadakis - Sexual Harassment

Mr Jaber withdrew his complaint before it was heard by the Tribunal.

3.9. Complaints referred to the Tribunal without assistance

The following cases were referred on the complainant's request after being declined by the Commissioner. A complainant may choose to withdraw their complaint after they have lodged with the Tribunal for a variety of reasons. They may come to the opinion after filing their complaint that their prospects are poor, that they do not wish to go ahead with a trial, that they cannot afford legal fees or that they simply want the case to be finished and no longer wish to pursue their case at the Tribunal.

3.9.1. Rankine v DTEI

Mr Rankine withdrew the complaint before a Tribunal hearing.

3.9.2. Price v Equal Opportunity Commission

The Commissioner declined Ms Price's complaint due to the alleged incidents occurring outside of the six-month time frame allowed by the Act at the time of the events. Ms Price took the Commission to the Tribunal; however, the Tribunal struck the case out in March 2011.

3.9.3. Ingham v DTEI

As of 30 June 2011, the case had yet to be heard.

3.9.4. Douglas v SA Legal Practitioners' Registry Board

As at 30 June 2011, the case had yet to be heard.

3.9.5. Deng v SA Ambulance Service

Mr Deng alleged that when questioning the length of time it took an ambulance to arrive, he was told that he could not ask questions like that and things were different in Australia compared to his country of origin. The Tribunal found that the ambulance staff did not make comments of this nature to Mr Deng, and dismissed the complaint.

3.9.6. Hanrahan v Woolworths

Mr Hanrahan withdrew his complaint prior to the case being heard.

3.9.7. Estafanos v Tiger Airways Australia Pty Ltd

The matter was struck out prior to hearing due to the non-attendance of the complainant.

3.9.8. Cakouros v Capgemini

As of 30 June 2011 the case had yet to be heard.

[3.9.9. Pope v Invicta Services Ltd](#)

The Tribunal struck the complaint out due to non-attendance of the complainant.

[3.9.10. Rana v University of South Australia](#)

Mr Rana withdrew his complaint prior to the Tribunal's hearing.

[3.9.11. Hobby v Ambrose & Associates](#)

Ms Hobby withdrew her complaint prior to the Tribunal's hearing.

[3.9.12. Sloan v SA Youth Arts Board](#)

As of 30 June 2011, the complaint had not been heard.

[3.9.13. May v Central Districts Football Club, Starkey & Stewart](#)

Ms May discontinued her complaint prior to the Tribunal's hearing.

[3.9.14. Somasundaram v Adelaide Health Service](#)

As of 30 June 2011, the complaint had yet to be heard.

3.10. Equal Opportunity Tribunal decisions

In 2010-11, the Equal Opportunity Tribunal handed down four decisions, related to the areas of employment, goods and services and education.

3.10.1. Rankin v State Electoral Commissioner [2010] SAEOT 3 - Disability discrimination

(September 2010)

Mr Rankin is print-blind. He requested that he be provided with computer-assisted voting machines for vision impaired persons at the next South Australian state election, to exercise his right to a secret ballot. The Tribunal found that Mr Rankin had experienced no detriment as the election had not been held when he lodged a complaint. The Tribunal also found that the current Electoral Act does not allow for computerised voting.

Read more about the decision at <http://www.austlii.edu.au/au/cases/sa/SAEOT/2010/3.html>

3.10.2. Rana v SkyCity Adelaide Pty Ltd [2010] SAEOT 4 - Disability/Race discrimination

(October 2010)

Mr Rana claimed that he was asked to leave the Casino due to suspected intoxication and was racially abused by staff. Mr Rana claimed that his intoxicated appearance was due to a low blood sugar diabetes attack. The Tribunal accepted the evidence of the Casino and determined that there was no credible evidence of any discrimination against Mr Rana.

Read the decision at

<http://www.austlii.edu.au/au/cases/sa/SAEOT/2010/4.html>

3.10.3. Pearce v Charles Parletta Real Estate T/A LJ Hooker - Glynde [2011] SAEOT 1 - Disability discrimination

(February 2011)

Ms Pearce is legally blind. She requested that all letters sent to her by her property manager, LJ Hooker, be in large print. Not all letters were provided in large print by LJ Hooker despite Ms Pearce's reminders. Ms Pearce filed a complaint for disability discrimination with the Tribunal. The Tribunal found that the few letters that were not provided in large print were an oversight, which was not unreasonable. The Tribunal also found that Ms Pearce had access to content of the letters through

other means including magnification and CCTV, therefore no detriment was suffered.

Read the decision at

<http://www.austlii.edu.au/au/cases/sa/SAEOT/2011/1.html>

3.10.4. Mysko v Gibbons DCCIV-10-1751

Ms Mysko was employed as a waitress at an Adelaide hotel. She alleged she was sexually harassed by Mr Gibbons, a chef at the hotel. Mr Gibbons admitted to the harassment prior to the trial and reached a settlement agreement with Ms Mysko. The Tribunal accepted the admission, and made an order in line with the terms of the agreement. Mr Gibbons was ordered to pay Ms Mysko \$5,000 and provided a written apology.

This decision is not available online.

3.10.5. Deng v SA Ambulance Service DCCIV-10-1496

Mr Deng alleged that when questioning the length of time it took an ambulance to arrive, he was told that he could not ask questions like that and things were different in Australia compared to his country of origin. The Tribunal found that the ambulance staff did not make comments of this nature to Mr Deng, and dismissed the complaint.

This decision is not available online.

4. Programs

[4.1 Training with the Commission](#)

Statistical information on our training

[4.2 E-learning Module](#)

Making training sustainable

[4.3 The top 20 hits of 2010-11](#)

What's accessed on the website?

[4.4 The Commissioner and the community](#)

Event attendance and submissions by the Commissioner



4.1. Training with the Commission

The Commission provides two main types of training.

1.

Throughout the year, the Commission offers training courses to the general public, held at the office in Adelaide's central business district. Training for staff identified by their employer as contact officers, and sessions on effectively managing workplace issues, are the most popular public courses.

2.

In addition to public courses the Commission delivers customised training for a range of organisations, tailored for individual workplaces. Commission training officers work

closely with organisations to ensure their program is relevant and effective. This includes reviewing workplace policies and procedures, developing an equal opportunity plan and completing an assessment of the workplace culture.

The Commission also recognises the need to adapt training to the requirements of a modern workforce, and the capacity of the Commission to offer extensive face to face training. As a result, the Commission expanded its training to include an E-learning program, as detailed in 4.2.

4.2. E-Learning Program - Making Training Sustainable

Due to turnover of staff it is often difficult for businesses to continually train new staff in equal opportunity matters. In response to this the Commission developed a new CD-Rom and web based e-course which will allow organisations to train staff in equal opportunity basics as part of their in house induction programs or as a refresher.

The program can be customised for individual organisations and feature a personalised message from CEOs, workplace policies, procedures and logos. The scenario based program takes a typical work situation and encourages employees to think about appropriate and inappropriate behaviour in the workplace, to understand what is expected of them and their options in the event of a grievance. The program also includes a quiz, providing employers with a greater level of assurance that new staff have understood the key principles of fair treatment in the workplace

The module tested successfully in the pilot phase and is now available for employers to purchase. Below are some comments received from users:

"I liked the look and feel of the program and found it easy to use."

"What can I say, the program is fantastic. I am sure we will benefit from its introduction into our induction process."

For more information on the E-Course visit:

<http://www.eoc.sa.gov.au/eo-business/training/equal-opportunity-ecourse>



4.3. Case study - Racial preference

Saeed was born in Iran, and worked as a contract driver for Dave's limousine business. One evening he was assigned a job, but then it was taken from him and given to another driver. The job card included a note: "Send Australian driver." He was very upset at this. He believed the change was made because he is not white-skinned and so not viewed as Australian. He felt the client request was acceded to by Dave, and so he went to the Equal Opportunity Commission.

Saeed and Dave attended a conciliation conference, and discussed what had happened. Dave told Saeed that he had in the meantime contacted the client and told him that he would not agree to further requests that potentially amounted to race discrimination. After further discussion, Dave agreed to settle

the complaint by providing Saeed with a written apology.



4.4. The top 20 hits of 2010-11

The Equal Opportunity Commission website continues to be well-used, with the overall number of website visits up 18% in 2010-11. The website was visited more than 165,000 times over the reporting period – about 450 times a day.

Many people come to the site for case studies and examples, as well as policies and procedures. Hits such as these, and for particular issues like dress codes, are likely to come from managers or human resource officers.

Another way that the Commission determines visitor interest is by tracking

the searches that lead people to the site. Many of the top search terms are similar to previous years; however, searches relating to dismissals from employment have increased.

The website statistics in 2010-11 confirm the value of the Commission's website for both individuals who may be considering lodging a complaint, and for businesses who need to be aware of their obligations

Top 20 requested pages

1	What is Discrimination?	11	EO for business
2	Discrimination Laws	12	About us
3	Making a Complaint	13	South Australian laws
4	EO for you	14	EO resources
5	What is discrimination? > Types	15	When is discrimination against the law
6	Contact us	16	Complaint summaries > Employment
7	Videos online	17	Employers
8	Equal Opportunity Act	18	News
9	EO 4 Schools > Quizzes	19	Workers
10	Lodge a complaint online	20	Complaint summaries

Top 20 searches hitting our website

1	equal opportunity commission (SA)	11	Customer service (tips)
2	equal opportunity/ies (SA)	12	(anti) discrimination (SA)
3	Cultural differences (in the workplace)	13	Dress codes (in the workplace/customer)
4	equal opportunity act (SA)	14	EO laws/legislation (SA)
5	EO/EOC videos	15	(small) business policies/procedures
6	EO4 Schools	16	Privacy act (SA)
7	What is discrimination	17	Unfair dismissal/unlawful termination (SA)
8	(dealing with) customer complaint/s policy/procedure (template)	18	Types of discrimination
9	(returning to work after) maternity leave (SA)	19	Equal opportunity tribunal (SA)
10	Complaint handling procedure/template/policy/checklist	20	Commissioner for equal opportunity (SA/Anne Burgess)

These results identify what people are looking for when they follow a search result through to our website.

4.5. The Commissioner and the community

The Equal Opportunity Commission engages with the community through forums and events. In 2010-11 the Commission has maintained its attendance at public events including expos, cultural events and seminars.

The Commissioner is often asked to present views on discrimination, human rights and topical issues at events or in the media.

Significant events which the Commissioner has participated in this year include:

- SA Gerontology Conference (September, 2010)
- Disability Conference - Forward Together (October 2010)
- International Day of the Disabled (December 2010)
- Launch of Centre for Equality (March, 2011)
- AHRI HR Practices Day (April, 2011)



Acting Commissioner, Anne Burgess addresses an assembly at Walford College.

Submissions made to various government consultations this year include:

- Sex and Age Discrimination Act Amendments (Commonwealth)
- Activating Citizenship - Social Inclusion Board
- APHRA guidelines
- Public Integrity Institutions in SA and an integrated model for the future
- Disability Standards for Education

4.6. Freedom of information

This year, EOC received four new applications under the *Freedom of Information Act 1991 (SA)*. All received satisfactory responses.

