



Annual report 2011 - 2012

# 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	19 October 2012
Reference	n/a

### Availability

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Do not publish until	n/a

## Contents

Annual report 2011 - 2012.....	1
1. Message from the Commissioner.....	5
2. Highlights.....	7
2.1. Chiefs for Gender Equity.....	8
2.2. Age Matters.....	9
2.3. Skilled Migrants.....	11
Case study – not child friendly.....	12
2.4. National Anti-Racism Strategy consultations.....	13
2.5. Building partnerships.....	14
Case study – Victimisation following a complaint of sexual harassment.....	16
2.6. National Human Rights Conciliation, Legal and Education Officers’ Conference ..	17
Case study – Under 18 and running a business.....	18
2.7. Strengthening our community engagement.....	19
2.8. 2011 Mitchell Oration.....	20
2.9. Rights, Camera, Action!.....	21
3. Complaints.....	22
3.1. Complaints received.....	23
3.1.1. Complaints lodged 2011 -2012.....	24
3.1.2. Complaints - types of discrimination.....	25
3.1.3. Complaints - where discrimination occurs.....	25
Case study – Breastfeeding at work.....	27
3.2. Complaint outcomes.....	28
3.2.1. Percentage of complaints resolved through conciliation.....	29
3.3. Our service.....	30
3.3.1. Satisfaction rates - complainants and respondents.....	31
3.3.2. Impartiality rates - complainants and respondents.....	31
Case Study – Racist slur.....	32
3.4. Enquiries.....	33
3.4.1. Enquiries - types of discrimination.....	34
3.4.2. Enquiries - where discrimination is reported.....	34
3.5. Whistleblowers.....	35
Case study – Someone to care for.....	36
3.6. The Equal Opportunity Tribunal.....	37
3.7. Exemptions from the Act.....	38
3.7.1. Raytheon Australia Pty.....	38
3.7.2. House-One Co-op.....	38

3.7.3. ASC Pty Ltd & Others .....	38
3.7.4. BAE Systems Australia .....	39
3.8. Complaints referred to the Tribunal .....	40
3.8.1. Cases referred to the Tribunal with full or partial assistance .....	40
Davies v. Reinboth - Sexual Harassment .....	40
Riley v. Christies Beach Residential Care - Disability.....	40
Yaghoubi v. Fedayee – Sex, Sexual Harassment and Victimisation.....	40
Haynes v. Ceduna Hotel [2011] SAEOT 7 - Race .....	40
3.8.2. Cases referred to the Tribunal without assistance.....	41
Mian v. University of Adelaide - Disability .....	41
Le Raye v. DFEEST - Victimisation .....	41
Bailey v. Central Adelaide Local Health Network- Chosen Gender and Disability ....	41
Holmes v. Flight Training Adelaide - Race.....	41
Ramstrom v. Courts Administration & Baldino.....	41
Kellaway v. Department of Corrections & Bell – Sex and Sexual Harassment .....	41
Pantelos v. Khan – Sexual Harassment .....	41
Kersten v. Fleurieu Golf Course – Disability .....	41
Moore v. Slondia Nominees [2012] SAEOT 1 – Sex .....	41
3.8.3. Cases referred to the Tribunal prior to the 2011-12 financial year .....	42
Paine v. Lyberopoulos – Sexual Harassment and Victimisation .....	42
Somasundaram v. Adelaide Health Service - Race.....	42
Cakouros v. CapGemini – Sex and Caring Responsibilities.....	42
Sloan v. SA Youth Arts Board – Sex.....	42
3.9. Equal Opportunity Tribunal decisions .....	43
3.9.1. Haynes v Ceduna Hotel [2011] SAEOT 7 - .....	43
Race discrimination.....	43
3.9.2. Moore v. Slondia Nominees [2012] SAEOT 1 – Sex discrimination .....	43
4. Programs .....	44
4.1. Training with the Commission .....	45
4.2. Customer evaluation .....	46
4.3. E-courses .....	47
Case study – Disability discrimination.....	48
4.4. The top 20 hits of 2011-12 .....	49
4.5. The Commissioner and the community .....	51
4.6. Freedom of information .....	52

## 1. Message from the Commissioner

I am pleased to report that 2011-12 has seen a great deal of activity at the Commission, and we have welcomed the opportunity to contribute to several major projects and initiatives over the last financial year. One such initiative was the development of the National Anti-Racism Strategy. In 2011-12 the Commission worked closely with the Australian Human Rights Commission on the development of the Strategy. We hosted six public consultations to hear from the community their views and experiences of racism and their vision for a national strategy to tackle it. The Strategy will be rolled out over three years and the Commission will continue to be involved in its implementation.

The Commission hosted the National Human Rights Conciliation, Legal and Education Officers' Conference in Adelaide which was attended by equal opportunity and anti-discrimination practitioners from around the country. The conference was an excellent opportunity to share information and experiences with our interstate counterparts, and to discuss common challenges and opportunities.

This year saw the establishment of the Chiefs for Gender Equity. The group, comprising of male Chief Executives from a range of industries, have come together voluntarily to share strategies



for improving diversity and increasing the number of women in senior positions. This is a positive step towards closing the gender gap in employment and identifying the institutional barriers that exist for women. The group will continue to meet in 2012-13 and have shown an impressive commitment to improving opportunities for women in their industry sectors.

One significant feature of the last financial year has been the large increase in the number of complaints received by the Commission. This trend may reflect an increased awareness of individuals' rights or is possibly a symptom of these tough economic times. The Commission has continued to work hard to resolve the complaints received and conciliated 94 complaints this year, compared with 75 the previous year.

The most common complaints this year were based on the grounds of disability and sexual harassment in employment. An increase in the number of complaints relating to the more recent ground of religious dress was also noted.

2011-12 has also been a year of change for the Commission as we farewell Anne

Burgess who has held the position of Acting Equal Opportunity Commissioner for the past two years. I would like to take this opportunity to thank Anne Burgess for her dedication and contribution to the Commission and also extend my thank you to Cecilia White who has been Acting Commissioner for the past three months.

## 2. Highlights

[2.1 Chiefs for Gender Equity](#)

[2.2 Age Matters](#)

[2.3 Skilled Migrants](#)

[2.4 Inter-agency collaboration](#)

[2.5 National Anti-Racism Consultations](#)

[2.6 National Human Rights Conciliation, Legal and Educations Officers' Conference](#)

[2.7 Community Engagement Strategy](#)

[2.8 2011 Mitchell Oration](#)

[2.9 Rights, Camera, Action](#)

## 2.1. Chiefs for Gender Equity

In a move to develop strategies that address the under representation of women in senior positions across a number of industries, Anne Burgess, the Acting Equal Opportunity Commissioner, created the “Chiefs for Gender Equity”.

The group comprises of a select number of male CEOs and Managing Directors of prominent South Australian companies across key industry sectors (legal, finance, accounting, energy, mining and resources). The goal of the group is to actively advance and advocate for gender equity across their sectors, not only for the benefit of the women they employ, but also to improve their business bottom line.

The membership of the Chiefs for Gender Equity group comprises of the following business leaders:

- Dr David Cruickshanks-Boyd, Regional Director, Parsons Brinkckerhoff
- Malcolm Jackman, CEO & Managing Director, Elders
- David Knox, CEO & Managing Director, Santos
- Stephen Ludlam, CEO & Managing Director, ASC Pty Ltd
- Nigel McBride, CEO, Business SA
- Nick Reade, General Manager Small Business, ANZ Banking

- Con Tragakis, Managing Partner, Adelaide, KPMG
- Rob Stobbe, CEO, ETSA Utilities
- Warren McCann, Commissioner for Public Sector Employment, Dept of Premier & Cabinet
- Rex Jory, journalist, The Advertiser

To create a sustainable change that successfully increases the participation of women at the highest levels of industry, initiatives cannot just be aimed at women, but need to also enable men to drive and initiate change themselves within the organisations that they lead.

The Chiefs for Gender Equity have met four times since first coming together in October 2011. On The 5<sup>th</sup> October 2012, the Chiefs for Gender Equity are hosting a CEDA lunch as part of the Women in Leadership series, which will feature an all-male panel discussing the issue of gender diversity within the workplace.

The group have discussed strategies such as staying connected to all staff at all times, including when women are taking maternity leave, awareness of inherent barriers to inclusion such as caring responsibilities and the identification of senior female role models.

## 2.2. Age Matters

The demographics of South Australia are changing; we have a rapidly ageing population which requires an adjustment to the way employers manage their workforce. The current under-utilisation of mature age workers is not only discriminatory, but also threatens the sustainability of the South Australian workforce.

The project, Age Matters, was initiated in 2011 in partnership with SafeWork SA's Work Life Balance Strategy. The aim of the project was to create and disseminate resources designed to inform employers and future employers about age discrimination.

The project targeted the initiatives not only at current employers and mature age workers themselves, but also looked to involve the next generation of leaders and decision makers, Generation Y.

With that in mind, one of the outcomes of the project was the creation of three web clips. These clips present the issue of age discrimination in a light-hearted 'mockumentary' style, to gently challenge attitudes commonly held about mature age workers. The clips have been released on the internet by way of non-traditional "viral" distribution, in order to hopefully reach a broader audience

Another outcome of the project has been the creation of an e-learning module, aimed at both employers and employees, highlighting potentially discriminatory practices in the areas of recruitment, training and promotion.



## Case study – recruiting older workers

Jean contacted the Commission to enquire as to whether it is discrimination when a job application specified that an applicant must disclose their age.

The Commission advised Jean that it is not discriminatory to ask how old a person is during a job interview or on an application form. However, if the employer uses that information as a reason not to hire someone, that may be discrimination.

An employer should ensure that their recruitment practices do not directly or indirectly discriminate against a person on the basis of their age. When deciding whether to ask an applicant to disclose

their age, an employer should ask themselves whether a person's age is relevant to the position.



### 2.3. Skilled Migrants

In 2011 the Commission undertook a survey of clients of the Skills Recognition Service and identified that many skilled migrants have difficulty finding employment on account of their visa status.

Nearly half of the respondents indicated that they found work within three months of arrival, however many indicated that this work was not in their area of expertise or at their level of experience. 26% found work in 3 to 6 months and 20% between 6 and 12 months after arrival. Overall 40% of respondents indicated that their current jobs were not in their skill area or commensurate with their experience. Many stated that they were working in jobs such as process workers, hospitality and cleaning despite being tertiary educated with years of experience in their home country. Some indicated that they took these roles purely in order to survive financially or to ensure they meet visa conditions. The frustration and disappointment that is felt by the respondents was evident in the written responses to the survey questions.

Through meetings with stakeholders and hearing the migrants' experiences,

several factors were identified that led to a reluctance on the part of employers to employ visa holders. These factors were a lack of understanding of visa types and classes, a perception of onerous responsibilities being placed upon employers who do hire visa holders and a belief that they did not have the requisite 'local knowledge' or experience to do the job.

The aim of the project was not to actively promote the employment of skilled migrants, but rather to level the playing field and to prevent arbitrary and potentially discriminatory criteria which may determine whether skilled migrants are employed, rather than selection being based upon the merit of the candidate.

The lack of clarity surrounding an employer's responsibilities when employing a provisional or temporary visa holder was evident in both the public and private sector. The Commission is working together with the Commissioner for Public Sector Employment to address this within the public sector and raise awareness of an employer's ability to employ the holder of a provisional visa into an ongoing position.

## Case study – not child friendly

Judith visited a café with her 6 month old daughter. While she was waiting for her friends to arrive, she was told she could not sit inside with her child because it wasn't a 'child friendly' café, but was welcome to sit outside. Judith lodged a complaint of discrimination based on the ground of association with a child.

At conciliation, the manager conceded that they had introduced a blanket rule because they considered that to be the fairest approach. The matter was settled, with the manager of the café agreeing that the blanket policy was discriminatory to those accompanied by children and agreed to no longer enforce

it. They also agreed to undertake training in workplace discrimination.

This is an example of how inflexible policies can have the effect of unfairly discriminating against a group of people. Such policies should have the flexibility to reflect individual circumstances.



## 2.4. National Anti-Racism Strategy consultations

Throughout April and May 2012 the Commission held a number of public consultations around the State discussing racism in our communities and how we can work together to tackle it. The consultations were the first step of a national initiative coordinated by the Australian Human Rights Commission aimed at developing a National Anti-Racism Strategy.

The South Australian consultations, held in Adelaide, Mt Gambier and Port Augusta, drew an impressive turnout, with over 200 attendees. The discussions were lively, engaging and enlightening, producing many interesting ideas regarding the development of the National Anti-Racism Strategy.

The consultations focused on four main questions:

- What strategies are effective in preventing and reducing racism?
- What are the priority areas for addressing racism?
- What information should be included in an anti-racism campaign?
- What strategies can help individuals and communities experiencing racism to speak up or take action?

The interactive nature of the consultations allowed all attendees the opportunity to join the national conversation and have their say. The result was a broad spectrum of experiences and strategies that will help to shape the development of the National Anti-Racism Strategy.



*One of the consultations held in Adelaide*

In July 2012 the Australian Human Rights Commission released their National Anti-Racism Strategy consultation report. The report consolidates the outcomes of public consultations which were held right across Australia. A copy of the report can be found at the [Australian Human Rights Commission website](#).

## 2.5. Building partnerships

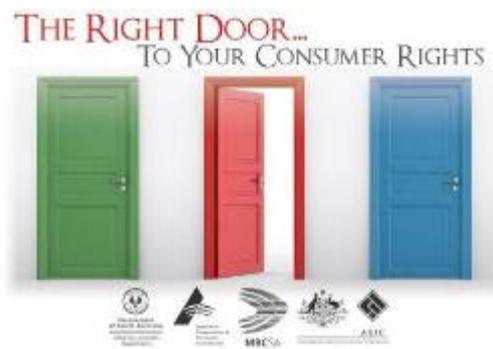
The Commission regularly collaborates with government and non-government organisations in order to increase the impact of our work and reach a larger audience. In 2011-12 the Commission has worked closely with the Migrant Resource Centre, Office for Consumer and Business Services, the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission to develop a mobile web site for new arrivals that provides information regarding their consumer rights. 'The Right Door' mobile website was launched on Consumer Rights Day, the 15<sup>th</sup> March 2012 in Rundle Mall.

'The Right Door' mobile website can be accessed at [www.cbs.sa.gov.au/mobile](http://www.cbs.sa.gov.au/mobile)

The strategic partnership with these agencies has continued, with representatives from each agency presenting to the Migrant Resource Centre's Community Ethnic Leaders Forum, covering areas such as their rights with regards to mobile phone contracts and tenancy agreements.

All of the projects undertaken by the Commission draw on support and input across government. For example, the Age Matters project involves close liaison with Safework SA and the Skilled Migrant project is a collaboration

between the Commission and the Skills Recognition Service. Working closely with other agencies enables the Commission to make the most of the available expertise and resources across government and to achieve better outcomes for the community.



### 2.3.1. Disability Justice Plan

The Commission has also been part of the Disability Justice Plan Steering Committee, an interagency partnership formed to develop and implement a Disability Justice Plan based on the recommendations made in the report of the Social Inclusion Board - "*Strong Voices*". The Committee also takes on work done by an interagency partnership formed in October 2011 to address community concern about the lack of prosecutions initiated against alleged perpetrators of sexual assault of people with cognitive impairment.

The group has met five times from September 2011 to March 2012 and identified key areas of concern, priorities for agencies, and international examples of good practice, as well as tracking proposed legislative changes.

### 2.3.2. Statutory Authorities and Rights Protection Agencies

The Rights Protection and Statutory Authorities groups were formed with the objective of responding to the expectations of the community by providing accessible, coordinated and effective services in a cooperative manner intended to decrease duplication and red tape.

In September 2011, the group produced a joint publication entitled 'Your Right to be Heard'. The leaflet provided information about all the rights protection agencies and the services they provide. Stemming from the publication was an invitation to present at Immigration SA's workshop for new arrivals that is held every two weeks.

The Commission has also worked closely with the Rights Protection Agencies to develop joint training and community education initiatives. Representatives from the agencies

regularly meet to identify ways in which training providers can collaborate.

### 2.3.3. Commissioner for Aboriginal Engagement

Following the national anti-racism consultations (see section 2.4), the Commission has strengthened its partnership with the Commissioner for Aboriginal Engagement, Khatija Thomas.

The Commission's Manager of Community and Business Engagement accompanied Ms Thomas and Helen Szoke, the National Race Discrimination Commissioner to Port Augusta to meet with the Aboriginal Community Engagement Group (ACEG).

ACEG comprises of members of the local Aboriginal community who have set targets and priorities for the community (such as education, employment and health). The outcomes determined by ACEG help inform government policy around the provision of services to the Port August area. This is to enable the community to determine what services are needed and how best to deliver them.

## Case study – Victimization following a complaint of sexual harassment

Jenny's manager took an interest in her that progressed to unwelcome attention which included asking her inappropriate questions about her relationship and sending her explicit text messages.

Jenny complained to a more senior manager, after which, the sexual harassment ceased.

However, following her complaint, her manager transferred her clients to another staff member and generally treated her less favourably than other staff in her area.

Jenny lodged a complaint with us claiming she had been subject to sexual harassment and victimisation.

Following a conciliation conference, Jenny's employer agreed to pay her \$3,000 in settlement of her claim.



## 2.6. National Human Rights Conciliation, Legal and Education Officers' Conference

The Commission hosted the National Human Rights Conciliation, Legal and Education Officers' Conference held in Adelaide on the 1<sup>st</sup> and 2<sup>nd</sup> of September 2011. The conference brought together practitioners from around Australia and New Zealand with Cara Tikimitui from the New Zealand Human Rights Commission, in attendance.

Sessions were held over two days which covered issues such as the promotion of sexuality and gender diversity in sport.

Sessions which covered practical issues were also held over the two day conference including subjects such as 'Managing psychiatric disability in the workplace – educating managers and human resources professionals' and media training.

A highlight of the conference was the presentation by the keynote speaker, Professor Salman Sayyid, the Director of the International Centre for Muslim and Non-Muslim Understanding, at the University of South Australia, who gave an address entitled 'Religion, human rights and secular societies'.

The conference was also an opportunity for anti discrimination agencies around the country to share new ideas and initiatives. The Tasmanian Anti-Discrimination Commission gave a presentation introducing their online incident report form, a tool designed to enable people to report instances of discrimination anonymously.



Overall the conference was a success with positive comments received from delegates such as '*well planned, interesting and gained well informed knowledge...SA Commissioner and staff are a wonderful and supportive group of people*' and '*I have thoroughly enjoyed the opportunity to network and take renewed energy and enthusiasm back*'.

## Case study – Under 18 and running a business

Graham was under 18 and wanted to open a business bank account.

However, the bank said he was too young to open a business account as he was not over 18. Graham made a complaint of age discrimination to the Commission.

The bank's confirmed that its policy was not to allow minors to open business accounts.. The matter was conciliated when the bank agreed to allow Graham to open a business account on the

condition that he was afforded no overdraft facility.



## 2.7. Strengthening our community engagement

In 2011-12, the Commission focussed on strengthening its links with key community organisations, in order to reach a broader section of the community and to build its strategic partnerships. The Commission has met with many organisations, learning more about their work with the community and the challenges experienced by their clients. This will determine how the Commission can support the work of these organisations and begin to address systemic discrimination experienced in their sectors.

The aim of this work is also to inform local groups about our services, such as the availability of training as well as our complaints and conciliation process.

To date, our sessions with community organisations have resulted in many ongoing opportunities for joint work.

such as presenting to the Hepatitis Council of SA, future collaborative projects with the YWCA and the opportunity to be involved in a number of steering groups and committees established to improve outcomes for vulnerable groups.

To date, representatives from the Commission have met with:

- Parkinsons SA
- SA Network of Drug and Alcohol Services (SANDAS)
- Southern Junction Community Services
- Autism SA
- YWCA
- Multicultural Aged Care
- Australian Refugee Association
- Chaffey Community Centre (Renmark Paringa Council)
- Riverland Community Legal Service
- Riverland Multicultural Forum Inc.
- Lone Fathers' Association
- Carers SA

## 2.8. 2011 Mitchell Oration

Every two years the Commission sponsors the Mitchell Oration, an event that promotes debate and discussion within the community regarding human rights issues.

The event was held on the 8<sup>th</sup> October 2011 as part of the Adelaide Festival of Ideas. The topic was ‘Human rights – sword, shield or just symbolism?’, presented by Larissa Behrendt with David Marr.

Larissa Behrendt is a Professor of Law and Director of Research at the Jumbunna Indigenous House of Learning at SUT and has written extensively on legal and indigenous social justice issues.

David Marr is a journalist, author and progressive political and social commentator. His areas of expertise include the Law, Australian politics, censorship, the media and the arts.

The Oration discussed the idea that consideration needs to be given to the role of symbolism in a human rights framework, with relevance to the interest in the recognition of Aboriginal people in the Constitution. The Oration also broached the debate regarding what

works and what doesn't to improve socio-economic conditions in Aboriginal communities.

The role of human rights, and how human rights benchmarks and legislation can influence the achievement of real improvement in the lives of indigenous people.

The audio recording of the 2011 Mitchell Oration can be found on the Commission's website at <http://www.eoc.sa.gov.au/eo-resources/events/mitchell-oration/mitchell-oration-2011>.



## 2.9. Rights, Camera, Action!

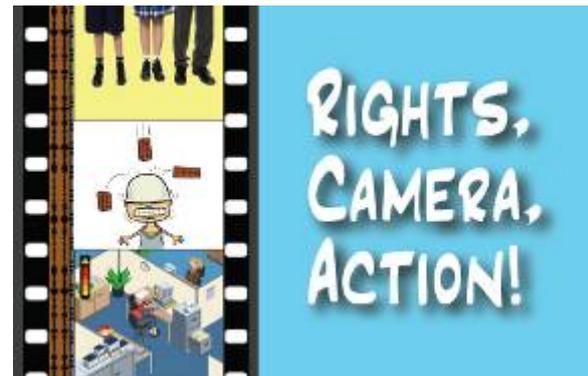
The Rights, Camera, Action! Video and animation competition began in 2009 when the Commission was seeking to obtain new content for the redesign of the EO 4 Schools website. The 2010 and 2011 competitions have been run in partnership with SafeWork SA as part of their Passport to Safety program.

The theme for the 2011 Rights, Camera, Action! Competition was 'rights and responsibilities at work, at school or in the community'.

The main purpose of the competition this year was to engage students with the equal opportunity and occupational health and safety messages. It encouraged young people to examine

occupational health, safety and welfare, discrimination and harassment issues by producing a short video.

The Commission received many entries of a very high standard that imaginatively explored theme of the competition. The winner was announced in November 2011 and won a \$1,000 gift voucher and a behind-the-scenes tour of a leading Adelaide filmmaker.



## 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

Seeking information about discrimination matters

### 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 2011-12, 382 complaints were received, a figure which equates to a 55% increase on the number received the previous year. However, changes in reporting, which means complaints with multiple respondents are now being recorded as separate complaints, account for some of this increase. Notwithstanding the change in the method of reporting, the increase in complaints received was still 22%.

The highest number of complaints relate to disability and sexual harassment with these grounds accounting for 26% and 14% of received complaints respectively. The more recent ground of caring responsibilities accounted for 5% of lodged complaints in 2011-12.

The majority of complaints received involved discrimination in the workplace. In 2011-12, over 59% 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 grounds that are only covered at the Commonwealth level, including discrimination on the grounds of religion and irrelevant criminal record. These complainants are referred to the Australian Human Rights Commission.



As an alternative to lodging a complaint, this year the Commission piloted a new reporting tool, the Online Incident Report. The public can report an incident of discrimination they were affected by, whether they be a witness or the victim, and remain anonymous.

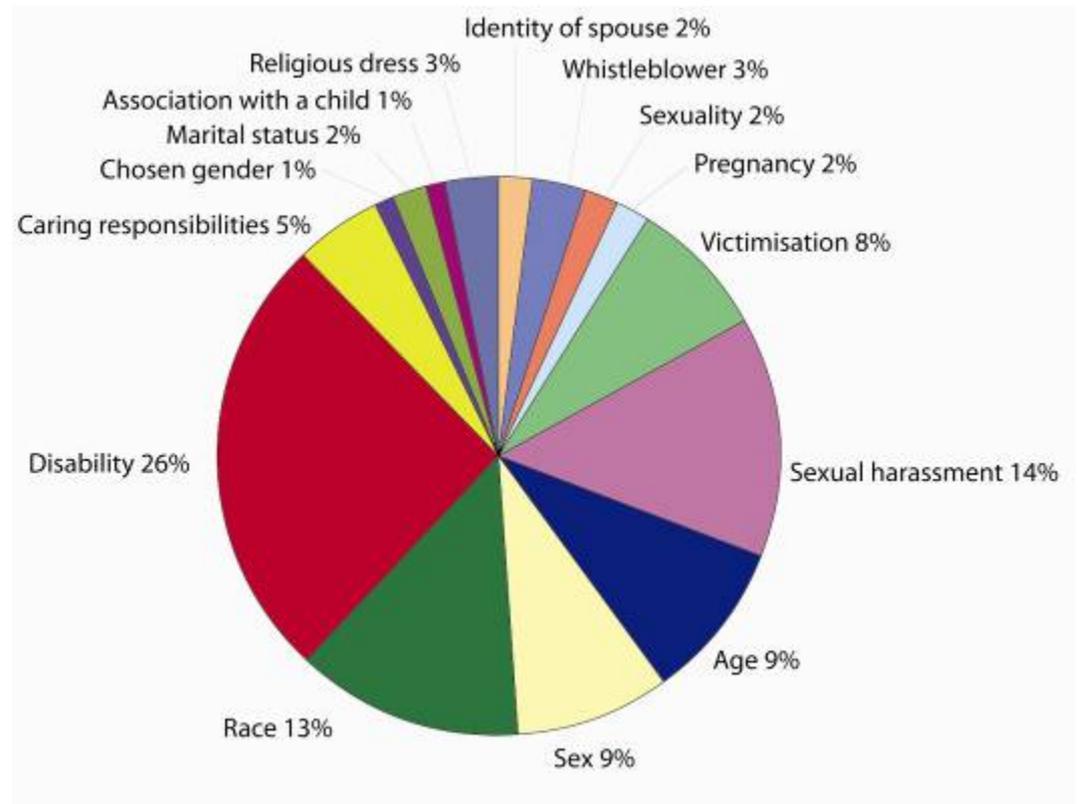
The Online Incident Report, is designed to enable those who do not wish to make a formal complaint, a way to report incidences of discrimination. This enables us to identify those systemic issue of discrimination and in what areas of public life they may be occurring.

## 3.1.1. Complaints lodged 2011 -2012

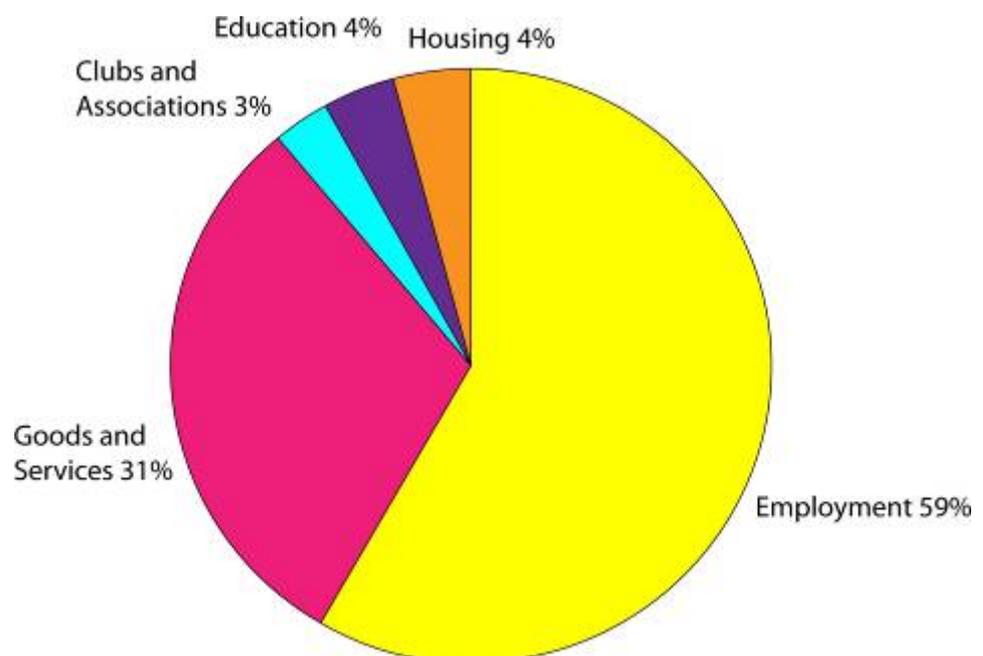
	Employment	Customer Service	Education	Clubs	Housing	Total
Disability	61	57	5	2	5	130
Sexual Harassment	64	6	0	2	0	72
Race	23	35	4	2	2	66
Victimisation	37	7	3	1	0	48
Sex	28	11	1	5	1	46
Age	27	14	1	0	2	44
Caring responsibilities	17	0	3	0	3	23
Whistleblower	12	2	2	0	0	16
Religious dress	15	0	0	0	0	15
Identity of spouse	7	0	2	0	0	9
Marital Status	4	2	2	0	1	9
Pregnancy	9	0	0	0	0	9
Sexuality	4	3	0	1	0	8
Association with a child	2	2	0	0	1	5
Chosen gender	1	4	0	0	0	5
Aiding an unlawful act	1	0	0	0	0	1

Note: The above totals to 506 although reflects 490 types of discrimination due to some complaints of discrimination being lodged under more than one area.

### 3.1.2. Complaints - types of discrimination



### 3.1.3. Complaints - where discrimination occurs



## Case study – returning to work after an illness

Steve worked in a call centre and needed some time off work to undergo minor surgery. A few weeks after his surgery his doctor confirmed that he was able to return to work but applied some minor restrictions with regards to his normal duties.

Steve's ability to fulfil his role was not significantly affected, however, his employer refused to allow him to return to work until his doctor confirmed he was 100% fit. Steve made a complaint to the Commission however, the matter failed to resolve and has been referred to the Tribunal.

Steve's employer was required to make reasonable adjustments to accommodate his restrictions, but failed to do so.



### Case study – Breastfeeding at work

Catherine returned to work after maternity leave. However, her employer would not allow her to breastfeed at work or afford her any time to breastfeed her 3 month old child.

Catherine called the Commission to explore what her rights were. Armed with relevant information she was, over time, able to negotiate an arrangement with her employer that allowed her to breastfeed at work.

Her employer has now introduced a policy outlining how to accommodate a woman returning to work who wishes to continue to breastfeed her child. The policy provides for appropriate

breastfeeding facilities and paid lactation breaks. Such policies are an important support for women wishing to return to work after maternity leave.



## 3.2. Complaint outcomes

The Commission has a legislative duty to endeavour to resolve complaints of discrimination through conciliation. Over the past year 45% of complaints covered by our Act were resolved through conciliation, 4% below the long-term average. This is a decrease of 11% compared to 2010-11, however, the number of accepted complaints is 79% higher in 2011-12 than 2010-11. Furthermore, the actual number of complaints conciliated is 94, compared with 75 the previous year.

This dramatic increase in the number of accepted complaints is in part attributable to individuals with multiple complaints and changes in the way complaints are now reported by the Commission. However, taking these factors into account, the number of accepted complaints are still up roughly 45%.

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 2011-12, 52% of complaints settled with a financial component; this is an increase of 10% compared to last year. Five agreements were for amounts over

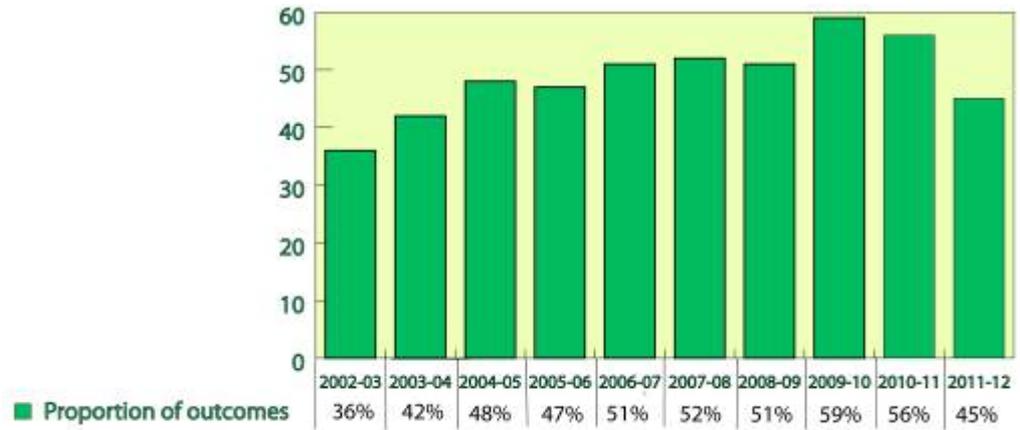
\$10,000. The average settlement amount was just under \$4,000 and the median settlement amount was \$1,625.

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 requires the respondent review their equal opportunity policies or undertakes staff training. This can result in long term changes to workplace culture and an increased awareness of discrimination issues.

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, 54% of conciliated outcomes involved the respondent making an apology to the complainant, undertaking training and/or reviewing their policies.

### 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:

*"I was completely satisfied with the service provided and greatly appreciate how well I was treated. Thank you"*

Complainant

*"Thank you for your impartial and professional advice throughout the process. The team were exceptional."*

Respondent

*"Overall I was very impressed and satisfied with the Commission's approach and professionalism. My case manager provided excellent advice, feedback and service."*

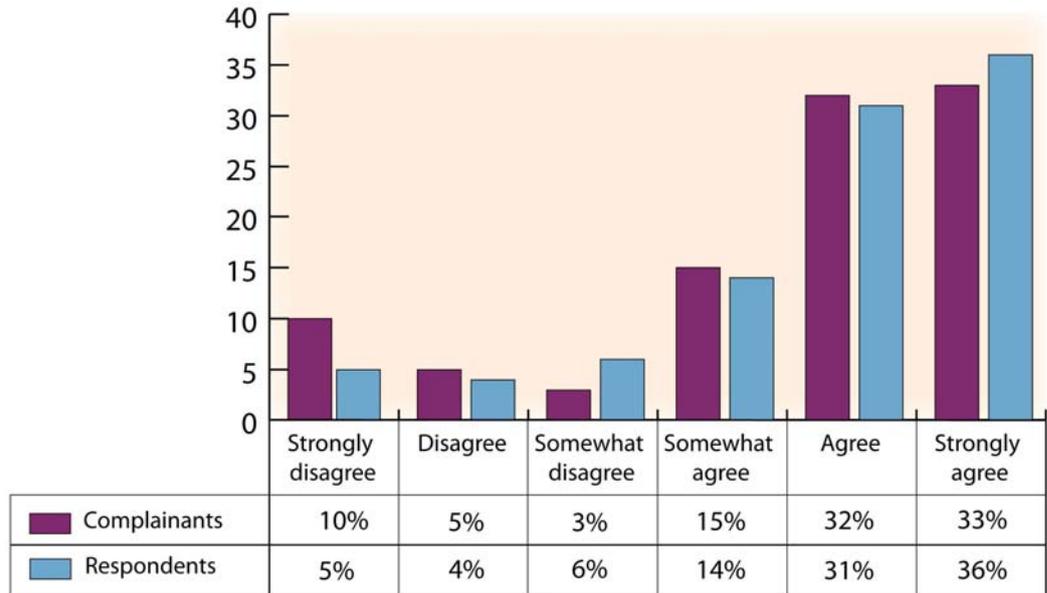
Complainant

Of those who filled in evaluations, 88% of complainants and 92% 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.

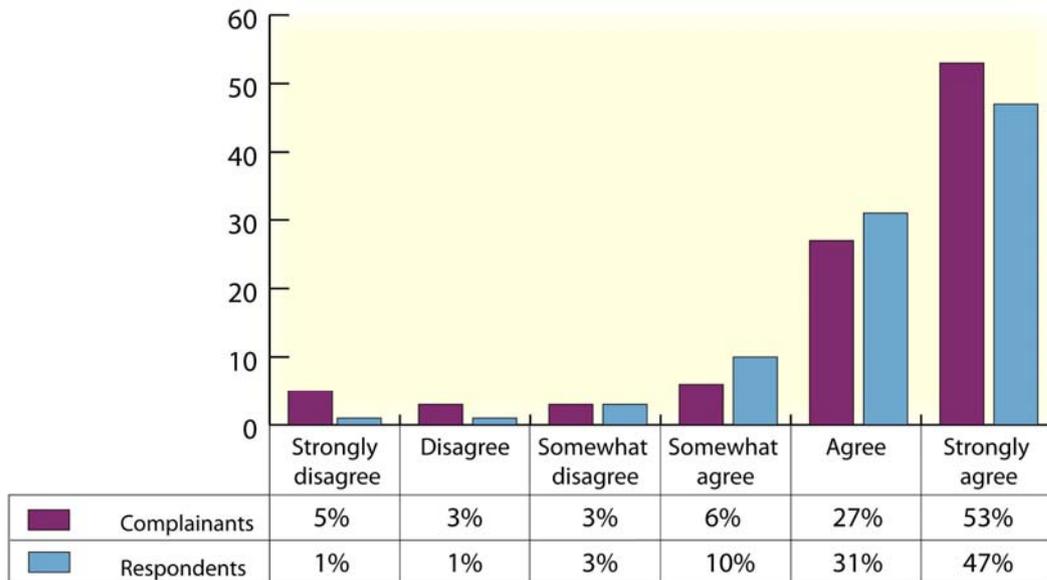
The majority of complainants and respondents were satisfied with the timeliness of the Commission's service. Furthermore, 87% of complainants and 88% of respondents felt that the Commission remained neutral in the way their complaint was handled.

In terms of overall satisfaction, 80% of complainants were satisfied with the outcome and the complaint handling process, and 81% 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 – Racist slur

Peter, who identifies as Aboriginal, was at his local hotel when he heard the owner of the establishment, Dexter, refer to some other patrons in the hotel as 'black sh\*\*heads'. The comment wasn't directed towards Peter, but it upset him greatly as he saw it as a derogatory comment about Aboriginal people in general.

Dexter agreed that he had made the comments, but disagreed with Peter about the context in which they had been said.



The matter resolved with Dexter apologising to Peter for any upset caused, agreeing to attend Equal Opportunity training conducted by the Commission, and to pay Peter \$500 for injury to feelings.

### 3.4. Enquiries

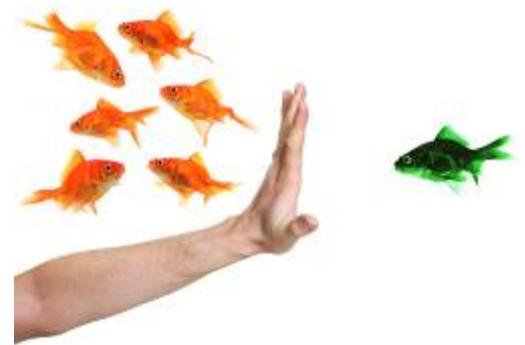
The Commission receives a large number of telephone and email enquiries from individuals who believe they have been discriminated against, and from businesses seeking information about discrimination issues.

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 2011-12, enquiries were most frequently about allegations of disability, sex, age and race discrimination.

Over a quarter of enquiries received related to issues that the Commission could not assist with as they 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

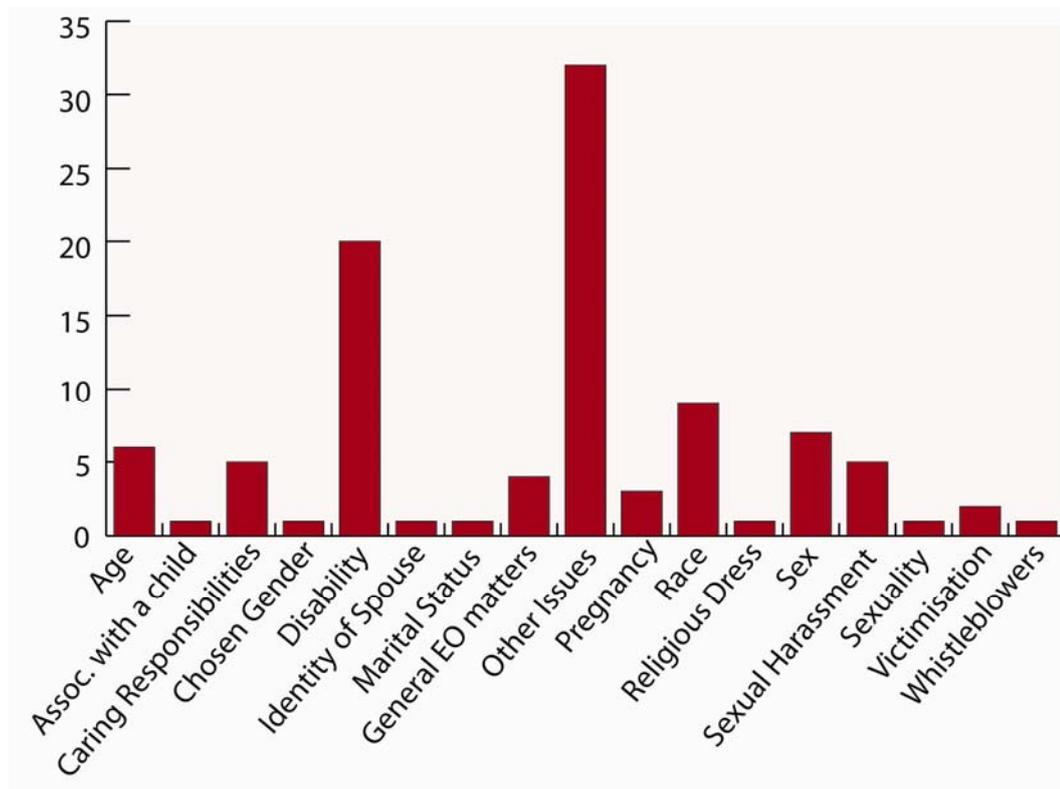
refers the enquirer on to the most appropriate agency to assist with the issue.



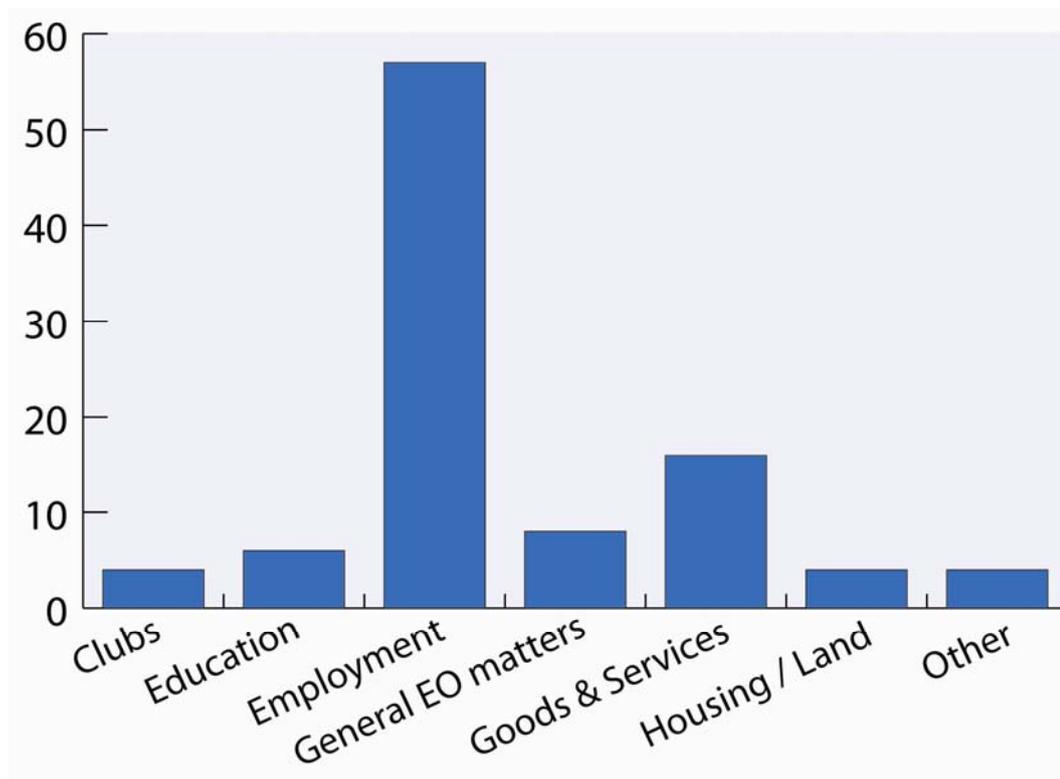
The number of enquiries received in 2011-12 were similar to 2010-11, only down by 3%. Over the years, the number of enquiries has declined as visits to the Equal Opportunity Commission website have increased.

For more information about our website statistics in 2011-12, see page 49.

### 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 16 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 four of these complaints met the requirements of the Whistleblowers Protection Act. Two of the complaints received have not yet been determined and the decision whether to accept them has not yet been made. Three of the accepted complaints have been withdrawn; the other one has the option of a Tribunal hearing.

## Case study – Someone to care for

Sandeep's son suffers from a physical disability that requires her to be able to pick him up from school at an earlier time than her office closes. Sandeep had negotiated with her supervisor an arrangement whereby she started earlier so that she could finish in time to pick up her son from school.

Sandeep's employer recently had a change of management. The new management team were not willing to honour the arrangement Sandeep had negotiated with her previous supervisor that allowed her to fulfil her caring responsibilities for her son.



Following lodging a complaint with the Commission, Sandeep was able to resolve her complaint via her workplace's internal complaint process. Consequently, she withdrew her complaint at the Commission.

### 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 and two extensions to existing exemptions as detailed below:

### 3.7.1. Raytheon Australia Pty

Raytheon Australia Pty applied for an extension of their exemption from race discrimination. The exemption was sought to permit discrimination on the grounds of nationality of employees by requiring them to be Australian citizens on account of requirements imposed by United States legislation.

The Tribunal granted the extension of the exemption for a further three years.

<http://www.austlii.edu.au/au/cases/sa/SAEOT/2011/6.html>

### 3.7.2. House-One Co-op.

House-One Co-op applied for an exemption from sex and sexuality discrimination to enable it to provide

accommodation exclusively to homosexual men.

The Co-Operative sought to enable homosexual men to secure accommodation as they are known to encounter prejudice and experience unique difficulties securing rental accommodation within the private sector.

The Tribunal granted the exemption for a period of three years.

<http://www.austlii.edu.au/au/cases/sa/SAEOT/2011/5.html>

### 3.7.3. ASC Pty Ltd & Others

ASC Pty Ltd & Others applied for an exemption from race discrimination to allow them to discriminate against employees on the basis of their nationality.

The exemption was sought as a result of contractual obligations imposed by United States legislations. The Tribunal granted the exemption for a period of three years.

<http://www.austlii.edu.au/au/cases/sa/SAEOT/2011/4.html>

#### 3.7.4. BAE Systems Australia

BAE Systems Australia applied for an extension of an exemption from race discrimination that allowed them to discriminate in their employment practices on the basis of a person's nationality. This was a result of United States legislative requirements that required companies working on US

defence contracts to only employ Australian citizens.

The Tribunal granted the extension of the exemption.

<http://www.austlii.edu.au/au/cases/sa/SAEOT/2011/3.html>

## 3.8. Complaints referred to the Tribunal

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.

### 3.8.1. Cases referred to the Tribunal with full or partial assistance

Of the cases referred to the Tribunal in 2011-12, four were funded by the Commission.

If legal assistance is provided, the Commissioner can opt to partially fund a complaint. Situations where this may occur include where the Commissioner, following pleadings having been lodged, receives advice that the complaint is unlikely to be successful. Of the complaints referred in 2011-12, four were partially or fully funded.

#### [Davies v. Reinboth - Sexual Harassment](#)

As at 30 June 2012, the complaint had yet to be heard.

#### [Riley v. Christies Beach Residential Care - Disability](#)

Ms Riley withdrew her complaint prior to it being heard by the Tribunal.

#### [Yaghoubi v. Fedayee – Sex, Sexual Harassment and Victimisation](#)

As at 30 June 2012, the complaint had yet to be heard.

#### [Haynes v. Ceduna Hotel \[2011\] SAEOT 7 - Race](#)

See below for the full case summary.

### 3.8.2. Cases referred to the Tribunal without assistance

If the Commissioner declines the complaint, the complainant can still take their complaint to the Tribunal but they will not receive financial assistance from the Commissioner. In 2011-12, nine complaints that went to the Tribunal were not funded by the Commission.

#### [Mian v. University of Adelaide - Disability](#)

As at 30 June 2012, the complaint had yet to be heard.

#### [Le Raye v. DFEEST - Victimisation](#)

As at 30 June 2012, the complaint had yet to be heard.

#### [Bailey v. Central Adelaide Local Health Network- Chosen Gender and Disability](#)

As at 30 June 2012, the complaint had yet to be heard.

#### [Holmes v. Flight Training Adelaide - Race](#)

Mr Holmes withdrew his complaint prior to it being heard by the Tribunal.

#### [Ramstrom v. Courts Administration & Baldino](#)

As at 30 June 2012, the complaint had yet to be heard.

#### [Kellaway v. Department of Corrections & Bell – Sex and Sexual Harassment](#)

Ms Kellaway withdrew her complaint prior to it being heard by the Tribunal.

#### [Pantelos v. Khan – Sexual Harassment](#)

Ms Pantelos withdrew her complaint prior to it being heard by the Tribunal.

#### [Kersten v. Fleurieu Golf Course – Disability](#)

The matter was withdrawn by agreement with a confidential settlement.

#### [Moore v. Slondia Nominees \[2012\] SAEOT 1 – Sex](#)

As at 30 June 2012, the complaint had yet to be heard. A preliminary hearing has been held, see below for a summary of the hearing.

### 3.8.3. Cases referred to the Tribunal prior to the 2011-12 financial year

The following cases were referred to the Tribunal in 2010-11 but did not reach an outcome in that period.

#### [Paine v. Lyberopoulos – Sexual Harassment and Victimisation](#)

A confidential settlement was reached between the parties prior to the matter being heard by the Tribunal.

#### [Somasundarum v. Adelaide Health Service - Race](#)

As at 30 June 2012, the complaint had yet to be heard.

#### [Cakouros v. CapGemini – Sex and Caring Responsibilities](#)

This matter was discontinued by consent prior to being heard by the Tribunal.

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

This matter was discontinued by consent prior to being heard by the Tribunal.

### 3.9. Equal Opportunity Tribunal decisions

In 2011-12, the Equal Opportunity Tribunal handed down two decisions. One was related to the area of goods and services and the other was an application for an order dismissing proceedings.

#### 3.9.1. Haynes v Ceduna Hotel [2011] SAEOT 7 - Race discrimination (December 2011)

Ms Haynes, an Aboriginal elder, was refused service by the hotel's drive-through bottle shop attendant in November 2009. The incident occurred two weeks after new hotel licence conditions came into force that didn't allow alcohol into Yalata.

Judge Cole accepted that the decision to refuse Ms Haynes was motivated by ensuring the hotel complied with new laws. But Judge Cole found the attendant did not have reasonable grounds to assume Ms Haynes was from Yalata, and didn't make any further enquiries to establish this.

Judge Cole said the attendant "made a series of unfounded assumptions" and some were based on beliefs he had about Aboriginal people.

Judge Cole found the hotel had discriminated against Ms Haynes

because of her race. Judge Cole ordered the hotel to pay Ms Haynes \$3000 in compensation.

*Read more about the decision at*  
<http://www.austlii.edu.au/au/cases/sa/SAEOT/2011/7.html>

#### 3.9.2. Moore v. Slondia Nominees [2012] SAEOT 1 – Sex discrimination (June 2012)

The respondents lodged an application for an order dismissing the proceedings on the grounds that the complainant's claim was trivial and lacking in substance.

The judge rejected the application made by Slondia Nominees on the basis that Ms Moore has raised the issue of discrimination on the basis of sex in an employer/employee relationship contrary to the Act. The judge deemed that it was not appropriate to impose a burden of proof prior to the trial.

*Read more about the decision at*  
<http://www.austlii.edu.au/au/cases/sa/SAEOT/2012/1.html>

## 4. Programs

### 4.1 Education and training

information on our training and education programs

### 4.2 Customer evaluation

Summary of our training survey

### 4.3 E-courses

The popularity of the Commission's e-courses continues to grow

### 4.4 The top 20 hits of 2011-12

What's accessed on the website?

### 4.5 The Commissioner and the community

Event attendance and submissions by the Commissioner

### 4.6 Freedom of information

Requests received by the Commission

## 4.1. Training with the Commission

Throughout the year, the Commission offers a range of training and educational programs organisations and individuals. The Commission provides three main types of training.

Firstly, throughout the year, the Commission offers training courses to the general public, held at its office in Adelaide's central business district. Training for contact officers, and sessions on effectively managing workplace issues, are the most popular public courses.

Secondly, 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 increasing difficulties with the Commission meeting the high demand for extensive face to face training. As a result, the Commission expanded its training to include an E-learning program, as detailed in 4.3.

Finally, the Commission presents information to the community regarding their rights through community education sessions. The Commission presents to students at Thebarton College, new arrivals at TAFE and recent immigrants who attend Immigration SA's information sessions. Commission staff are also regular guests on Radio Adelaide and Coast FM discussing current issues of discrimination.

## 4.2. Customer evaluation

The Commission is committed to the continuous improvement of its services. With this in mind, in 2011-12 the Commission undertook a survey of those who had attended or booked an EOC training session in the past three years, from which we received 125 responses.

Questions were asked regarding the quality of training, the effectiveness and relevance of the training and training they would be interested in the Commission providing in the future.

Regarding the quality of the training, 88% of respondents who provided feedback described the standard as 'excellent' or 'very good'. 100% of respondents who rated the presentation skills of the trainer answered 'excellent', 'very good' or 'good'.

The survey results indicated that EOC training is regarded as high quality, relevant and effective, with 100% of responders who are responsible for

booking training indicating they would engage the Commission to deliver training again.

The Commission intends to use the feedback received to develop new courses such as 'Social media and discrimination' and 'Managing age diversity'.



### 4.3. E-courses

The Commission provides customised training to organisations in two ways - firstly, through face to face training and secondly through online training. In 2011-12 the Commission saw a continuation of a growing trend away from face to face training and towards e-courses.

In 2011-12, the Commission developed customised e-courses for organisations such as:

- Toyoda Gosei
- Accolade Wines
- Life Without Barriers
- City of West Torrens
- Jurlique
- Orana

- Tip Top Bakeries



The Commission continues to build the capacity of organisations to manage their own training requirements by working collaboratively with organisations to deliver new products such as e-courses and Equal Opportunity Training Toolkits for employers.

## Case study – Disability discrimination

Deanna visited a retail store to do some shopping and became aware of a promotion that offered entry into a competition for a \$1,000 shopping spree. She queued up to participate, but when she got to the head of the queue she was told that a scanning process that was required for participation would not work because she was in a wheelchair. She claimed that this amounted to disability discrimination.

A conciliation conference was held, and Robert, a manager from the store, apologised because staff had been instructed to offer entry in the competition to those who could not be scanned for any reasons (which

included pregnancy, pacemakers or metal objects). Deanna accepted this apology, but on top of this Robert offered Deanna a \$50 voucher to shop at the store. Deanna accepted this and the complaint was resolved.



#### 4.4. The top 20 hits of 2011-12

The Equal Opportunity Commission website has continued to be popular, with the overall number of website visits up 11% in 2011-12. The website was visited more than 189,000 times over the reporting period – about 500 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.

##### Top 20 requested pages

1	Cultural differences in the workplace	11	When is discrimination against the law?
2	What is discrimination?	12	Workers > Dress codes in the workplace
3	Discrimination laws	13	Shops and services toolkit > Developing a complaint handling procedure
4	Equal Opportunity Act	14	Shops and services toolkit > Developing your customer complaint policy
5	What is discrimination? > Types	15	EO for business
6	Making a complaint	16	About us
7	EO for you	17	Employer toolkit > Developing a complaint procedure
8	South Australian laws	18	Videos
9	Contact us	19	Workers
10	Employer toolkit > Small business policies and procedures	20	Lodge a complaint online

The website statistics in 2011-12 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 obligation.

## Top 20 searches hitting our website

1	Equal opportunity commission (SA)	11	(Returning to work after) maternity leave (SA)
2	Cultural differences (in the workplace)	12	Customer service charter (examples/template)
3	Complaint handling procedure/template/policy/checklist	13	Victimisation (at work)
4	Equal opportunity/EEO (SA)	14	Small business policies/procedures/code of conduct
5	(Dealing with) customer complaint/s policy/procedure (template)	15	Business policies/procedures
6	Equal Opportunity Act (SA/1984)	16	(Types of) discrimination in/at school
7	What is discrimination	17	EO/discrimination laws/legislation (SA)
8	Dress codes (in the workplace)	18	Dealing with difficult/problem customers
9	EO4 Schools	19	Customer service tips
10	Unfair dismissal/unlawful termination (SA)	20	Retirement age (in SA/Australia)

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 various forums and events. In 2011-12 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 in which the Commissioner has participated this year include:

- Presentation to students at Adelaide University School of Law
- Chaired the National Anti-Racism partnership and strategy consultative forum hosted by the Australian Human Rights Commission and FECCA
- Opening of the Muslim Women's Centre
- Young Workers Legal Service research into sexual harassment
- International Women's Day luncheon
- SPOKE Festival

Submissions made to various government consultations this year include:

- Proposal to amend the *Spent Convictions Act 2009* (SA)
- Workplace bullying code of practice review
- Australia's arrangement with Malaysia in relation to asylum seekers (Standing Committee on Legal and Constitutional Affairs)
- Australian Human Rights Commission: Protection from discrimination on the basis of sexual orientation and sex and/or gender identity
- Access and Equity
- Convention on the Rights of the Child
- Parliamentary inquiry into workplace bullying
- Grey areas – age barriers to work in Commonwealth laws

## 4.6. Freedom of information

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

