

# Equal Opportunity Commission

## Annual Report

2022-23



# Annual report 2022-23

The Western Australian Equal Opportunity Commission is committed to providing accessible services to Western Australians from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding the annual report, you can contact us on toll free 1800 198 149 and we will arrange an interpreter to effectively communicate the report to you.



This report provides information on the performance of the Equal Opportunity Commission in the 2022-23 reporting period.

## Disclaimer

The Commission is committed to providing quality services to its customers and makes every attempt to ensure accuracy, currency and reliability of the information contained in this publication.

## Feedback

As the Commission is constantly striving to improve services, we welcome any comments, observations or queries relating to the contents of this annual report.

## Accessibility

On request, large print or copies of this report in an alternative format can be obtained from the Equal Opportunity Commission.

## Further enquiries

Commission staff deal with any general concerns or queries about rights and responsibilities under equal opportunity laws.

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## Acknowledgment

The Commission acknowledges the Aboriginal peoples of Western Australia as the traditional custodians of the land on which we work and live, and recognise their continuing connection to land, water and community. We pay respect to Elders past, present and emerging.

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# Letter of compliance



Hon John Quigley LLB JP MLA  
Attorney General;  
Minister for Electoral Affairs

Hon John Quigley MLA  
Attorney General

In accordance with section 95 of the *Equal Opportunity Act 1984*, I hereby submit for your information and presentation to Parliament, the Annual Report of the Commissioner for Equal Opportunity for the financial year ending 30 June 2023.

The Report covers the work, functions, and activities of the Equal Opportunity Commission during the reporting period.

A handwritten signature in black ink that reads "John Byrne". The signature is written in a cursive, flowing style.

Dr John Byrne AM  
Western Australian Commissioner for Equal Opportunity

6 September 2023



# Commissioner's foreword

The 2022-23 reporting year has brought some changes to the Commission as Western Australia adjusts to a post-pandemic world.

After three years of restrictions the newly formed Strategy and Engagement section is now able to move more freely into the regions to deliver outreach and training.

In the 2022-23 financial year 542 people participated in training sessions, 497 people attended our events, and community education outreach sessions involved 1032 community members.

This provision of information is also augmented by online information from the website and the ebulletin which is sent out to over 1,300 people monthly.

The Integrated Court Management System for complaint handling is now fully operational and has switched complaint handling to a streamlined, virtually paperless system that can be accessed remotely by officers when working from home, in the regions or in the office.

This reporting year saw a downturn in COVID-19 complaints due to the easing of restrictions and lifting of mandates in the second half of 2022. This meant less complaints were received compared to the 2021-22 reporting year which brought an influx of COVID-19 related complaints to the Commission.

We are finding the *Equal Opportunity Act 1984* (the Act) increasingly restrictive when it comes to community standards of discrimination and harassment. More complaints are being dismissed because the Act has not kept pace with some aspects of a modern Western Australia.

Issues such as indirect discrimination, vilification, limits in the definition of sexual and racial harassment and the limited ground of gender history discrimination has made the Act difficult to access and the Commission welcomes a State Government response to the Law Reform Commission's review of the Act published in August 2022.



Dr John Byrne AM  
Western Australian Commissioner for Equal Opportunity



# About the Commission

The Equal Opportunity Commission supports the Commissioner in the administration of the *Equal Opportunity Act 1984* (the Act).

The main objective of the Act is to “promote equality of opportunity in Western Australia and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, sexual orientation, family responsibility or family status, race, religious or political conviction, impairment, or age, or involving sexual or racial harassment or, in certain cases, on gender history grounds.”

The Commissioner carries out the role by conducting community education and training, investigating and endeavouring to conciliate complaints of discrimination, and providing information to the community about equal opportunity.

The Commissioner is also involved in several projects designed to address the underlying causes of discrimination, often in partnership with other agencies, which are mentioned in this report.

The current Strategic Plan to June 2024 outlines our vision, mission, and strategic objectives.

## Our vision

Leading the way towards eliminating unlawful discrimination and harassment in our community.

## Our mission

Our mission is to promote both formal and substantive equality towards achieving an inclusive community, free of discrimination.

## Responsible Minister

The Hon John R Quigley LLB JP MLA Attorney General; Minister for Electoral Affairs.

## Enabling legislation

The office of the Commissioner for Equal Opportunity was established in 1985 under Part VII, Division I of the *Equal Opportunity Act 1984* (the Act) as amended.

The Commissioner for Equal Opportunity is appointed by the Governor.

The Act promotes equality of opportunity in Western Australia and provides remedies in respect of discrimination on the grounds and areas specified.

## Administered legislation

The Commissioner for Equal Opportunity also undertakes investigations and conciliation of complaints under specified parts of the following Acts:

- *Public Interest Disclosure Act 2003 - Part 3 section 15(4)*
- *Spent Convictions Act 1988 – Part 4.*

### **Other key legislation impacting on the Equal Opportunity Commission's activities:**

#### **State**

- *Auditor General Act 2006*
- *Disability Services Act 1993*
- *Financial Management Act 2006*
- *Fines, Penalties and Infringement Notices Enforcement Act 1994*
- *Freedom of Information Act 1992*
- *Gender Reassignment Act 2000*
- *Government Employees Superannuation Act 1987*
- *Industrial Relations Act 1979*
- *Minimum Conditions of Employment Act 1993*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*
- *Salaries and Allowances Act 1975*
- *State Administrative Tribunal Act 2004*
- *State Records Act 2000*
- *State Supply Commission Act 1991*
- *Work Health and Safety Act 2020*
- *Workers Compensation and Injury Management Act 1981*

#### **Commonwealth**

- *Age Discrimination Act 2004*
- *Australian Human Rights Commission Act 1986*
- *Disability Discrimination Act 1992*
- *Fair Work Act 2009*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*

## Our strategic objectives

To deliver and improve the Commission's services we need to engage with, and respond to, the Western Australian community. Over the period 2022-24, including this financial year, we will achieve this by focusing on the five strategic objectives listed below.

Below each objective is how the Commission will measure the achievement of these objectives. This focus will shape how we lead the way towards the elimination of discrimination and harassment in Western Australia and promote formal and substantive equality for its people:

- 1 Provide a just equitable, and accessible complaint handling and conciliation process**
  - Ongoing review of complaint handling processes and documents, with input from key client groups.
  - Monitor and report on trends in complaints data and outcomes to gauge effectiveness of complaint-handling and conciliation processes.
- 2 Consult with key reference and community groups to find out relevant issues to which the Commission can contribute through public discourse**
  - Establish a timetable to meet with identified groups and act on issues relevant to the Commission's functions.
- 3 Develop programs that raise awareness of discrimination and promote anti-discrimination for school-aged children by engaging with educational institutions**
  - Produce information about discrimination and harassment suitable for school-aged children, endorsed by education providers.
  - Develop material that is readily usable and compatible within the set curriculum.
- 4 Advocate for the substantive equality program to be a mandatory requirement for public sector agencies**
  - The inclusion of a legislative requirement for substantive equality by providers of public sector services or alternatively some other regulatory requirement.
  - The Commission to promote importance of substantive equality in provision of services.
- 5 Embrace and adopt new technology to maximise reach**
  - Ability to operate all services, where appropriate, through online programs, mindful of limited access by some groups.
  - New systems enable us to engage more readily with people in regional and remote communities.



## Our structure

At the beginning of the 2022-23 financial year the Equal Opportunity Commission restructured to better align itself to the Commission's statutory functions and streamline its services.

The Strategy and Engagement section aligns with the Commission's statutory function to enhance understanding of the principle of equal opportunity, as well as increase recognition of the provisions contained in the *Equal Opportunity Act 1984* (the Act) by the WA community.

Legal Services assists the Commissioner for Equal Opportunity and staff to carry out the statutory responsibilities contained in the Act and other relevant legislation by researching and providing advice on matters of law, jurisdiction and policy. The legal officers also represent complainants referred under s93 of the Act before the State Administrative Tribunal and Supreme Court.

The Conciliation Services section delivers the Commission's statutory function of investigation and endeavouring to resolve complaints of alleged unlawful discrimination, harassment and victimisation.

The Business Services section provides business support to the office and liaises with the relevant sections of the Department of Justice that provide administrative support to the Commission.

All four sections provide support to the Western Australian Commissioner for Equal Opportunity whose statutory task is to administer the Act.



## Strategy and engagement services

The Commission's Strategy and Engagement team has a broad range of functions:

- Delivers education and training to businesses, not for profit organisations and government agencies to increase understanding of rights and responsibilities under the *Equal Opportunity Act 1984* (the Act)
- Conducts information and awareness sessions for advocacy organisations, university and TAFE classes and community groups on rights under the Act
- Organises public events such as lectures to provide dialogue on current issues related to the Act
- Provides communications on topical issues to the public through the website, bulletins and social media
- Participates in community events.

### Education and training

We offer education and training on general equal opportunity and anti-discrimination as well as on specific issues such as sexual harassment or any other ground that relates to equal opportunity. The community education officers deliver most courses in person and some rights-based information sessions virtually.

Businesses and government organisations request training to understand and equip their managers and employees with skills to prevent discrimination and harassment in the workplace. Educational institutions and community groups also request specific training to raise awareness about rights and responsibilities. We offer a range of training sessions to suit different organisational and community needs. Our courses range from general introductory sessions to more focused training specific to participants' roles or organisations.



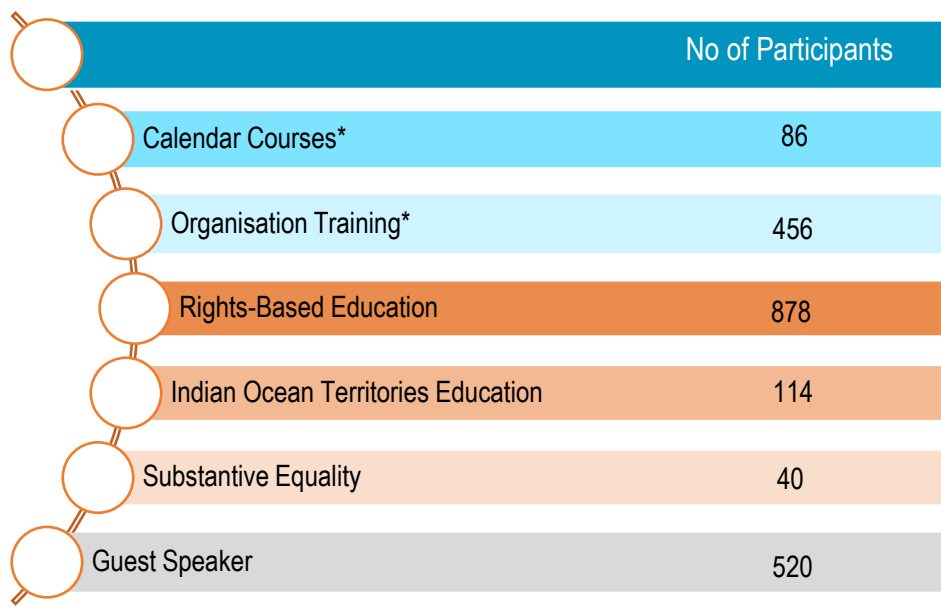
Member of the Commission's Strategy and Engagement team

Training can be delivered directly to teams in their workplaces, or via public training sessions held at the Commission which are open to all members of the public. Training is provided on a moderate fee-for-service basis. Rights-based training is free to community organisations.

Training is delivered either in a standard or customised format. Standard training courses are designed by the Commission team on set topics such as *Equal Opportunity Law*, *Contact Officer*, *Equity Grievance Officer* and *Sexual Harassment - Recognition, Responsibility and Response*. Organisations can also request customised training related to the Act to be developed to specifically address their interest.

In 2022-23 we delivered 42 fee-for-service sessions to approximately 542 participants and 96 rights-based and outreach sessions to 1,552 people.

**Figure 1: Education and training participant numbers 2022-23**

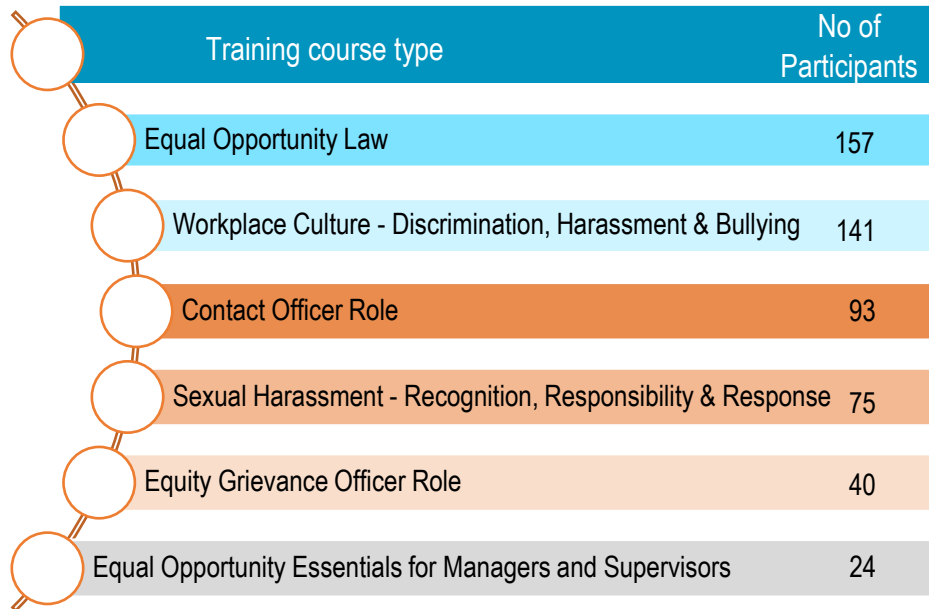


\* Fee for service

In 2022-23 we delivered **138** education and training sessions to **2094** participants

Our most popular training course in 2022-23 was *Equal Opportunity Law* with 157 participants throughout the year, followed by 141 people attending the *Workplace Culture – Discrimination, harassment and bullying* course and 93 attending the *Contact Officer Role* course.

**Figure 2: Fee for service training courses 2022-23**



Our most popular training course in 2022-23 was  
**Equal Opportunity Law** with **157** participants

### Where we provided training and outreach

In 2022-23 we provided training and outreach to towns in the Pilbara, Kimberley, Great Southern as well as the Indian Ocean Territories. The Strategy and Engagement team monitors issues through the complaint handling system, as well as through community organisations, to plan which areas of the State we will visit throughout the year.

Western Australia is a large state so careful planning is undertaken to ensure rural and remote areas of WA which need the Commission’s services are not missing out on education and outreach.

### October 2022 in the Kimberley

In October two officers from the Strategy and Engagement section delivered rights-based education to staff members of North Regional TAFE and engaged with not-for-profit and community organisations around Broome. Officers visited Headspace Broome, Shire of Broome, Kimberly Community Legal Centre, Child and Adolescent Mental Health, Aboriginal Family Legal Services, and Broome Circle. The officers delivered educational materials to these community organisations that can be used to support their clients understand different types of discrimination and harassment covered by the Act.

Organisations raised race discrimination as an issue which continues to be a pressing for community members in the region. The officers heard race discrimination is often experienced in the areas of goods and services as well as employment. Consultations were also held with Broome Circle and Aboriginal Family Legal Services to better understand the most common types of discrimination experienced by their clients. These consultations presented the opportunity to discuss issues for communities in and around Broome.



Training to North Regional TAFE

### October 2022 in the Pilbara

In October 2022 two members of the Strategy and Engagement team spent a week in Karratha providing fee-for-service training to North Regional TAFE.

While in the area, the team members visited community organisations to provide information about the Commission and the Act. The officers also visited Roebourne Prison to inform the peer support prisoners of the types of complaints the Commissioner can investigate.

### March 2023 in the Great Southern

Our strategy and engagement officers delivered training programs for South Regional TAFE, as well as visiting Albany Regional Prison and Pardelup Prison Farm and providing outreach to community and not-for-profit organisations around Albany and Katanning, including the Katanning Shire Council, Aboriginal Legal Service and Great Southern Aboriginal Health Service.

Homelessness and the social issues associated with homelessness were the main concerns for community members in Albany as a significant population increase in the area had impacted essential services for the community.



Aboriginal Medical Service Albany



### June 2023 in the Indian Ocean Territories

Through a Service Delivery Agreement with the Commonwealth Government, approximately every 18 months the Commission’s Strategy and Engagement team travel to the Indian Ocean Territories to provide education and outreach to the communities of Christmas and Cocos (Keeling) Islands.

### Participation in the RAAP

Members of the Commission’s Strategy and Engagement team again participated in the Regional Access and Awareness Program (RAAP) coordinated by the WA Ombudsman.

The program involves several State and Federal agencies travelling together to regional and remote areas in WA to provide information about the work of their agencies in complaint handling and to offer service to those areas.

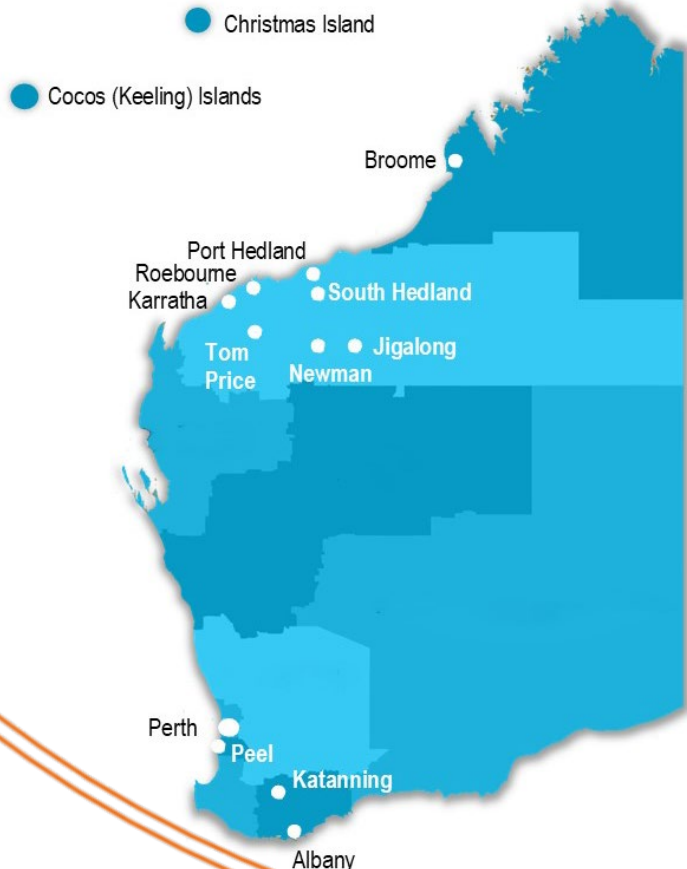
This financial year the RAAP visited the Pilbara covering Newman, Jigalong, Tom Price, Paraburdoo, Karratha, Roebourne and Port Hedland.

The RAAP is an important service to these areas as many community members find it difficult to access the services of agencies based in the metropolitan area.



Strategy and Engagement Officers in Christmas Island with the CI Women’s Association

**Figure 3: Regional visits 2022-23**



## Evaluations

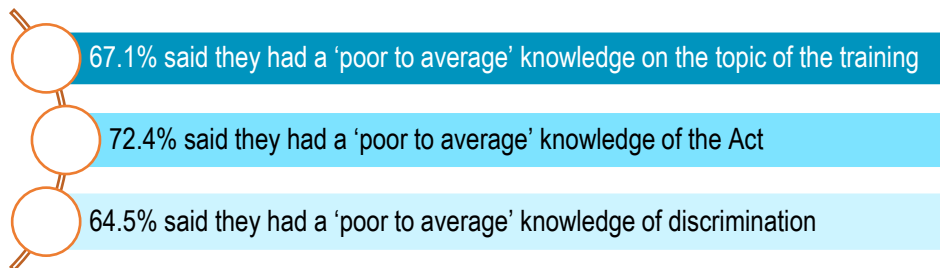
Participants who enrol to attend fee-for-service training are requested to complete a pre-training questionnaire to measure their level of knowledge of the Act.

### Perceptions before training

Participants are asked their current level of knowledge about:

- the topic of the training
- the Equal Opportunity Act
- discrimination.

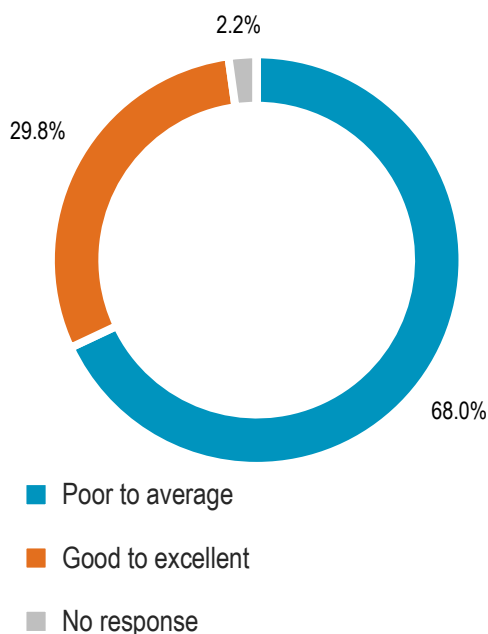
Of the participants who responded to these three questions:



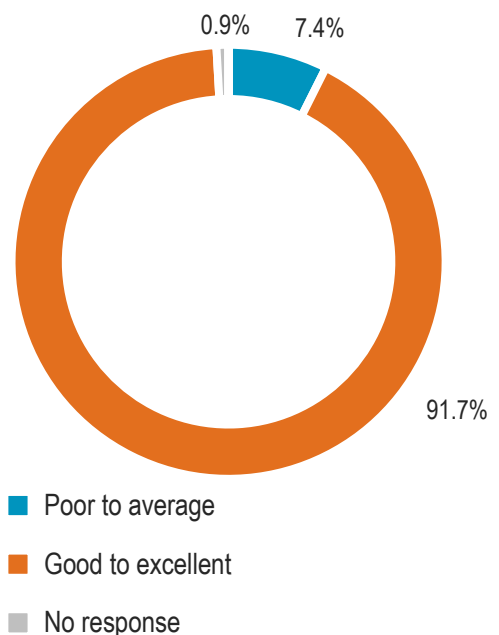
Some examples of what participants hoped to achieve by attending the course included:

- “Gain better understanding of the Equal Opportunity Act and the processes available to employees who feel they have been unlawfully discriminated against. Gain confidence in dealing with equal employment matters in a fair and consistent manner”
- “I want to learn about the right process and guidelines as to how to deal with grievances, how to be a mediator and handle conflict in a rational way without being bias”
- “Extend knowledge, understanding of EO Law”.

**Figure 4: Participants’ knowledge before training for 2022-23**



**Figure 5: Participants’ knowledge after training for 2022-23**



## Perceptions after training

Participants are also asked to complete a post training evaluation. After attending the training course, participant perceptions of having a 'good to excellent knowledge and understanding about equal opportunity' had increased from 29.8% before the course to 91.7% after.

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*After attending training, the participants 'good to excellent' knowledge increased from **29.8%** to **91.7%***

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The following is a sample of participant responses from the 2022-23 training evaluations, when asked what they liked most about the training:

- "I enjoyed the technical content – learning about the different types of bias"
- "The content was very relevant, and I enjoyed the activities which led to great discussions and new ideas"
- "The trainer was calm and gave a really calm feel to the content which helped to ease into the sometimes difficult topics"
- "Easy to follow and understand"
- "Excellent training, I feel prepared for the role ahead"
- "Important information to know in your workplace and community".

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*"The presenter was incredibly engaging and knowledgeable, and the content was very well presented. I loved this training session!"*

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Community Education  
and Training Officer

## Communications

We participate in a range of community engagement activities as part of our commitment to increasing public understanding and discussion of human rights and responsibilities.

### Events

With the easing of COVID-19 restrictions, attendance at community organised events and Commission organised events returned to pre-pandemic levels as we recognised 10 specific days on the inclusion and diversity calendar:

#### International Youth Day

International Youth Day is held on 12 August each year and in 2022-23 the Commission recognised the day with a panel discussion on the impact of gender identity discrimination in schools.

Our panellists included two gender diverse young people, two principals of single-sex schools and Dr Michelle Telfer who oversees the Gender Services Team at the Royal Children's Hospital Melbourne. The session was facilitated by Alyce Schott.



International Youth Day

#### NAIDOC Week

The Commission participated in the Mirrabooka NAIDOC Week event in 2022-23. Due to the COVID-19 pandemic the event was held in October instead of the traditional first week of July.

The Commission provided an information stall which was visited by community members wanting to learn more about their rights under the Act, especially with regards to race discrimination and racial harassment.



NAIDOC week



### Pride Week Perth

As in previous years the Commission held an information stall at the Perth Pride Fair Day in November 2022.

The stall was visited by Perth’s LGBTIQA+ community and its allies who engaged with staff about Commission processes and the Act.

Of particular interest to those visiting the stall were proposed amendments to the Act regarding the inclusion of a gender identity ground to replace that of gender history.

### International Men’s Day

This year the Commission worked with the Langford Aboriginal Association’s (LAA) Men’s Shed to design the 2023 Aboriginal Calendar.

The Commissioner was invited to the LAA International Men’s Day celebration at Reconciliation WA where he presented an award to William Osbern who drew the winning design. The award was accepted by Stephen Kirby on William’s behalf.

### Human Rights Day

For International Human Rights Day in 2022-23 the Commission, together with an intern from Edith Cowan University, launched its pilot program to introduce human rights and anti-discrimination in WA schools.

The intern worked with the Commission interviewing senior primary and middle school students from North Fremantle Primary School, Huntingdale Primary School, Newman College and Lance Holt Primary School to ascertain what students understood about human rights and discrimination and how they wished to learn more about these subjects.

The information gathered will help the Commission’s Community Education Team put together a strategy for educating students in primary school about human rights and discrimination as part of the next phase of the project.



Pride Week Perth



International Men’s Day



Human Rights Day



## Albany Pride

On Saturday 4 March 2023, Manager Strategy and Engagement Diana MacTiernan and Communications Officer Sarah Johnston hosted a stall at Albany Pride Fair where they spoke to local members of the LGBTIQ+ community and their allies about discrimination and harassment.

They spoke about the gender history and sexual orientation grounds within the Act and informed people about proposed changes to those grounds under the State Government's review of the Act.



Albany Pride

## International Women's Day

The Commission celebrated International Women's Day by hosting its sixth speed mentoring event, bringing inspirational women leaders and future women leaders together.

Eight mentors from various backgrounds and careers donated their time on International Women's Day to share their experiences and give guidance to 14 young women from Mt Lawley Senior High School, Mercedes College, Shenton College, Newman College and Curtin University.

Feedback from mentors and mentees showed both benefited from the interaction.



International Women's Day

## International Day for the Elimination of Racial Discrimination

The Commission held an information stall in the Murray Street Mall in Perth on the International Day for the Elimination of Racial Discrimination which occurred during Harmony Week.

The stall was held to raise awareness about the Act's grounds of race discrimination and racial harassment.



International Day for the Elimination of Racial Discrimination

## Youth Week

During Youth Week in 2022-23 the Commission announced initial research findings into the general understanding of human rights of year six students in Western Australia as part of its program to introduce human rights and anti-discrimination in WA schools.

Following interviews with year six students from schools within the Perth metropolitan area, the Commission has found more than half of the students understand the essential meaning of 'human rights'.

However, the Commission found there is room for education on how human rights are defined and understood, which it will address in further stages of the project.

## IDAHOBIT

In 2022-23 the Commission, together with the University of Western Australia, held the tenth annual Isabelle Lake Memorial Lecture to mark the International Day Against Homophobia, Biphobia and Transphobia.

Former AFL footballer and coach Danielle Laidley delivered the keynote address to an audience of 160 about her personal experience with gender dysphoria and how it impacted her in such a high profile, gendered industry.

This was the final lecture in the Isabelle Lake Memorial Lecture series as the State Government has committed to align gender identity provisions with the federal Sex Discrimination Act, which was the major objective of the series.



Youth Week



IDAHOBIT

## Media and communications

Our media engagement and broader public communications activities are an important part of our work to increase public understanding and discussion of the Act and what we do.

We are not always able to respond to requests for public comment as our role in complaint handling is a confidential and impartial dispute resolution service, and public comment or information about complaints we receive at any stage of proceedings may compromise this work.

Most of our public comment and media interviews are provided by the Commissioner, and the Commission's corporate executive team. In the 2022-23 financial year the Commission provided comment on sex discrimination in access to places, sex discrimination in sport, physical appearance discrimination, sexual harassment in employment, and discrimination and human rights in education. These comments appeared in print, on radio and, for the first time, in podcast.

### Website

The Commission has been part of the WA.gov.au platform for two years now. While the Commission has responsibility for content, the Department of the Premier and Cabinet oversees the function, security and format of this site. In 2022-23 the Commission's page had 70,000 viewers. The most viewed page of the website was the Act at over 24,000 views followed by the online complaint form at over 12,000.

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*The Facebook post with the most impact in the 2022-23 financial year was about the Isabelle Lake Memorial Lecture, which was delivered by former AFL player and coach Danielle Laidley*

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### Social media

We use Facebook to share information and news updates with social media users. The post with the most impact in the 2022-23 financial year was about the Isabelle Lake Memorial Lecture, which was delivered by former AFL player and coach Danielle Laidley. The post reached 1,440 people and was engaged by 164 Facebook users.

### Bulletins

We produce monthly ebulletins from February through to December to help keep subscribers up to date with news about discrimination and harassment, the Act, and the Commission's work.

These publications went to 4,020 subscribers in 2022-23 from across the state, Australia and internationally.

## Whole of Commission work

There is some work the Commission engages in that requires cross-sectional and external engagement. Each year the Commission takes on an intern to conduct research into a priority area for the Commission and this person works across the Commission to achieve this task.

The Commission is also approached throughout the year to make submissions to parliamentary inquiries at both state and federal level, as well as the development of legislation that might impact on the *Equal Opportunity Act 1984*.

Commission staff also engage in external projects and working groups within the public and private sectors to achieve changes to policies and practices relating to equality and substantive equality.

### Speaking engagements

The Commissioner and other Commission staff members regularly accept invitations to speak to students, community groups, lawyers, employee and employer groups, and at community events. Speaking topics range from specific issues in human rights and anti-discrimination law to broader topics of diversity and inclusion.

This year Commission staff spoke at:

- Australian Council of Human Rights Authorities' Stand at the Agora, Sydney WorldPride Conference
- Consumer Protection Empowering Consumers with Disability Forum
- Institute of Public Administration Australia WA 2023 Public Sector Young Professionals Conference
- Strata Communities Conference for Strata Managers.



Commissioner with Sex Discrimination Commissioner Kate Jenkins and Victorian Equal Opportunity and Human Rights Commissioner Ro Allan



## Partnerships and networks

We are involved in a range of issue and location based advisory groups and networks. These include multicultural and multi-faith networks, disability networks, access and inclusion advisory groups, and public sector interagency networks. Additionally, we have initiated and/or contributed to various consultation groups and cross-agency collaboration networks including:

- **The New and Emerging Communities Reference Group:** This reference group is hosted by the Equal Opportunity Commission and includes representatives from migrant and refugee advocacy groups as well as representatives from State Government agencies who focus on providing a service to these cohorts. The group meets to discuss issues that impact migrants and refugees based in WA and develop strategies for addressing these issues.
- **Northern Suburbs Community Legal Centre (NSCLC):** The Commission signed a MoU with the NSCLC to provide education and outreach to community organisations that work with the legal centre.
- **Mental Awareness, Respect and Safety (MARS) program:** The MARS program is a whole-of-government initiative that aims to improve the health, safety and wellbeing of workers and others in the mining industry. The Commission assists the initiative with cross-promotion and by providing input to education and training to industry members.
- **Stronger Together:** The Commission is part of the implementation group for this whole-of-government initiative which aims to develop strategies for gender equality in Western Australia.
- **Sponsorship of WA MEAA Awards:** Each year the Commission sponsors the Social Equity Reporting category at the WA Media, Entertainment and Arts Alliance awards. In the 2022-23 financial year the award was given to Annabel Hennessy from the West Australian.
- **Western Australian Multicultural Awards 2023:** WA Commissioner for Equal Opportunity Dr John Byrne participated on the judging panel for this event.
- **Isabelle Lake Memorial Lecture:** The Commission co-hosted the tenth Isabelle Lake Memorial Lecture with the University of Western Australia.



Commissioner with  
Northern Suburbs  
Legal Centre CEO  
Kathy Cokis



- **State Language Policy network:** The Commission works with the Office of Multicultural Interests (OMI) to provide comment on the policy and attends quarterly meetings hosted by OMI.
- **Play by the Rules (PBTR) partnership:** Play by the Rules is a national interactive education and information initiative which promotes inclusivity in sport free from discrimination and harassment. The Commission works in partnership to help promote campaigns run by PBTR and provides sponsorship. Community education officers also conducted Member Protection Information Officer sessions.
- **University intern partnerships:** The Commission accepts interns studying areas relevant to equal opportunity and human rights. Each year the Commission takes on an intern from either the University of Western Australia or Edith Cowan University. In the first half of the 2022-23 financial year the Commission hosted an intern studying Social Work from Edith Cowan University to commence research into upper primary and lower secondary students' knowledge about human rights and equal opportunity. In the second half of the financial year the Commission took on an intern from the University of Western Australia.
- **CEOs for Gender Equity:** The Equal Opportunity Commission formed the inaugural group of CEOs in 2012 and is now one of the 80 members from the corporate, not-for-profit and government sectors.
- **Australian Council of Human Rights Agencies:** The Commission is one of nine anti-discrimination and human rights agencies which meet to discuss issues impacting Australia's human rights obligations.
- **Seniors Strategy Implementation Group:** An Age-friendly WA: State Seniors Strategy 2023-2033 is a whole-of-government strategy providing guidance to government, so seniors feel valued, safe and empowered. The Commissioner is part of the implementation group driving this strategy.

## Submissions

The Commission made four submissions on issues that relate to its functions under the *Equal Opportunity Act 1984*.

### Commonwealth Parliamentary Inquiry into Australia's Human Rights Framework

The Commission submitted that frameworks such as the Policy Framework for Substantive Equality are an essential mechanism to provide the foundations for organisations to achieve human rights and substantive equality outcomes. However, without legislative underpinning, frameworks do not have the imprimatur to fully achieve their objectives. They are also more vulnerable than legislation to political influences and can be more readily disbanded. The Commission endorsed the submission made by the Australian Human Rights Commission for a federal Human Rights Act.

### National Strategy to Achieve Gender Equality

The Commission made a submission to the Federal Government's National Strategy to Achieve Gender Equality. The submission was made in collaboration with other state government agencies who are members of the Stronger Together Implementation Group convened by the Department of Communities. In the submission the Commission highlighted the challenges in the workplace faced by women undertaking IVF treatments.

Currently the many jurisdictions of employment and anti-discrimination laws do not recognise the requirements and demands of IVF treatments. The resulting disadvantage experienced within the workplace further contributes to gender inequality in Australia. Hence, recommendations for explicit leave protections under the *Fair Work Act 2009* and anti-discrimination protections under the federal *Sex Discrimination Act 1984* were made.

### **Refugees' access to vocational education and training**

The Commission made a submission to the Commonwealth Parliament on the *Inquiry into the perception and status of vocational education and training* (VET). The inquiry was conducted by the House of Representatives Standing Committee on Employment, Education and Training. The submission highlighted the challenges faced by refugee and asylum seeker communities when accessing VET programs. The Commission conducted a consultation with Kin Disability Advocacy to better inform the submission about the experiences of refugees and asylum seeker individuals with disability.

Access to education and training opportunities play a significant role in the settlement of refugees and asylum seekers and their social and economic inclusion. The lack of comprehensive support in the areas of disability, mental health and domestic violence heavily impacts refugees' access and their successful participation in VET programs. The support provided to pursue VET qualifications also differs from one state to another. A federal initiative with affirmative support that provides equal access to fee-free VET programs was recommended.

### **Review of the State Disability Services Act (DSA)**

The Commissioner accepted the invitation from the Office of Disability to provide feedback on the consultation paper *Reforming Western Australia's Disability Legislation*.

The Commission's feedback focussed on the importance of incorporating the concept of substantive equality into the objects of the DSA to ensure equal outcomes of services for people with disabilities.

## **Research**

### **Children, Discrimination and Rights Education**

This research project started as part of the Commission's intern partnership program with Edith Cowan University at the beginning of the 2022-23 financial year.

An Edith Cowan Social Work student conducted the initial research by interviewing year six and seven students from four schools across the Perth metropolitan area to ascertain the extent of human rights and discrimination knowledge the students had and how they would prefer to learn more about these issues.

Commission Strategy and Engagement Officer Dr Greg Watson is now expanding this research to year six students across the state to inform policy for incorporation of discrimination and human rights education into school curriculum materials.

### **Representation of Race in visual communications of Government Agencies**

The Commission was approached by the University of Western Australia to host a PhD candidate whose area of expertise is the representation of race in popular media. The Commission invited the candidate to apply his expertise to conduct a review of the visual communications of major government agencies for the representation of race. The agencies selected for the review are those mandated by the Policy Framework for Substantive Equality and deemed to deliver high impact services.

The candidate completed most of the work in the reporting year, however the final report will be released later in 2023.

# Enquiries

We provide a free, accessible and personalised information service to help people understand their rights and responsibilities under the *Equal Opportunity Act 1984* (the Act).

People enquire about discrimination and harassment, the Act and the functions of the Equal Opportunity Commission.

The enquiry roster is staffed by Commission officers.

## Mode of enquiry

In the 2022-23 financial year the Commission received 1,080 enquiries via telephone, email, post and in person.

Most enquiries in the reporting year were by telephone at 65.6 percent, followed by written enquiries at 32.7 percent, which includes by email and post, and then in person at 1.7 percent.

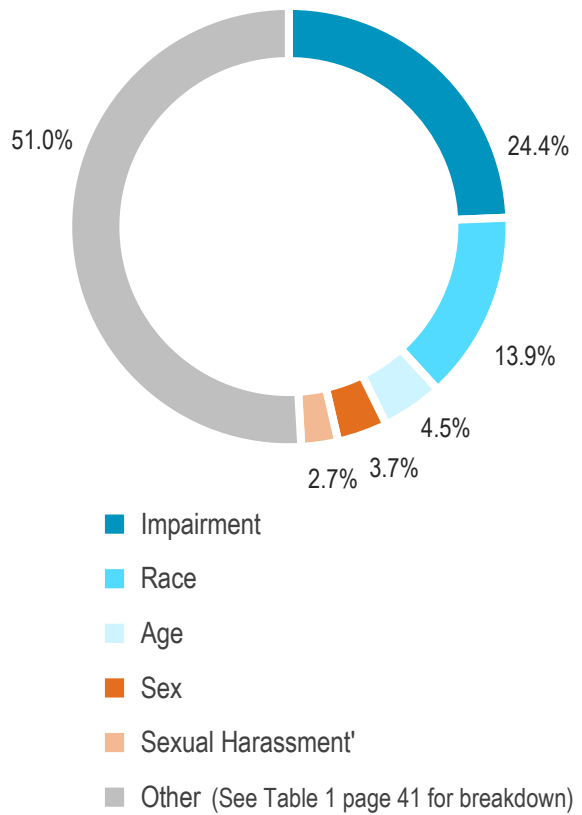
Of the written enquiries the majority (87%) were lodged electronically by email, the website or Facebook.

## Ground and area

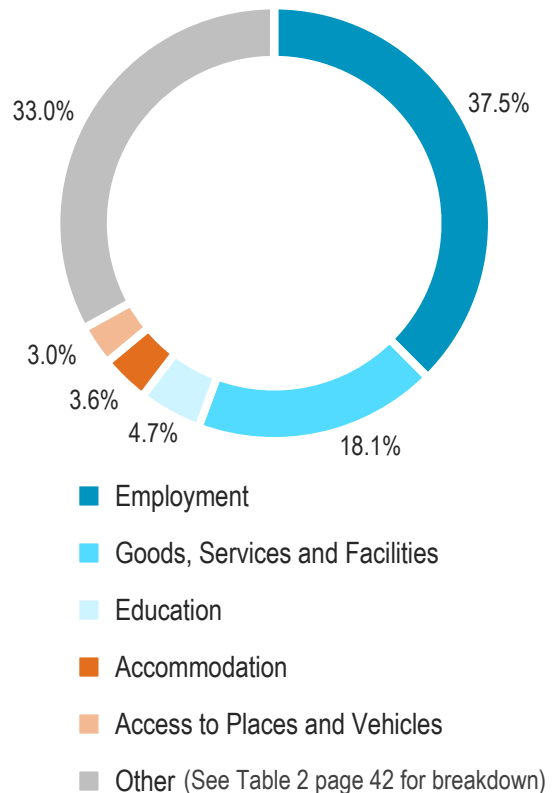
In 2022-23, enquiries about impairment were highest at 24.4 percent. Followed by race at 13.9 percent.

Most enquirers indicated employment (37.5%) as the area of public life concerning them, followed by goods, services and facilities at 18.1 percent.

**Figure 6: Top five enquiries received by ground 2022-23**



**Figure 7: Top five enquiries received by area 2022-23**



## Enquirers

In 2022-23 most of the enquiries were from individuals (88.3%). A total of 11.7 percent were from private enterprise, government agencies and non-government organisations.

Of those individuals who disclosed their gender, similar to previous years, women were slightly more likely (49.1%) to make enquiries than men (43.6%). Non-binary people, as well as other genders, made up less than 1%.

Seventy-six percent of all enquiries were people reporting general allegations of discrimination or requesting information about potential complaints. Other enquiries related to employers and potential respondents seeking information about their responsibilities under the Act (4.4%), which was a decline from the previous year. A smaller number of enquirers requested copies of Commission publications, an explanation of the Act or other legislative issues.

1

### Enquiry summary

#### Impairment in employment

The enquirer suffers from anxiety and depression and is the victim of domestic violence. Her employer placed her under performance management in response to her work absences due to domestic violence, which has exacerbated her anxiety and depression and in turn her work quality and output. A few months prior to her enquiry she took out a violence restraining order against her partner; however, she has been given notice of termination by her employer. She has contacted a community legal centre but cannot get an appointment for a couple of weeks.

*Outcome: Enquiry officer referred the enquirer to legal centre in her area and discussed making an application with the Fair Work Commission and an interim injunction to prevent her termination.*

2

### Enquiry summary

#### Gender identity and race in goods, services and facilities

An enquirer claimed she was harassed by service providers at an entertainment venue. She believes this was due to her gender and Asian background.

*Outcome: Enquiry officer explained relevant parts of the Act and what complainants must demonstrate.*

## Residence

In 2022-23 most enquiries were received from the metropolitan area (46.7%). Within the metropolitan area the highest number of enquiries were received from the South Metropolitan area at 23.0 percent.

In regional Western Australia the Southwest Region recorded the most enquiries received at 21.1 percent.

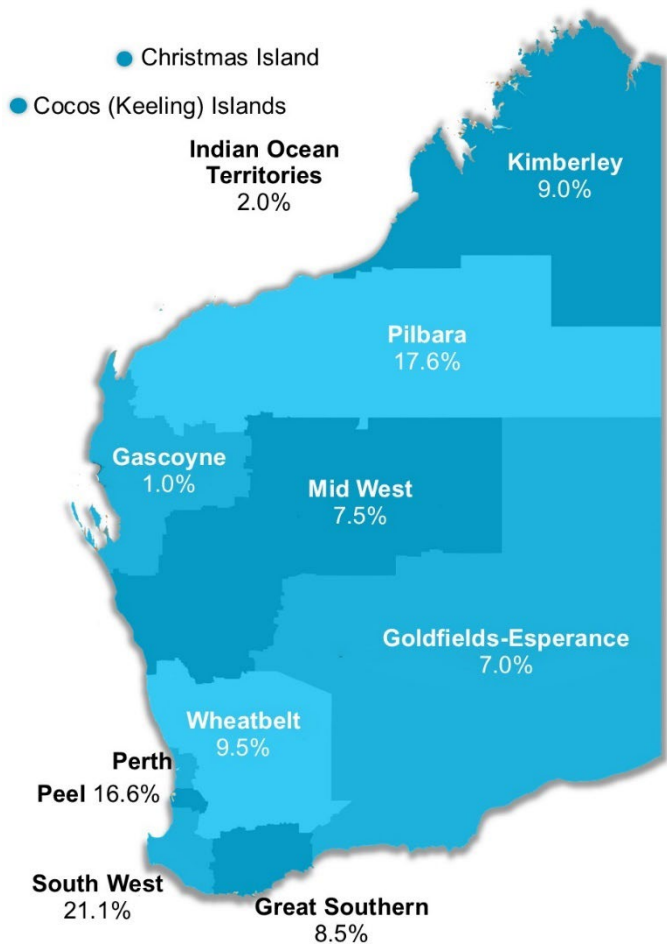
## Outcomes

Of the 1,080 enquiries received, 84.1% related to the Act and 15.9% were referred to organisations including, but not limited to:

- The Australian Human Rights Commission (5.8%)
- Non-government organisations, mainly community legal centres (4.7%)
- WA Government departments or agencies (4.4%).

The remainder of enquiries (1.0%) were deemed outside of jurisdiction and the enquirers, where possible, were referred to an appropriate body for assistance. This included agencies such as the Fair Work Commission, Fair Work Ombudsman, community legal centres or the relevant union or employer body.

**Figure 8: Regional enquiries received 2022-23**



## 3

### Enquiry summary

#### Pregnancy in employment

A man enquired on behalf of his wife claiming that she has been working for a state government department for 17 years under fixed-term contracts and her employer had recently refused to renew her contract. According to the man his wife's manager told her it was because she was pregnant, and they did not want to pay her maternity leave.

*Outcome: Enquiry officer explained relevant parts of the Act and the option to make a complaint with the Equal Opportunity Commission or the Australian Human Rights Commission under the Sex Discrimination Act. The officer also provided the enquirer with the Equal Opportunity Commission's fact sheet about pregnancy discrimination and the complaints process.*



# Conciliation services

## Counting of complaints

As complaints take time to resolve, some are finalised in a different financial year to receipt of the complaint. Previous Annual Reports counted complaints received in the text and tables, and counted complaints finalised in the Case Summaries, and in the text and tables referring to outcomes.

For 2022-23 the Annual Report has standardised, and only counts complaints finalised in the reporting year to better reflect the complaint process, because it is not until a complaint has been finalised that an outcome can be reported. For this reason, we would like to clarify that the table (appendix B) with complaints counted since 1985 shows complaints finalised in the reporting years, and not complaints received as in previous annual reports.

## Complaint handling

The Commission investigates complaints of unlawful discrimination and harassment by obtaining information and documents relevant to the allegations made by the complainant.

For the Commissioner to accept a complaint of unlawful discrimination for investigation, it must fall within the grounds and areas as provided by the *Equal Opportunity Act 1984* (the Act). Unlawful discrimination may have occurred where a person alleges they have been treated less favourably because of one or more of the grounds of unlawful discrimination under the Act and the treatment occurred in one or more of the areas of public life listed in the Act. Some grounds do not apply in all areas of public life; therefore, allegations with a ground but without an applicable area, cannot be accepted for investigation.

In addition to the grounds of discrimination specified in the Act, there are other matters which are unlawful in WA and can be investigated. These include victimisation and advertising. Victimisation under the Act is where a person is subjected to adverse treatment for asserting their rights under the Act, lodging a complaint of unlawful discrimination or agreeing to be a witness. Any form of advertising can be investigated by the Commission when it includes an express statement which indicates there could be a breach of the Act.

In addition, there are two other grounds of unlawful discrimination arising from other WA statutes, which confer jurisdiction to the Commissioner to investigate, conciliate or refer to the State Administrative Tribunal (the Tribunal) for determination as follows:

- i) Victimisation for making a disclosure under the *Public Interest Disclosure Act 2003*
- ii) Discrimination on the ground of a spent conviction in employment-related areas under the *Spent Convictions Act 1988*.

In the 2022-23 reporting year the Commission streamlined the complaint handling process using the Integrated Court Management System, and reviewed standard letters and documents sent to complainants and respondents to make them more accessible to a wider client base.

For a complaint to be accepted it must relate to at least one of the protected grounds of the *Equal Opportunity Act 1984* (the Act). The grounds in a complaint also need to correspond to a relevant area of public life.

Ground	Employment	Education	Accommodation	Goods, Services and Facilities	Access to Places and Vehicles	Clubs	Land	Superannuation	Sport	Victimisation - Public Interest Disclosure
Age	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Breastfeeding	✓	✓	✓	✓	✓	✓				
Family Responsibility	✓	✓								
Family Status	✓	✓								
Gender History	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Impairment	✓	✓	✓	✓	✓	✓		✓	✓	
Marital Status	✓	✓	✓	✓	✓	✓	✓			
Political Conviction	✓	✓	✓	✓		✓				
Pregnancy	✓	✓	✓	✓	✓	✓	✓			
Publication of Name in Fines Enforcement Registry Website	✓		✓	✓						
Race	✓	✓	✓	✓	✓	✓	✓			
Racial Harassment	✓	✓	✓							
Religious Conviction	✓	✓	✓	✓		✓				
Sex	✓	✓	✓	✓	✓	✓	✓			
Sexual Harassment	✓	✓	✓							
Sexual Orientation	✓	✓	✓	✓	✓	✓	✓			
Spent Conviction	✓									
Victimisation	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Victimisation - Public Interest Disclosure										✓

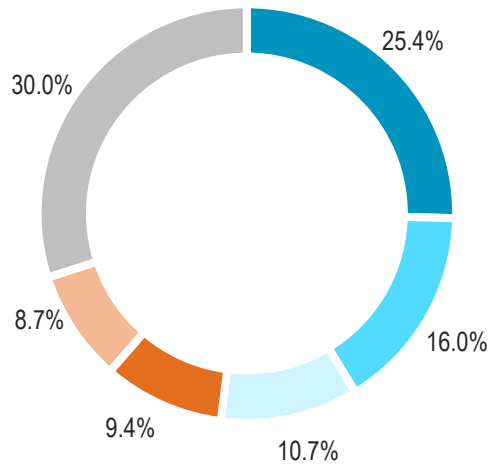
- ✓ Equal Opportunity Act applies
- Ground or Area not applicable

## Grounds

The top grounds of complaint finalised in 2022-23 were impairment at 25.4 percent, race at 16 percent, victimisation at 10.7 percent, sexual harassment at 9.4 percent and age at 8.7 percent.

Impairment covers complaints lodged by people with physical, psychological, sensory or other impairments, as well as short-term injury.

**Figure 9: Ground of complaints finalised 2022-23**



- Impairment
- Race
- Victimisation
- Sexual Harassment
- Age
- Other (See Table 10 page 45 for breakdown)



## 1 Complaint summary

### Impairment in employment

A woman who has Multiple Sclerosis (MS) disclosed her condition in a job application. She was interviewed for the job, and further documentation was requested, including medical documentation. The woman was advised her application was in the final process before employment began. Subsequently the woman received a phone call advising the job she had applied for was unsuitable because of her MS.

*Outcome: The matter was conciliated with a verbal apology, \$5,500 ex-gratia payment and a review of the organisation's systems for improved job application processing.*

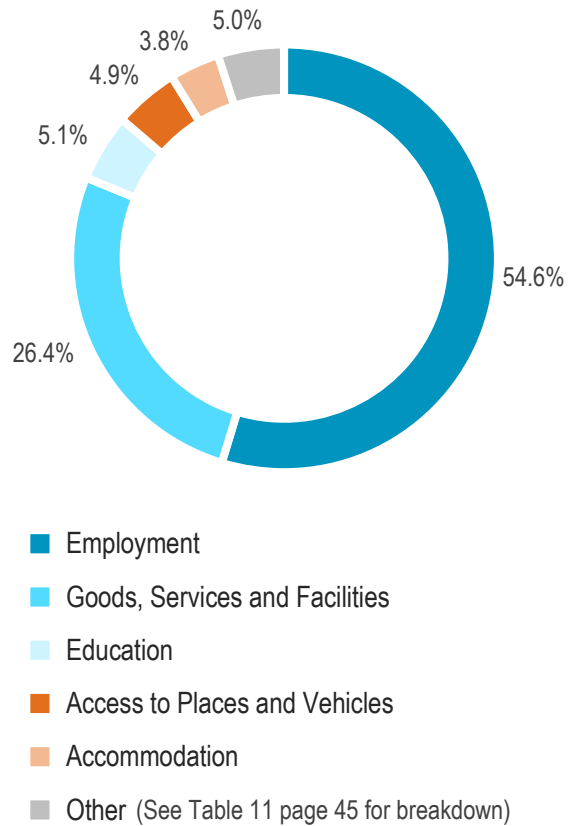
### Areas

When broken down into areas, the top five are employment (54.6%), goods, services and facilities (26.4%), education (5.1%), access to places and vehicles (4.9%) and accommodation (3.8%)

Employment /work covers:

- Employees/applicants
- Contract workers
- Commission agents
- Partnerships

**Figure 10: Area of complaints finalised 2022-23**



## 2 Complaint summary

### Race and sexual orientation in employment

A gay Aboriginal employee lodged a complaint on the ground of race and sexual orientation discrimination in the area of employment alleging a number of incidents that took place between him and his colleagues. The employer investigated the allegations and explained the outcome of the investigation. The employer also explained plans for the workplace regarding LGBTIQ+ and reconciliation initiatives. The employee then accepted the outcome.

*Outcome: Respondent’s explanation satisfactory to complainant. After considering the response and getting advice the complainant said the issue had been resolved.*

## Complaint process

The Commissioner has the power to compel complainants and respondents to provide information, produce documents and attend conferences. The Commissioner may dismiss a complaint at any stage if satisfied the complaint is misconceived, frivolous or vexatious, lacks substance, or relates to an act that is not unlawful by reason of a provision of the Act.

Should the Commissioner determine the complaint is to be dismissed, the complainant has the right to require the matter be referred to the State Administrative Tribunal (Tribunal).

Where the Commissioner has not dismissed a complaint and is of the opinion the complaint may be resolved, a Conciliation Officer endeavours to resolve the complaint by conciliation. The Conciliation Officer is impartial and does not represent or advocate for either party.

Resolution may be achieved through an exchange of letters or by a formal conciliation conference which the parties are required to attend.

Conferences may be conducted face-to-face, by a teleconference or by videoconference.

Some outcomes the complainant and respondent may agree to include:

- Providing an apology
- Making available something that was previously refused, such as accommodation, admission to a course or access to a venue
- Introducing or improving equal opportunity policies and practices
- Compensation for a specific loss e.g. income
- Compensation for emotional harm e.g. pain and suffering.

If the complaint is not resolved the Commissioner will review the complaint file and may request additional information from either or both parties, dismiss the complaint, or refer the matter to the Tribunal for hearing and determination. If the complaint is dismissed, the complainant may have the matter referred to the Tribunal.

### 3

## Complaint summary

### Age in accommodation

The complainant booked accommodation online and when confirming his booking some weeks later, was asked to provide ID. The respondent cancelled the booking when he realised the complainant was over 35 years of age.

*Outcome: An apology and payment of \$110.*



## Complaints finalised

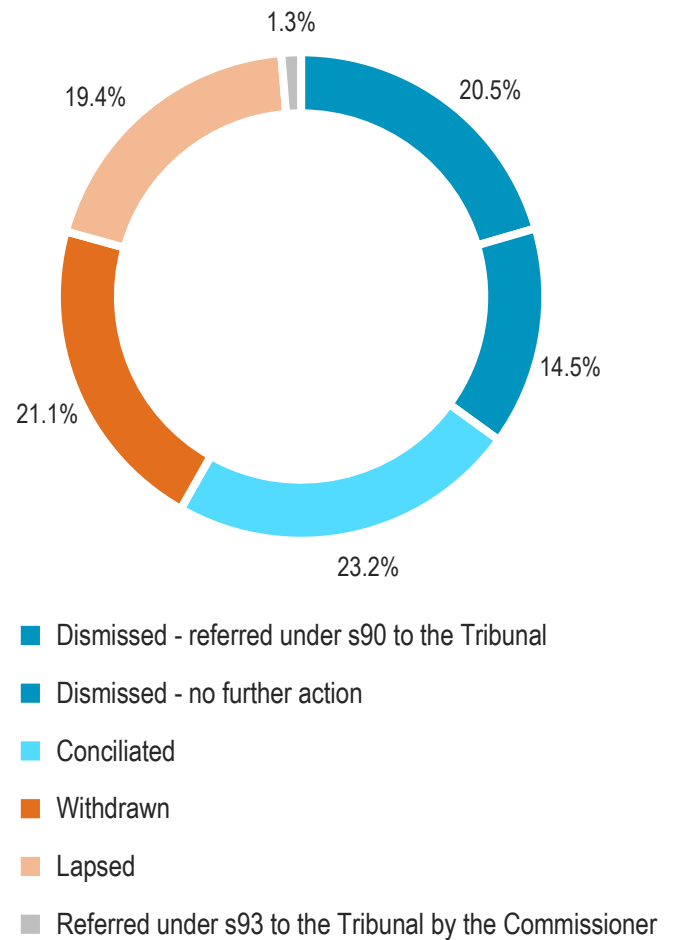
The Commission finalised 469 complaints in the financial year.

Of the complaints finalised 35 percent were dismissed, 20.5 percent were subsequently referred to the Tribunal under s90 and 14.5 percent required no further action, 23.2 percent were conciliated, 21.1 percent were withdrawn, 19.4 percent lapsed, and 1.3 percent were referred to the Tribunal under s93.

The Act specifies a complaint can be finalised in one of the following ways:

- **Dismissed by the Commissioner s90 referred** a complainant can in writing require a dismissed complaint be referred to the Tribunal
- **Dismissed by the Commissioner** if it is lacking in substance, misconceived, vexatious or frivolous
- **Resolved by conciliation** when complainant and respondent achieve a mutually agreed outcome
- **Withdrawn by the complainant** at any time. This may occur based on the initial response from the respondent, election to move to another jurisdiction, or an inability to provide evidence
- **Lapsed by the Commissioner** if there is no response to attempts to contact the complainant, or if the person does not provide information to actively pursue the complaint
- **Referred under s93 to the Tribunal by the Commissioner** if the complaint cannot be conciliated and the Commissioner determines there is an arguable case.

**Figure 11: Outcome of complaints finalised 2022-23**



## 4 Complaint summary

### Sex in goods, services and facilities

A man and his male partner, both wearing sleeveless shirts, were not permitted entry to dine at a venue's restaurant due to the venue's dress standard policy, although women wearing similar attire were permitted entry.

*Outcome: Apology and change to venue dress standard entry policy.*

## Conciliation

Conciliation brings complainants and respondents together in a non-adversarial environment to determine if a complaint can be resolved. The outcomes of this process vary depending on the parties involved and the situation.

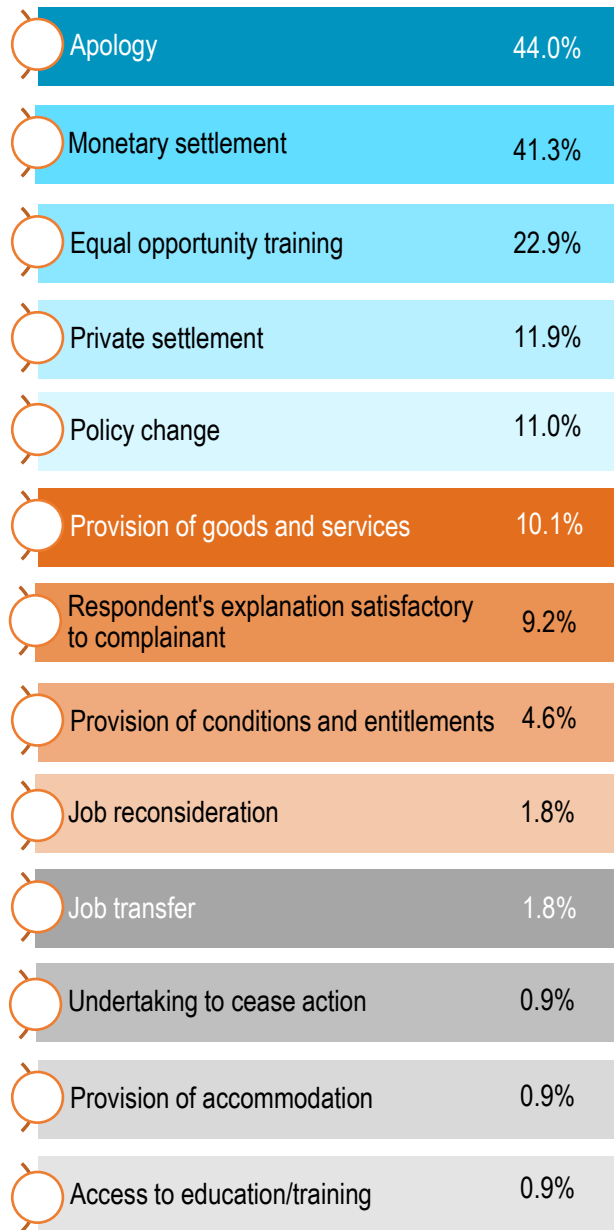
Figure 12 shows the outcomes of the complaints which were conciliated. Many of these conciliated complaints were resolved with more than one outcome, for instance a monetary settlement, a policy change and an apology.

Conciliated complaints finalised with an apology were the highest at 44.0 percent, followed by a monetary settlement at 41.3 percent and equal opportunity training at 22.9 percent.

Impairment complaints were the most conciliated complaints at 32.1 percent, followed by race at 18.3 percent, sexual harassment at 13.8 percent and age at 4.6 percent.

The area of public life with the most conciliated complaints was employment at 54.1 percent, followed by goods, services and facilities at 28.4 percent.

**Figure 12: Conciliated outcomes finalised 2022-23**



*“Appreciate your frank and calm demeanour to get the outcome achieved” – Respondent*

*“I am so thankful for the Equal Opportunity Commission, and I don't know where I would be or the hardships I may face right now had I been without the help of the Commissioner” – Complainant*

## Time taken to resolve complaints

The Commission aims to finalise complaints in a timely and impartial manner that ensures interested parties are treated fairly and can achieve satisfactory outcomes.

In 2022-23, 81 percent of complaints were finalised within 12 months and the average length of time taken to resolve complaints was 6.9 months. The significant increase in complaints during the COVID-19 pandemic, along with the secondment of Conciliation Officers to assist the Health Department with contact tracing during this time, led to a backlog of older complaints. The backlog, which was cleared by 30 June 2023, resulted in poorer than targeted percentages and timeframes for finalising complaints.

### 5

#### Complaint summary

##### Sex and sexual harassment in employment

A woman working for a mining company in a remote location experienced inappropriate behaviour from her manager including sexual harassment. Although the woman objected to his behaviour it continued until she made the decision she could no longer remain on the site as she did not feel safe. The woman left the site and her position with the organisation and reported the matter to HR.

*Outcome: The matter was conciliated with the company agreeing to make a \$900 payment, providing workplace behaviour training, update policies, issue a statement of service, and to acknowledge the woman's hurt and upset.*

### 6

#### Complaint summary

##### Age in goods, services and facilities

A 17 year old attempted to fill a car with petrol and was asked to go to the counter to verify his age. He was asked for ID and to prepay for the petrol and then was not able to access his fuel app discount.

*Outcome: Following submissions from both the complainant and the respondent the Commission assessed the complaint as arguable; however when the conciliation conference was listed the complainant advised he wished to discontinue the complaint.*

## Legal services

The legal officers in Legal Services assess potential complaints of unlawful discrimination lodged with the Commission, provide advice to the Commissioner and conciliation officers regarding complaints under investigation, assist complainants at the State Administrative Tribunal (Tribunal) where a complaint is referred under s93 of the *Equal Opportunity Act 1984* (the Act) and prepare responses to state and federal inquiries and consultations.

Legal officers also review the Commission's publications, and draft ministerial and other correspondence. They provide advice and guidance to government agencies regarding the application of the Act to new and existing policies and practices.

Legal officers deliver presentations to employers, tertiary institutions, community organisations, and government agencies on the application of the Act. They also represent the Commissioner before the Tribunal on exemption applications, parliamentary committees, and other forums as required.

### State Administrative Tribunal

Referral of complaints to the Tribunal can occur in one of two ways:

**(i) If the complaint has not been dismissed, and:**

- the complaint cannot be resolved by conciliation; or
- endeavours to resolve the complaint by conciliation have been unsuccessful; or
- the Commissioner is of the opinion the nature of the complaint is such that the matter should be referred to the Tribunal;

the Commissioner must refer the complaint to the Tribunal under s93.

**(ii) If the complaint has been dismissed, the Commissioner must refer the complaint under s90, if requested by the complainant.**

In each case, a report of the complaint investigation is provided to the Tribunal upon referral.

The Commissioner must provide assistance if requested by complainants whose complaints have been referred to the Tribunal under s93 of the Act. This is usually done by assigning one of the Commission's legal officers to advise and represent the complainant.

The Commissioner does not provide assistance where a complaint has been dismissed and referred to the Tribunal under s90.

At the Tribunal, complainants can choose to represent themselves or engage representation, regardless of how a complaint is referred to the Tribunal.

When the matter is referral to the Tribunal, the complainant is referred to as the 'applicant' under the *State Administrative Tribunal Act 2004*.

## 1

**Case summary - Age in goods, services and facilities****Background**

The complainant was intending to visit WA from the ACT in June 2022. The respondent is a well-known car rental company. At the material time, the complainant was 80 years old. The complainant had rented cars from the respondent on previous visits to WA, when he was younger than 80. On this occasion, the complainant attempted to rent a car from the respondent through its website and noticed that they no longer rent vehicles to persons 80 years of age or over.

The complainant called the respondent directly to discuss. The respondent informed him they could still rent a car to him, but he would have to pay for the insurance, an extra \$27 per day. He complained about this, following which the respondent sent the complainant an email confirming they had decided not to rent him a car at all.

**What did we do?**

The complainant lodged a complaint of age discrimination in the area of goods and services with the Commission. In response to the complaint, the respondent stated it is self-insured and relies on in-house information and data when adjusting rates and conditions of rental, including those based on the renter's age. The respondent said it stood by its policy.

The Commissioner did not consider the response sufficient to justify dismissal of the complaint. As the complaint could not be resolved by conciliation, it was referred to the Tribunal pursuant to s93 of the Act, with assistance provided by the Commission's senior legal officer.

The Tribunal ordered the parties to attend a mediation conference. The senior legal officer attended the conference to represent the complainant and to assist him in negotiations. The respondent was also legally represented.

**Outcome**

The parties settled the complaint by the respondent apologising to the complainant for any inconvenience and hurt caused by its conduct and agreeing to pay him \$1,000 compensation. The terms of the settlement were recorded at the conference, but no formal agreement was entered into by the parties. The Tribunal discontinued and dismissed the matter by consent pursuant to s107(3a) of the Act.



## 2

**Case summary - Race in employment****Background**

The complainant is from Southern India. He worked for the respondent as a hotel cleaner in Perth, working night shifts.

One evening in June 2021, the complainant took a toilet break during a shift, using the urinals in the male staff toilets. An hour later, the complainant was asked to meet with the site leader and his assistant, both of Northern Indian origin. He was asked if he had used the toilet, to which he replied that he had. The assistant told the complainant they had checked the CCTV and that he was the last person to use the toilet, which had been left soiled and untidy.

The site leader told the complainant that although they were not suggesting he washed his bottom in the toilet, he was from "that part of the world", referring to his Southern Indian ethnicity. The complainant said he was shocked by the stereotypical comment. He denied the accusation and tried to explain the water on the floor was caused by staff having showers, which was well known among the respondent's employees. The complainant also questioned whether the water was coming from the disabled toilet, to which the site leader replied, no one used the disabled toilets, so it must have been the complainant.

Later, the complainant took a video of water flowing out of the shower, across the floor, as he had claimed. He showed the video to the site leader and contacted an HR officer to request a site change. In the meantime, the site leader and the assistant showed the complainant a photo of a soiled toilet cubicle, accusing the complainant of leaving it that way. The complainant denied doing so, and later checked with the HR section, who confirmed it was not the toilet the complainant had used. The complainant sought a verbal apology from the site leader and assistant about the way he was treated, including the insinuation about his Southern Indian heritage, but was not happy with the outcome.

**What did we do?**

The complainant then lodged a complaint of race discrimination with the Commission. Following unsuccessful endeavours to conciliate, the complaint was referred to the Tribunal pursuant to s93 of the Act, with assistance provided by the senior legal officer. The Tribunal referred the complaint to a mediation conference. The senior legal officer represented and assisted the complainant at the conference.

**Outcome**

The parties reached a settlement at the conference. The respondent's HR manager, who had not initially been involved in the dispute, apologised unconditionally to the complainant. The respondent also agreed to pay the complainant \$5,000 by way of general damages for distress and humiliation.

## 3

**Case summary - Impairment in goods, services and facilities and access to places and vehicles****Background**

A mother lodged a complaint on behalf of her five-year-old daughter who suffers from a severe allergy to milk and dairy products, alleging that a party venue had discriminated against her daughter because of her allergy.

The complainant had been invited to a birthday party organised and catered for by the party venue. The complainant's mother contacted the respondent explaining her daughter's allergy and asking if she could take her own home-made food. The respondent refused and replied they offered non-dairy food. However, they could not guarantee there would be no cross contamination from the standard food menu. The respondent did not want to change its policy of allowing home-made foods at their parties.

The girl attended the birthday party but sat without having any food while the other children consumed what the respondent provided. The girl felt excluded, and the incident caused hurt and humiliation.

At first, the respondent claimed their insurance policy did not allow homemade foods, and that their staff were trained in preparing allergy-free foods. However, the respondent failed to produce any evidence backing such claims and admitted the insurance policy justification was something the franchisor told them to say, and their resistance was because allowing food from outside affects their profit.

**What did we do?**

The matter was not resolved during conciliation and the Commissioner referred the matter for final determination to the Tribunal under s93 of the Act with assistance from a legal officer.

As the complainant's representative, the legal officer advised the complainant's mother to lodge a further complaint against the business franchisor alleging its policies regarding outside food indirectly discriminated against her daughter and amounted to causing or allowing discrimination to take place in breach of s160 of the Act.

**Outcome**

The second complaint against the franchisor settled in conciliation as the franchisor eventually understood the discriminatory effect of its policy on children like the complainant. It agreed to change the policy and notify its franchisees about the change immediately.

This assisted the original respondent to also settle at the Tribunal with assistance from the legal officer.

The original respondent eventually agreed to apologise to the girl and her mother, and to pay the sum of \$2,000 for the hurt and humiliation the young complainant suffered because of the respondent's policy. The parties settled this matter at the Tribunal on that basis.

## 4

**Case summary - Impairment in employment****Background**

The complainant is a qualified therapeutic carer who looks after children under state supervision.

In March 2020, the complainant lodged a workers' compensation claim with her then employer due to a prolonged period of work-related stress. After six weeks leave, she was cleared to return to work, and remained working until December 2020, when she went on parental leave.

While on parental leave she applied for a position with another employer (the respondent) as a therapeutic carer in August 2021. The complainant disclosed her previous workers' compensation claim in her application. The respondent offered her the job in September 2021. A week later, the respondent requested the complainant provide more details about her workers' compensation claim, including a copy of the final workers' compensation certificate. The respondent then informed the complainant she needed to get an updated clearance from her doctor. As the complainant had changed her doctor, she asked the respondent if it would be acceptable to obtain a certificate from her current doctor. The respondent initially advised the complainant this was acceptable.

However, the respondent's initial decision was overruled by the respondent's HR consultant, who rejected the certificate because it had not been obtained from her previous doctor. The respondent informed the complainant it was withdrawing its offer of employment.

**What did we do?**

The complainant lodged a complaint of impairment discrimination in the area of employment against the respondent. The complaint could not be conciliated and was referred to the Tribunal by the Commissioner pursuant to s93 of the Act. The complainant was assisted in the Tribunal by the senior legal officer. The Tribunal referred the complaint to a mediation conference.

**Outcome**

The complaint settled at the conference. The respondent agreed to pay the complainant the sum of \$5,000. The parties executed a deed of release, following which the matter was discontinued in the Tribunal.

# Disclosures and legal compliance

## Reference by the Minister

Under s81(1) of the *Equal Opportunity Act 1984* (the Act)

- (1) The Minister may refer to the Commissioner for report any matter relating to –
- a) a law or a proposed law; or
  - b) a practice, an alleged practice or a proposed practice of any person or class of persons, which conflicts with or may give rise to conflict with this Act.

No references were made by the Minister pursuant to s81(1) of the Act.

## Public Interest Disclosure Act 2003

Victimisation against someone who has made or intends to make a Public Interest Disclosure (PID) is unlawful under the Equal Opportunity Act. The s15 of the *Public Interest Disclosure Act 2003* states:

- (4) An act of victimisation under this Act may be dealt with under the *Equal Opportunity Act 1984* as if it were an act that was unlawful under s67 of that Act but, if the victim commences proceedings in a court under subsection (1), he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* because of the act and, conversely, if the victim lodges a complaint under that Act because of the act, he or she cannot subsequently commence proceedings under subsection (1) because of the act.
- (5) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

In the reporting year the Commission finalised two PID victimisation complaints. One was withdrawn and the other was dismissed, but not referred to the State Administrative Tribunal.

## Spent Conviction Act 1988

Section 29 of the *Spent Convictions Act 1988* provides that a person may lodge a complaint in relation to alleged discrimination on the ground of a spent conviction or the charge to which it relates, as if such discrimination were a form of discrimination to which the Equal Opportunity Act applies.

In the reporting year the Commission finalised two spent conviction complaints. One was withdrawn and the other was dismissed and referred to the State Administrative Tribunal.

## Other legal requirements

The Equal Opportunity Commission transitioned from a stand-alone agency to be a part of the Department of Justice on 1 December 2020, however remains independent in the performance of its statutory functions under the *Equal Opportunity Act 1984*.

The Department of Justice 2022-23 Annual Report has further information on:

- Advertising and allied expenditure
- Compliance with Public Sector Standards and Ethical Codes
- Disability Access and Inclusion Plan
- Financial Statements
- Key Performance Indicators
- Occupational Safety, Health and Injury Management
- Other Financial Disclosures
- Other Governance Disclosures
- Policy Framework for Substantive Equality
- Record Keeping Plan
- Reconciliation Action Plan
- WA Multicultural Policy Framework.

## Freedom of information

Although part of the Department of Justice the Equal Opportunity Commission independently manages Freedom of Information applications related to its statutory functions under the Equal Opportunity Act.

Summary of FOI applications	No.
Applications received	3
Applications processed	4
Personal information requests	2
Non-personal information requests	2
Amendment of personal information	0
Applications transferred in full	0
Outcomes	No.
Applications withdrawn	0
Internal reviews completed	0
External reviews completed	0
Applications currently being processed	0

At the end of this period, no reviews remain outstanding with the Information Commissioner.



# Appendices

## Appendix A: enquiry and complaint tables

### Enquiries

Table 1: Enquiries received by ground

	2022-23	%	2021-22	%
Age	49	4.5	65	4.6
Breastfeeding	3	0.3	2	0.1
Bullying	24	2.2	26	1.8
Family responsibility	15	1.4	27	1.9
Family status	15	1.4	16	1.1
Gender history	3	0.3	6	0.4
Gender identity	10	0.9	12	0.8
Human / civil rights	1	0.1	36	2.5
Impairment	263	24.4	327	22.9
Marital status	4	0.4	6	0.4
Political conviction	3	0.3	23	1.6
Pregnancy	15	1.4	19	1.3
Publication of name in fines enforcement registry website	0	0.0	0	0.0
Race	150	13.9	155	10.9
Racial harassment	9	0.8	8	0.6
Racial vilification	5	0.5	6	0.4
Religious conviction	10	0.9	42	2.9
Religious vilification	1	0.1	3	0.2
Sex	40	3.7	43	3.0
Sexual harassment	29	2.7	30	2.1
Sexual orientation	8	0.7	8	0.6
Spent conviction	11	1.0	13	0.9
Victimisation	10	0.9	16	1.1
Victimisation PID	3	0.3	1	0.1
All grounds	93	8.6	67	4.7
Other	47	4.4	123	8.6
Not applicable	259	24.0	347	24.3
<b>Total</b>	<b>1080</b>	<b>100</b>	<b>1427</b>	<b>100</b>

**Table 2: Enquiries received by area**

	2022-23	%	2021-22	%
Access to places and vehicles	32	3.0	117	8.2
Accommodation	39	3.6	64	4.5
Advertising	1	0.1	2	0.1
Application forms	2	0.2	0	0.0
Clubs	12	1.1	22	1.5
Education	51	4.7	43	3.0
Employment	405	37.5	565	39.6
Goods, services and facilities	195	18.1	243	17.0
Insurance	3	0.3	3	0.2
Land	0	0.0	0	0.0
Public place	4	0.4	5	0.4
Sport	2	0.2	5	0.4
Superannuation	0	0.0	0	0.0
All areas	81	7.5	60	4.2
Other	31	2.9	47	3.3
Not applicable	222	20.6	251	17.6
<b>Total</b>	<b>1080</b>	<b>100</b>	<b>1427</b>	<b>100</b>

## Complaints

### About the complainant

Complainants were asked a series of questions when completing the complaint form, the results are shown below.

In which country were you born?

**Table 3: Birthplace of complainant – finalised complaints**

	2022-23	%	2021-22	%
Born in Australia	295	62.9	335	60.5
Born outside Australia	157	33.5	182	32.9
No survey returned/unspecified	17	3.6	37	6.7
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

What is the main language spoken at home?

**Table 4: Language of complainant – finalised complaints**

	2022-23	%	2021-22	%
Other	41	8.7	37	6.7
English	411	87.6	477	86.1
No survey returned/unspecified	17	3.6	40	7.2
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

Do you consider yourself to have an ethnic background?

**Table 5: Ethnic background of complainant – finalised complaints**

	2022-23	%	2021-22	%
Yes	114	24.3	143	25.8
No	355	75.7	411	74.2
No survey returned/unspecified	0	0.0	0	0.0
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

Which of the following age group do you belong?

**Table 6: Age of complainant – finalised complaints**

	2022-23	%	2021-22	%
0 – 12	9	1.9	10	1.8
13 – 17	28	6.0	4	0.7
18 – 24	19	4.1	45	8.1
25 – 34	94	20.0	94	17.0
35 – 44	99	21.1	153	27.6
45 – 54	78	16.6	116	20.9
55 – 64	71	15.1	60	10.8
65 – 74	26	5.5	22	4.0
75+	7	1.5	5	0.9
No survey returned/unspecified	38	8.1	45	8.2
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

Which of the following best describes you currently?

**Table 7: Work status of complainant – finalised complaints**

	2022-23	%	2021-22	%
Homemaker	9	1.9	27	4.9
In paid employment	185	39.4	263	47.5
Looking for work	102	21.7	143	25.8
Pensioner	46	9.9	37	6.7
Retired	10	2.1	9	1.6
Student	60	12.8	26	4.7
No survey returned/unspecified	57	12.1	49	8.9
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

Do you have an impairment that results in a permanent disability?

**Table 8: Disability of complainant – finalised complaints**

	2022-23	%	2021-22	%
Yes	98	20.9	77	13.9
No	371	79.1	477	86.1
No survey returned/unspecified	0	0.0	0.0	0.0
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

**Table 9: Complainant residence – finalised complaints**

	2022-23	%	2021-22	%
Metropolitan	330	70.4	387	69.9
Non-metropolitan	98	20.9	135	24.4
Other state / overseas	14	3.0	10	1.8
Not specified	27	5.8	22	4.0
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

## About the complaint

**Table 10: Complaints finalised by ground**

	2022-23	%	2021-22	%
Age	41	8.7	42	7.6
Breastfeeding	0	0.0	1	0.2
Family responsibility	22	4.7	29	5.2
Family status	5	1.1	8	1.4
Gender history	1	0.2	1	0.2
Impairment	119	25.4	133	24.0
Marital status	3	0.6	5	0.9
Political conviction	2	0.4	19	3.4
Pregnancy	9	1.9	15	2.7
Publication of name in fines enforcement registry website	1	0.2	0	0.0
Race	75	16.0	73	13.2
Racial harassment	26	5.5	27	4.9
Religious conviction	17	3.6	38	6.9
Sex	39	8.3	33	6.0
Sexual harassment	44	9.4	51	9.2
Sexual orientation	11	2.4	11	2.0
Spent conviction	2	0.4	2	0.4
Victimisation	50	10.7	57	10.3
Victimisation PID	2	0.4	9	1.6
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

**Table 11: Complaints finalised by area**

	2022-23	%	2021-22	%
Access to places and vehicles	23	4.9	29	5.2
Accommodation	18	3.8	24	4.3
Advertising	2	0.4	0	0.0
Clubs	17	3.6	9	1.6
Education	24	5.1	24	4.3
Employment	256	54.6	350	63.2
Goods, services and facilities	124	26.4	114	20.6
Sport	5	1.1	4	0.7
Victimisation	0	0.0	0	0.0
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>



**Table 12: Impairment complaints finalised – disability of complainant**

	2022-23	%	2021-22	%
Blind and vision impairment	0	0.0	3	2.3
Deaf and hearing impairment	5	4.2	2	1.5
HIV or other organisms	0	0.0	0	0.0
Imputed impairment	3	2.5	5	3.8
Intellectual disability	16	13.4	6	4.5
Mental health/psychosocial	34	28.6	37	27.8
Physical disability	60	50.4	74	55.6
Not specified	1	0.8	6	4.5
<b>Total</b>	<b>119</b>	<b>100</b>	<b>133</b>	<b>100</b>

**Table 13: Employment complaints finalised – employment status of complainant**

	2022-23	%	2021-22	%
Casual	30	11.7	22	6.3
Fixed-term contract	9	3.5	15	4.3
Full-time	110	43.0	156	44.6
Part-time	15	5.9	22	6.3
Permanent	25	9.8	13	3.7
Unemployed	49	19.1	88	25.1
Other	0	0.0	0	0.0
Not specified	18	7.1	34	9.8
<b>Total</b>	<b>256</b>	<b>100</b>	<b>350</b>	<b>100</b>

## About the respondents

**Table 14: Respondent industry - finalised complaints**

	2022-23	%	2021-22	%
Accommodation and food services	33	7.0	29	5.2
Administrative and support services	13	2.8	23	4.2
Agriculture, forestry and fishing	2	0.4	0	0.0
Arts and recreation services	62	13.2	36	6.5
Construction	8	1.7	24	4.3
Education and training – school, tertiary other education	50	10.7	48	8.7
Electricity, gas, water and waste services	9	1.9	9	1.6
Financial and insurance services	7	1.5	6	1.1
Health care and social assistance	55	11.7	75	13.5
Information media and telecommunications	0	0.0	4	0.7
Manufacturing	3	0.6	3	0.5
Mining	31	6.6	26	4.7
Professional, scientific and technical services	6	1.3	19	3.4
Public administration and safety	30	6.4	74	13.4
- Correctional and detention services	39	8.3	10	1.8
- Police services	5	1.1	15	2.7
Rental, hiring and real estate services	34	7.2	32	5.8
Retail trade	49	10.4	67	12.1
Transport, postal and warehousing	23	4.9	20	3.6
Wholesale trade	2	0.4	15	2.7
Other services	8	1.7	19	3.4
Not specified	0	0.0	0	0.0
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

**Table 15: Respondent identity - finalised complaints**

	2022-23	%	2021-22	%
Club	21	4.5	7	1.3
Non-government organisation	29	6.2	30	5.5
Private enterprise	290	61.8	331	59.7
State government department / agency / authority / local	129	27.5	174	31.4
Trade union	0	0.0	8	1.4
Other	0	0.0	4	0.8
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

**Table 16: Size of organisation - finalised complaints**

	2022-23	%	2021-22	%
0 - 19	58	12.4	60	10.8
20 - 99	123	26.2	121	21.8
100 - 499	73	15.6	75	13.5
500+	180	38.4	202	36.5
Not specified	35	7.5	96	17.3
Other	0	0.0	0	0.0
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

## How complaints were handled

**Table 17: Outcome of complaints finalised**

	2022-23	%	2021-22	%
Conciliated	109	23.2	131	23.6
Dismissed – no further action	68	14.5	103	18.6
Dismissed – referred under s90 to the Tribunal	96	20.5	46	8.3
Lapsed	91	19.4	111	20.0
Withdrawn	99	21.1	137	24.7
Referred under s93 to the Tribunal by the Commissioner	6	1.3	26	4.7
<b>Total</b>	<b>469</b>	<b>100</b>	<b>554</b>	<b>100</b>

## Appendix B: complaints finalised from 1985 to 2023

