

2021-22



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Statement of compliance

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 2022.

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



John Byrne
Commissioner for Equal Opportunity

8 September 2022

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Advice: Aboriginal readers are advised that this document may contain images of people who have died.

About this report

This report provides information on the performance of the Equal Opportunity Commission in the 2021-22 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.

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.

Further enquiries

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

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From the Commissioner



In this reporting year the Commission, like many organisations in Western Australia, has learnt to live with COVID-19 and has adapted well.

Online meetings are now a matter of course, and in May the Commission successfully held its first online public event for the annual Isabelle Lake Memorial Lecture.

As restrictions were put in place to ease the spread of the pandemic across WA, the Commission was impacted by an influx of enquiries from the public. There was 13.7 percent increase of enquiries received at the Commission compared with the previous year.

The past year also continued to bring a focus on sexual harassment.

Since the reinvigoration of the #MeToo movement in 2017 following allegations of sexual harassment and abuse in the Hollywood film industry, various industries around the world have been scrutinised and this year that included Federal Parliament in Canberra and the FIFO mining industry in Western Australia.

The Commission made a submission to the WA State Government inquiry into sexual harassment in the state's FIFO mining industry.

Within that submission the Commission recommended the *Equal Opportunity Act 1984* be amended to remove the onus on the complainant to prove the respondent's behaviour caused a disadvantage to them. This was also taken up as a recommendation in the inquiry's final report *Enough is Enough*.

The Commission and many stakeholders made submissions to the Law Reform Commission of Western Australia's (LRCWA) review of the *Equal Opportunity Act 1984*. The LRCWA's Report and recommendations to the WA Government was published after 30 June 2022.

The Commission also made a submission to the Australian Human Rights Commission's National Anti-Racism Framework.

In the submission the Commission recommended the Policy Framework for Substantive Equality across State Government as best practise for achieving diversity and inclusion with the public sector and Western Australia.

Aboriginal people in particular have suffered and continue to suffer as a result of systemic discrimination. The mandating of the Framework for Substantive Equality would place an important focus on how to address systemic racism and other forms of systemic discrimination.

Another recommendation included in the submission was to neutralise unconscious bias in employment. Many organisations do not match the diversity of the community they serve, particularly at senior levels.

This is not solely a race problem, and many initiatives have already been put in place to address gender bias in recruitment.

However there needs to be more widespread use of methods for addressing intersectionality barriers from unconscious bias for other diversity groups including race, impairments, gender diversity, older and young people.

The Commission transitioned to the Integrated Courts Management System (ICMS) for managing its complaints and enquiries. I would like to thank Commission staff for their efficiency in adapting to the new system, particularly the Commission's Systems Officer who worked with the Courts Technology Group (Department of Justice) to fit the system to the Commission's needs.

During 2021-22 the Commission's Corporate Executive developed a new operating structure which was put in place at the beginning of the 2022-2023 financial year. The new structure better aligns the two arms of the Commission - community education and complaint handling – to more effectively streamline its services to the people of Western Australia.

Finally, I would like to thank Commission staff for rising to the challenges set before them during 2021-22. We are a small body of dedicated staff tasked with tackling discrimination and harassment in a very large state, and this office has handled this challenge with passion and professionalism.

Snapshot of 2021-22

Provision of information and guidance regarding equal opportunity and human rights



939 phone and visit enquiries from the public answered



489 written enquiries from the public answered



1,435 people received e-bulletin monthly



154 training and education sessions held



2,015 people attended training and education sessions



Equal Opportunity Law the most popular course

Avenue of redress for unlawful discrimination and unreasonable treatment



518 complaints received



93% of complaints submitted online or by email



Ground most common grounds of complaint **impairment, race, victimisation** and **age**



Area most common areas of complaint **employment, goods and services** and **access to places**



23% of conciliated complaints were resolved with an **apology**



92% complaints finalised in under 12 months

Commission in focus

Our agency

Our vision

A society respectful of human rights and free from discrimination and prejudice.

Our mission

To lead in the elimination of discrimination and build a community that reflects and promotes equality of opportunity and human rights.

Responsible Minister

The Hon John R Quigley LLB JP MLA, Attorney General.

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, and under the provisions of the *Public Sector Management Act 1984*.

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:

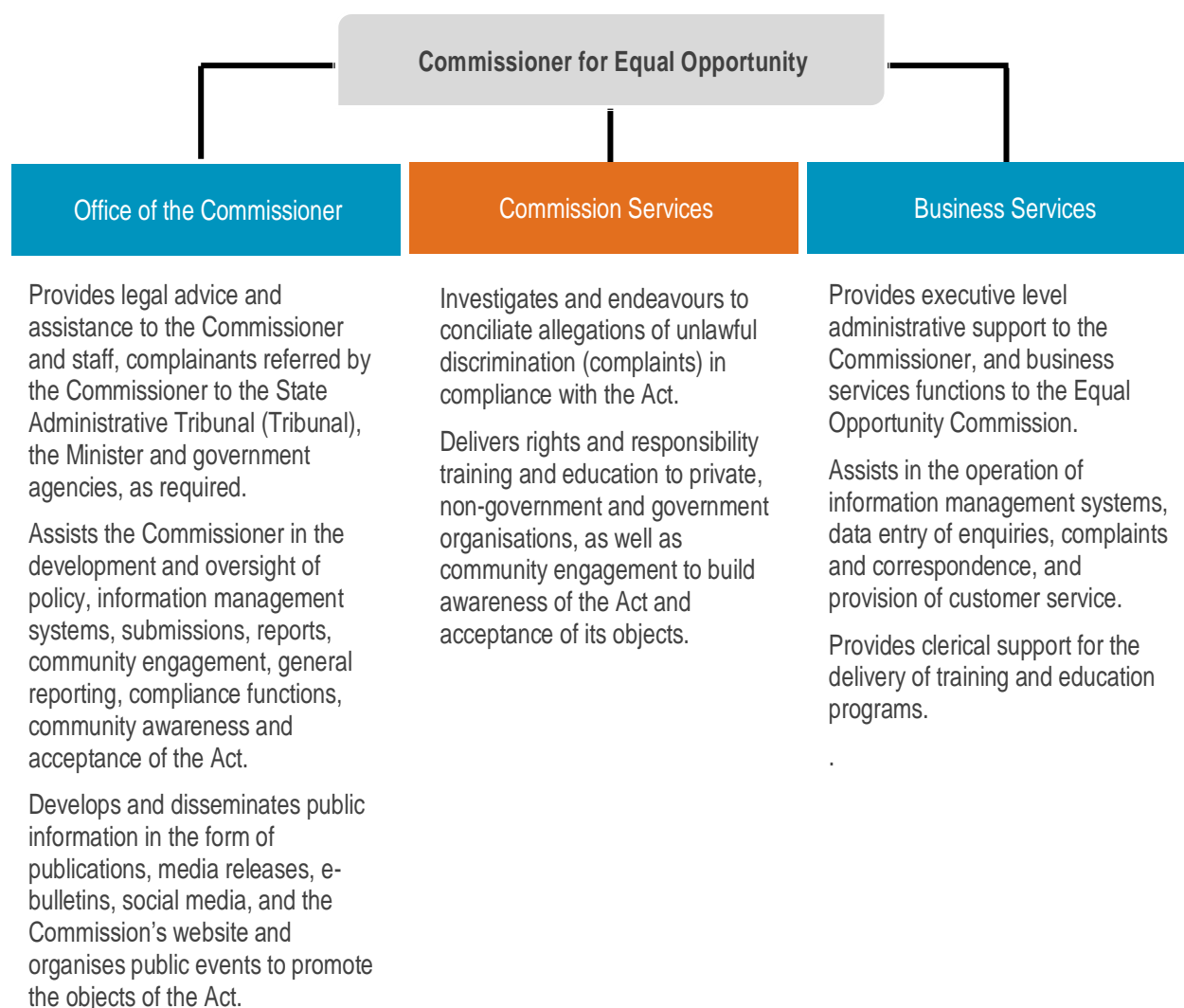
State

- *Auditor General Act 2006*
- *Financial Management Act 2006*
- *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*
- *Fines, Penalties and Infringement Notices Enforcement 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

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

Our structure



Our corporate executive

Commissioner for Equal Opportunity

Dr John Byrne commenced in the role in 2016. He was awarded a Member of the Order of Australia in the Queen's Birthday Honours in 2020.

Manager Office of the Commissioner

Allan Macdonald has been the Commission's Senior Legal Officer since 2002 and manages the Office of the Commissioner.

Manager Commission Services

Diana MacTiernan has a background in industrial relations working for unions, employers and an independent body. She has worked across the Commission since joining it in 2007 and manages Commission Services.

A/Manager Business Services

Rebecca Grimley joined the Commission in 2014 and commenced in the current role in 2022.

Our performance management framework

Management framework

The Commissioner for Equal Opportunity's Performance Management Framework is consistent with the Government's goal of Strong Communities: Safe communities and supported families.

The Commission's work is informed by the statutory obligations under the *Equal Opportunity Act 1984*, and the activities undertaken in 2021-22 are reported in this section. The Equal Opportunity Commission delivers services through its two outcome areas:

Provision of information and guidance regarding equal opportunity and human rights

- Dissemination of relevant and appropriate information on the *Equal Opportunity Act 1984*, other relevant laws and human rights issues generally.
- Provision of accurate advice on equal opportunity matters.
- Identification of discriminatory policies and practices.

Avenue of redress for unlawful discrimination and unreasonable treatment

- Investigating and endeavouring to conciliate complaints that fall within the jurisdiction of the *Equal Opportunity Act 1984* and other legislation administered by the Commissioner and providing assistance to complainants referred to the State Administrative Tribunal (the Tribunal) by the Commissioner.

Shared responsibilities with other agencies

To improve access and sustainability of corporate services, the Equal Opportunity Commission (EOC) transitioned from a stand-alone agency to be a part of the Department of Justice on 1 December 2020. The EOC remains independent in the performance of its statutory functions under the *Equal Opportunity Act 1984*.

Report on operations

Provision of information and guidance

The Commission works with community members and organisations to extend understanding and skills to achieve equality. This is so organisations and individuals are aware of their responsibilities and rights under the *Equal Opportunity Act 1984*. The Commission endeavours to do this through:

- Involvement in community programs and events
- Responding to enquiries from individuals, government agencies, non-government organisations and private industry
- Delivering training for employers and service providers on their responsibilities and rights under the Act
- Educating community groups and individuals on their rights and responsibilities under the Act
- Identifying potentially discriminatory policies and practices and raising these with appropriate bodies.

Key strategies include:

- Raising awareness of equal opportunity and human rights issues in Western Australia through presentations, forums, guest speakers, media interviews, community information stalls and lectures using various media to promote public discussion and interest in equal opportunity issues
- Development of resources, both targeted and general information for the community about aspects of equal opportunity law and human rights in a variety of printed and electronic formats.

Digital engagement

Website

The Equal Opportunity Commission's website is part of the WA Government website.

The Commission's address is www.eoc.wa.gov.au and in the 2021-22 financial year there were 82,628 page views. The three most commonly visited pages were the Equal Opportunity Act, the online complaint form and the Fact Sheets on our publications page.

The WA Government website platform contains general accessible information about the Equal Opportunity Act, the Commission, and the activities it undertakes.

The Commission's online complaint form and email are now the primary avenue used to lodge complaints of unlawful discrimination, with 482 of the total 518 complaints submitted through the website and by email.

E-bulletin

The Commission distributed its monthly E-bulletin to 1,435 subscribers this year.

The bulletin links back to announcements featured on the website homepage, as well as the Commissioner's column '*From the Commissioner*' which addresses topical issues regarding discrimination and harassment.

It informs our stakeholders about events, training and projects undertaken by the Commission from month to month.

Facebook

The Commission's Facebook page provides outreach across Western Australia and has steadily increased in significance with a following of 547 by the end of 2021-22. Posts include links to the Commission's website announcements and media articles regarding discrimination and harassment.

During 2021-22 the most popular post on the Commission's Facebook page was promotion of a community survey to gauge discrimination and harassment against gender diverse people using public facilities.

The post reached over 11,976 people and received 521 reactions and 1,605 link clicks.

2022 Aboriginal Calendar

The 2022 Aboriginal Calendar design was adapted from artwork provided by the community at the Mirrabooka NAIDOC Event in 2021. The theme was *Heal Discrimination* to tie in with the 2021 NAIDOC theme of *Heal Country*. Participants were asked to draw or write about something or someone who helped them to heal when they were treated badly.



Events

Making diversity in local government a priority

Commissioner Dr John Byrne spoke about making diversity mainstream to Local Government Professionals at their Annual State Conference.

Dr Byrne spoke about the tyranny of the competitive assessment of merit in recruitment processes and how it was holding organisations back from reaching their full potential to serve an increasingly diverse public.

"Despite statistics showing us how diverse our population is, most of the societal influence still lies with the one demographic – that is white, Anglo Celtic, heterosexual men with no obvious disabilities," Dr Byrne said.

He said this demographic had traditionally made decisions on behalf of a population which many of them may know very little about.

Dr Byrne said if we wanted to dismantle these structures to make institutions better reflect mainstream society, then organisations had to put diversity targets in place when it came to recruitment.

"Recruitment panels need to better reflect the society we live in," he said.

"Panels need to put forward several candidates who meet the selection criteria for the CEO to select one who meets organisation objectives, including diversity targets.

Dr Byrne said a competitive assessment of merit was not appropriate since it did not counter conscious and unconscious bias, resulting in organisations that did not reflect the diversity of the community they served and leading to diminished credibility, relevance and productivity.

He encouraged the audience to gaze inwards at their organisations to reflect on strategies for making their own executive and management teams more diverse. "Organisations need to put in place meaningful policies and procedures to enact change, not just for the effectiveness of the organisation, but the future of our society," he said.

Commissioner discusses age discrimination for COTA Seniors' Week roundtable

The Commissioner was invited to the Council of The Aging (COTA) Positive Aging Alliance roundtable discussion at Government House to discuss issues around mature age employment including age discrimination.

Dr Byrne said the main problem for mature age employees was the onus of proof placed on discrimination complainants when alleging age discrimination during the recruitment process.

"Often these complainants are told they did not get the job because there was someone better suited to the job.

"The recruitment panel will use the nebulous excuse of merit to disqualify someone who they might think is too old for the job," he said.

Dr Byrne said it was an important time to consider these issues during Seniors' Week and beyond.

Commissioner shares experience of disability with DFES

WA Commissioner for Equal Opportunity Dr John Byrne spoke to employees at the Department of Fire and Emergency Services for the 2021 International Day of People with Disability in December.

The theme was "not all disabilities are visible" and Dr Byrne shared his experiences of living with profound deafness since he was a child.

Dr Byrne with DFES staff



Albert Facey House wearing it purple

The Equal Opportunity Commission hosted a Wear It Purple morning tea for fellow tenants of Albert Facey House to raise awareness for discrimination, harassment and bullying of LGBTQIA+ youth.

The Commissioner welcomed everyone to the event and spoke about the vulnerability of transgender and intersex youth.

"Transgender and intersex youth are one of the most vulnerable groups in our community, because they are so often a target for bullying and harassment, and because the nature of their gender identity attributes does not guarantee support from family, and because the Equal Opportunity Act does not currently have a gender identity ground," he said.

Tenants at Albert Facey House wearing purple



Commissioner delivers keynote address at CCIWA conference

In June 2022, the Commissioner gave an address to Chamber of Commerce and Industry WA members about the importance of workplace diversity.

Dr Byrne said a diverse workforce not only benefited an organisation internally, but also provided better customer service through representation of a wider client base.

“A workforce that is not representative of the people it serves is less effective and productive.

“Diversity adds new ideas and ways of working,” he said.

Dr Byrne said there were ways the *Equal Opportunity Act 1984* (the Act) could help achieve diversity such as s31 which allowed people to choose a job candidate based on sex for the purpose of achieving equality within an organisation.

“My advice is to set targets for diversity, including gender diversity, and representation of Aboriginal people, culturally and linguistically diverse people and people with disabilities.

“Targets should be set for a proportion of employees and also for representation in senior management, as management has the greatest ability to change cultures and set standards and enforce them,” he said.

He also said organisations needed to address bias in the recruitment process.

“Unconscious bias is the biggest problem, and we need techniques to combat it,” he said.

Dr Byrne said regarding gender diversity, one technique is to ensure both genders are represented on the selection panel.

“If there is a target to increase the proportion of women, the selection panel could have more females than males,” he said.

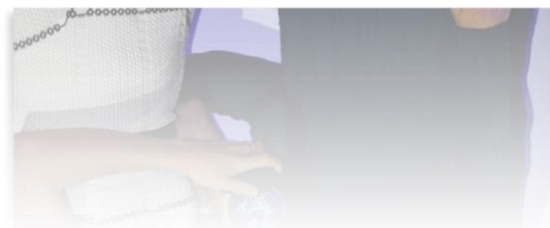
WA Media Awards

The Commission again sponsored the Social Equity Report category at the annual WA Media Awards of the Media, Entertainment and Arts Alliance.

The winner of the 2021 Social Equity Report was WA Today’s Marta Pascual Juanola for her story ‘Wrong Skin’ tragedy: death, drugs and violence in a divided town.

The report was a tragic example of the impact systemic discrimination continues to have on Aboriginal communities.

Marta Pascual Juanola with Communications Officer Sarah Johnston



Fun at the Fair

The Equal Opportunity Commission held an information stall at the 2021 Pride Fair Day again this year with great success.

The Commissioner said it was a busy day with many fairgoers enjoying the good weather to visit the many information, retail and hospitality stalls throughout the fair.

"Our stall enquiry officers took many enquiries regarding a number of grounds of the Act," he said.

He said these enquiries reflected the intersectionality discrimination WA's LGBTQIA+ community experienced.

"Not only are the LGBTQIA+ community subjected to sexual orientation and gender identity discrimination, but they are also subjected to other forms of discrimination such as race, impairment, family responsibility and age discrimination," Dr Byrne said.

He said it was always valuable to attend community stall events to provide Western Australians information about their rights under the Act.

"It really is about more than giving information, it's showing the community that the Commission is proud to take part in their significant events and recognises the valuable contribution they make to WA," he said.

Commission Services Manager Diana MacTiernan engaging with the community at the stall



Research and Policy

New and Emerging Communities Reference Group

Members of the New and Emerging Communities Reference Group continue to raise awareness of issues experienced by refugee and asylum seekers in our communities. The reference group currently includes representatives from community, non-government and government organisations.

The purpose of the group is to identify issues of discrimination and harassment that may be direct or systemic, examine their impact on the refugee and asylum seeker community and new arrivals, and propose mechanisms and take action to address them.

This year, members of the group have been working to ensure refugees and asylum seekers have access to basic goods like food and services such as housing and education throughout WA's housing and supply issues as a result of the COVID-19 pandemic.

The reference group members have also been working hard to communicate pandemic mandates issued by the government effectively to their clients and refugee and multicultural communities in WA.

Group members such as Red Cross, MercyCare and the Centre for Asylum Seekers, Refugees and Detainees (CARAD) have also been actively involved in supporting newly arriving refugees from Afghanistan and Ukraine in their settlement in WA.

EOC submission to the Inquiry into Sexual Harassment Against Women in the FIFO Mining Industry

Following multiple reports of sexual harassment in the mining sector in 2021 the WA Parliament's Community Development and Justice Standing Committee held an inquiry to better understand the nature and prevalence of the issue, the workplace practices in which sexual harassment occurs and how current legislations protect workers.

The Commission commended the findings and recommendations of the Respect@Work report by National Sex Discrimination Commissioner Kate Jenkins to the Committee. In its submission the Commission highlighted that sexual harassment and sex-based discrimination and bullying have been unlawful in WA since 1984.

The mining industry is similar to other sectors such as construction, and warehousing in being dominated by males and the Commission see a disproportionate number of sexual harassment complaints from females in these types of industries.

In its evidence to the inquiry, the Commission also discussed the importance of intersectionality for different people who have experienced sexual harassment. As highlighted by the Respect@Work report Aboriginal and Torres Strait Islander individuals, culturally and linguistically diverse people, LGBTQIA+ folks, people with disability and young people experience sexual harassment at even higher rates in the workplace.

The Commission emphasised that employers have legal responsibilities to take reasonable steps to prevent sexual harassment under the Act. The Commission recommended employers invest in diversifying the FIFO workforce including leadership positions. It is also important to invest in the skills and experience of the individuals who manage complaints of sexual harassment. The Commission also recommended that employers upskill their workers in bystander intervention and for the mining industry to review its accommodation arrangements and after-hours services.

EOC Submission to the Australian Human Rights Commission National Anti-Racism Framework

The EOC with contribution from the Office of Multicultural Interests had the opportunity to make a submission to the AHRC's first National Anti-Racism Framework. The Commission recognised that racism is embedded within every aspect of our society and expressed its concerns on the ongoing impact it has on Aboriginal and Torres Strait Islander communities and people from culturally diverse backgrounds.

The submission raised concerns on the lack of data collection by service providers of experiences of Aboriginal, Torres Strait Islander and culturally and linguistically diverse people which significantly impacts allocation of funds and service delivery. The Commission reiterated the importance of a coordinated and strategic collaboration across sectors to enable the dismantling of systemic discrimination. It also highlighted the importance of raising awareness of racism by including its historical and structural impact, particularly its significant effect in access to services.

Recommendations in the submission included requiring organisations to analyse disaggregated data on health, education and employment outcomes that incorporate a racial equity impact analysis on federal, state and local government levels. It was also recommended anti-racial and anti-racism federal and state legislations be amended to have stronger protection by ensuring all areas of public life are covered by these laws.

International Day of People with Disability

To recognise International Day of People with Disability, which falls on 3 December each year, the Equal Opportunity Commission launched Pathways to inclusion – a research report into access and inclusion barriers for users of electric mobility devices. The research report documents the experiences of mobility device users and the barriers they face in the community.

Curtin University intern Shannon Galvin, who conducted the research including a community survey, found mobility device users faced both physical and social barriers such as difficulties manoeuvring their devices on public transport and being ignored by service providers in shops and restaurants. The report is available on the EOC's website www.eoc.wa.gov.au.

Dr Byrne with Shannon Galvin



Community education and training

The Commission's team of community education and training officers continued to deliver on the Commission's core function of building awareness and knowledge about discrimination and harassment and specifically rights and responsibilities under the *Equal Opportunity Act 1984*.

This was done through the adoption of best practice models in:

- Organisational training
- Community education on equal opportunity and human rights
- Working with stakeholder groups on specific projects
- Community development work with groups that have specific needs, such as migrants, refugees and emerging communities.

Fee for service training

Training which is provided on a fee for service basis is delivered in two categories: Mixed profile and Customised.

Mixed profile training is where courses are publicly advertised and participants may come from a range of organisations.

Customised training is for an organisation which requests a course to be run exclusively for its staff and the course is adapted to meet the needs of the organisation.

In 2021-22 participants in fee for service and mixed profile training were drawn from public sector organisations, local government, the private sector and community organisations.

There were 73 sessions of fee for service training in the 2021-22 year reaching 962 participants. This was a small increase on the number of sessions held in 2020-21.

The Community Education team undertook a more comprehensive review of its training material towards the end of the financial year, including revision of the evaluation process.

The team continued to test and refine new ways to provide whole-of-organisation training aimed at supporting workplace cultures which are inclusive and free of discriminatory practices.

In 2021-22 the course with the highest number of participants was *Equal Opportunity Law* with 359 participants, followed by courses focussed on stopping and addressing *sexual harassment* with 264 participants.

Other courses have been developed and refined to meet industry specific or niche issue training needs such as courses tailored for sports clubs, and courses such as *Bystander to Upstander*, which provides skills and confidence to encourage bystanders to intervene in a situation where they observe a person being harassed or discriminated against.

Evaluation

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

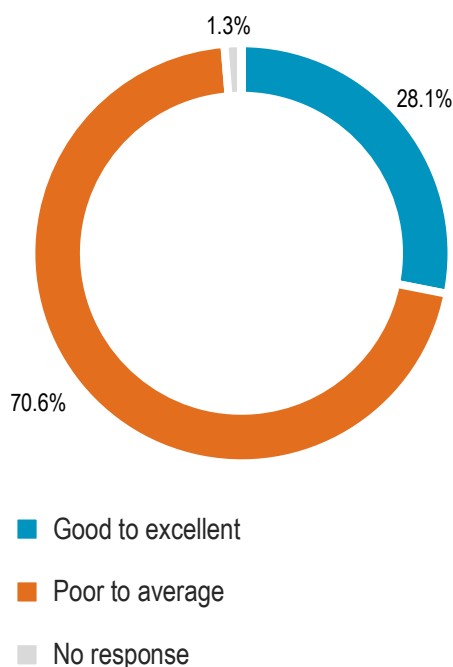
Participants are asked their current level of knowledge about:

- the Equal Opportunity Act
- what unlawful discrimination is
- what can be done about it?

Of the participants who responded to these three questions:

- 75.6% said they had a 'poor to average' knowledge of the Act;
- 64.7% said they had a 'poor to average' knowledge of what unlawful discrimination is; and
- 71.5% said they had a 'poor to average' knowledge of what could be done about this.

Figure 1: Participants' knowledge prior to training for 2021-22



Prior to attending training, some participants described what they hoped to gain as follows:

- “More knowledge about the law and what actions can be taken if something happened”
- “Protecting myself and others from inappropriate behaviour”
- “This is my pathway / professional development progression. I manage 5 staff currently and with promotions into future hope to manage more, want this training to be aware of requirements”.

Perceptions after training

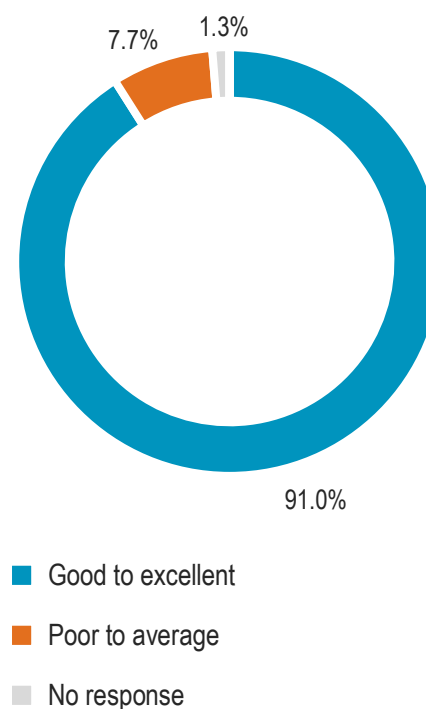
Participants are also asked to complete a post training evaluation. After attending the training course, participant perceptions of having a ‘good to excellent knowledge and understanding about equal opportunity’ had increased from just over 30% before the course, to 91% after.

Of the 962 people who participated in fee for service training sessions, 823 (85.5%) completed a post-course evaluation. These evaluations indicated a consistently high level of satisfaction with the education and training experience.

Ninety-six percent of participants assessed as high or very high that the trainer/s style and delivery was effective.

When asked if the participants would recommend the Commission’s training courses to their colleagues, 99% said they would.

Figure 2: Participants' knowledge after training for 2021-22



Some participant comments on Commission training courses were:

Contact Officer Role

- “Content and delivery good, well informed and professional”
- “Interactive, responsive training that make the understanding the role well”
- “To understand the complex work life of today, be able to mentor assist”.

Sexual Harassment - Know where the line is

- *“Yes. It is ideal so there is a clear understanding by everyone”*
- *“Everyone needs to keep updated in an every changing world”*
- *“Clear delivery, no jargon”.*

Equal Opportunity and Diversity

- *“Good coverage of issues and consideration relevant to diversity and discrimination”*
- *“Hands on, group share/ activity made topics relevant accessible”*
- *“I think it was excellent, well facilitated and very engaging”.*

Equal Opportunity Essentials for Managers and Supervisors

- *“Very helpful, real life incidents, very easy to listen”*
- *“Very knowledgeable, provided clear guidelines and process. Case studies were great”.*

Rights based education

Community education officers delivered rights based sessions to community groups, not-for-profit organisations, and other groups. Rights based training serves a valuable function in educating groups who are more likely to experience discrimination including Aboriginal people, people with disability, migrants, refugees, young people and others who may not be fully aware of the protections available under the Act, or their obligations towards others.

Seventy-four rights based sessions were delivered in 2021-22 in Perth and regional WA which was marginally higher than the previous year (67).

Rights based sessions included:

- *Equal Opportunity Law – Awareness:* Sessions were conducted with agencies including the Metropolitan Migrant Resources Centre, Curtin University, North Metropolitan TAFE, South Metropolitan TAFE
- *Sexual Harassment - Know Where the Line Is:* Sessions were conducted with the University of Western Australia Guild and Colleges, Curtin University and other organisations
- *Dealing with sexual harassment complaints:* Sessions were conducted with the Western Australian Industrial Relations Commission regarding its new jurisdiction with stop sexual harassment orders and Western Australian Local Government Association Regional Managers.

Equal opportunity in sport

In 2021-22 the Commission continued:

- Sponsorship of the Australian Institute of Sport's Play by the Rules website and program
- Being a point of contact for sports associations and clubs for enquiries relating to discrimination law
- Presenting to sports clubs where particular issues have arisen
- Presented three Member Protection Information Officers training sessions with Netball WA and WA Cricket Association.

Uni students debate provisions of the Act

In August 2021 students from Curtin University's Built Environment faculty debated the following topics:

- The Review of the *Equal Opportunity Act 1984* needs to reverse the current onus of proof to the respondent from the complainant in complaints of unlawful discrimination and harassment.
- The Review of the *Equal Opportunity Act 1984* needs to change sexual harassment provisions of the Act so complainants don't need to show they would be disadvantaged if they rejected the behaviour of their alleged harasser.

Commission staff adjudicated debates between the student panels. Following the debates, the Commission staff provided an overview of the *Equal Opportunity Act 1984* and on sexual harassment, following the debate on the Act's disadvantage test.

Community Education and Training Officer Sara Shengeb discussing the Act with students



Outreach program in Regional WA

The Commission has a state-wide mandate and therefore needs to reach regional areas and has a three-year plan which aims to cover four regions each year. Trips to the more distant regions of WA are usually for a duration of approximately a week and involve two community education officers travelling together for reasons of occupational health and safety and to get better coverage in the region. Regions closer to the metropolitan area may involve a single officer making a two or three-day round-trip.

The Commission is also contracted from time to time by organisations to provide on-site fee for service training in regional and remote areas. This has assisted the Commission to undertake trips additional to the regional plan, and where possible, to conduct additional training, networking, and community development activities in these regions.

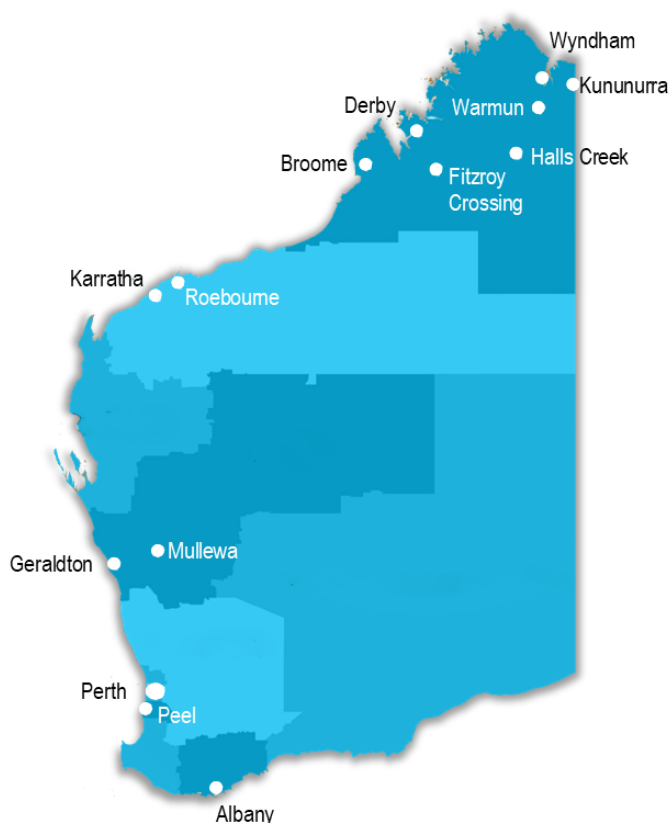
Regional visits provide valuable insights into issues that affect diverse communities throughout WA.

Over the past few years, many regional visits have been undertaken via the Regional Accessibility and Awareness Plan (RAAP) with other state government agencies.

- RAAP was developed to assist government agencies to travel together to regions throughout WA to provide their services as a 'One Stop Shop'.
- The joint program provides a particular regional centre and community with access to staff from the various agencies including the Equal Opportunity Commission, Ombudsman WA, federal Ombudsman, Corruption and Crime Commission, the Health and Disability Service Complaints Office (HaDSCO) and Consumer Protection to deliver information about their respective services.
- Generally, the agencies provide a stall at a shopping centre and engage with shoppers and community members at large to assist with a matter or issue that may present.

- Community information sessions are also held at a not for profit organisation to allow the respective agency staff to speak about the service they provide. Complaint Clinics, are also a very important part of the program where community members can meet privately with a staff member to discuss a matter.
- In August/September 2021 the RAAP program travelled to the East Kimberley (Kununurra, Wyndham, Warmun and Halls Creek) and in October the West Kimberley (Broome, Derby and Fitzroy Crossing).

Figure 3: Regional visits for 2021-22



South West

A community education officer travelled to Albany in late July to speak to a forum of managers from the local government sector on responsibilities under the Act particularly regarding sexual harassment.

Meetings were also held with community organisations, including an Aboriginal organisation and the community legal centre.

Pilbara

In October 2021 community education officers travelled to the Pilbara to deliver grievance and contact officer training in Karratha. During this visit they were also able to meet with community-based organisations in Karratha and Roebourne.

Mid West

In early June 2022 community education officers travelled to the Midwest to provide training in Geraldton and Mullewa.

Enquiries

The Commission operates a telephone enquiry and face to face service each weekday from 8.30am to 4.30pm through a roster of officers from across the Commission. Enquiries can also be made anytime by email, Facebook, the website or post.

The Commission receives a diverse range of enquiries, many of which allege discrimination. Some enquirers describe situations which do not constitute unlawful discrimination as defined by the *Equal Opportunity Act 1984* (the Act), including allegations of unfair dismissal, victimisation and bullying. Commission officers endeavour, where possible, to direct these enquirers to appropriate agencies for support with their matters.

Where the situation described by an enquirer seems to fall within the jurisdiction of the Act, the enquirer is informed about the Commission's complaint handling process, or where appropriate, their options under federal anti-discrimination laws. There are some allegations of unlawful discrimination where federal legislation provides greater protections, including allegations involving students in education, or employees with impairments that requires reasonable adjustments, or access to facilities. In these cases, enquirers are provided with contact details for the Australian Human Rights Commission.

In the current financial year 6.1% of enquirers were advised to contact the Australian Human Rights Commission or an appropriate advocacy service to discuss whether the federal jurisdiction may be a more appropriate avenue for investigating their allegations.

Details of the data relevant to this section are provided in Appendix A of this report.

Enquiry summary 1

Age discrimination

A 75 year-old man wanted to hire a car for a wedding and when he gave his age to the hire company, was told there would be an extra charge for drivers his age. He felt his age is less of a risk than younger people.

On face value, higher charges based on this person's age may arguably amount to age discrimination in the area of the provision of goods and services. If the hire company has that policy as a requirement from an insurer company, then the insurer company could be joined as a respondent for causing the discrimination to occur, unless they can provide statistical or actuarial data justifying the restriction.

Enquiry summary 2

Family status discrimination

A person was banned from a pub in a country town where they lived because previously their daughter-in-law was involved in a dispute with the manager. The daughter-in-law hit the manager, who then banned her and the person who had nothing to do with the dispute.

Although the EO Act makes discrimination on the ground of family status unlawful in the areas of employment and education, it is not unlawful in the areas of goods and services, or access to places.

Answering enquiries from the community

The Commission received 1,428 enquiries during 2021-22 from people who phoned the enquiry line, sent a written enquiry electronically or by hardcopy, or visited the Commission's office in person. The number of enquiries was 13.7% higher than the 1,256 enquiries received in the 2020-21 financial year. Nearly two thirds of all enquiries (64.9%) received in 2021-22 were by telephone.

Of the 489 written enquiries received, 91.2% were lodged via the Commission's website, email or by Facebook.

Enquiry summary 3

Sex discrimination

A man saw an advertisement in a perfume shop for a sales job. After a period of time off work, the man wanted to ease back into the workforce through casual employment. He had a good knowledge of perfume and cologne, so when the shop assistant was serving him, he enquired about the advertisement. The shop assistant was very dismissive of his enquiry, so he asked her if she only wanted to employ a woman. The assistant allegedly replied yes. He said that was 'sexist' and explained he had good knowledge of perfume and that the shop opposite, which was a chemist, had all men at the perfume counter.

This could be an example of direct sex discrimination in employment.

Enquiry summary 4

Race discrimination

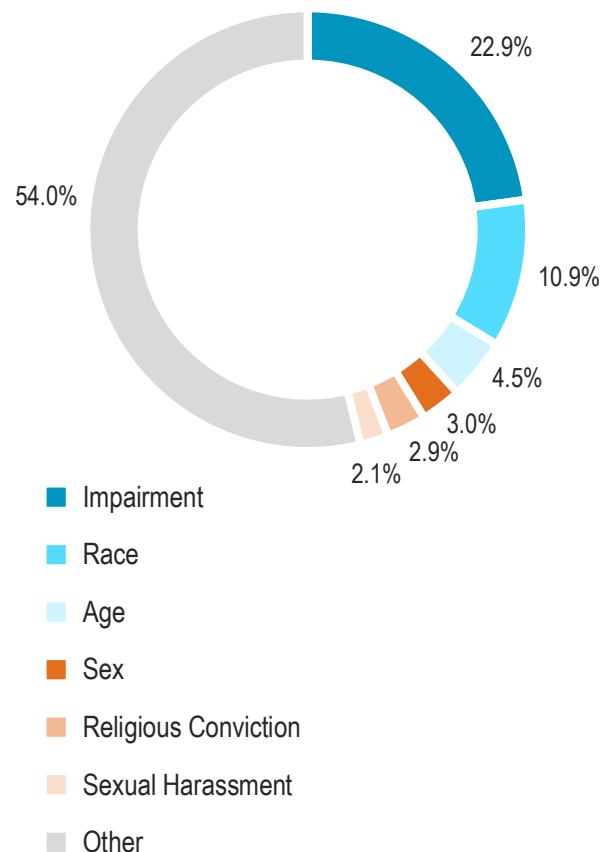
A homeless Aboriginal person tried to obtain accommodation at two separate backpacker hostels. They were told they had to have an international passport.

This could amount to race discrimination in the area of accommodation or the provision of goods and services, as the concept of race under the Act includes nationality and national origin.

Nature of enquiries

Of the 1,428 enquiries received in 2021-22, the two most common grounds of discrimination cited by enquirers were impairment (22.9%) and race (10.9%). These grounds have consistently been the two with the highest number of enquiries for the past three years. This pattern mirrors the grounds of complaints accepted for investigation in the reporting year and where in 2020-21 impairment was also the ground on which the highest number of complaints were lodged.

Figure 4: Top six grounds of enquiries received 2021-22



COVID-19 enquiries

The first case of COVID-19 was recorded in Australia in January 2020, and in the 18 months after this the Commission received 68 phone and written enquiries about COVID-19. This number surged in the current financial year by 385% to 330 enquiries as COVID-19 related mask and vaccination mandates were introduced.

The Commission specifically recorded enquires for allegations of discrimination related to the mandates and other issues arising from the pandemic. This category formed 23% of all enquiries.

Enquiry summary 5

Political conviction discrimination

An enquirer who was not vaccinated against COVID-19 alleged a shop discriminated against him on the ground of his political conviction when he was told to leave the premises because he was unvaccinated.

Unless the man was exempted from being vaccinated, under the Public Health Act 2016 the refusal of service was not unlawful under the EO Act.

Enquiry summary 6

Impairment discrimination

A person with Type 1 diabetes was contracted to work on a mine site as an electrician. He had previously declared their medical condition to the site operator. After contracting COVID-19 he had to fill out a new declaration. The site operator declared the person a high risk and he was removed from site.

This is an example of impairment discrimination. The site operator would need to demonstrate that the contractor was not able to carry out the work reasonably required to be done in the position for its conduct to be considered lawful.

Enquiry summary 7

Impairment discrimination

A man alleged impairment discrimination against a supermarket manager when he was refused service because he was not wearing a mask. Despite claiming a medical exemption, he refused to show it when asked to do so by the manager and claimed he didn't have to share his personal information.

Had the man shown a valid medical certificate confirming he was unable to wear a mask because of a medical condition, he could have had an arguable case of indirect discrimination on the ground of impairment in the areas of access to places and provision of goods and services.

Enquiry summary 8

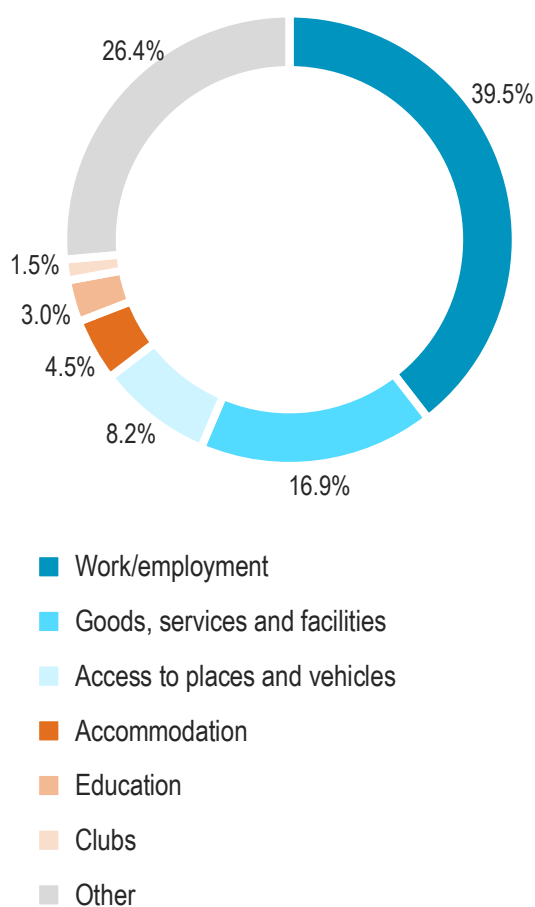
Victimisation

A man alleged he was victimised by his employer for complaining about discrimination after he refused to be vaccinated for COVID-19. He believed he was being "coerced into being injected with poison", violating his human rights.

The allegations falls outside the jurisdiction of the EO Act because it did does not relate to any of the grounds under the EO Act. It could be an issue for the Australian Human Rights Commission. The man was provided with information about the Fair Work Act to address his concerns.

The most common areas of discrimination mentioned by enquirers in 2021-22 had a shift from the area of work/employment only accounting for 39.5% compared to previous years when it was around 50%. In the current year, over 26% were designated as 'other' as they could not be attributed to a prescribed area of the EO Act. Enquiries regarding provision of goods, services and facilities were the next highest area (16.9%), followed by access to places and vehicles (8.2%).

Figure 5: Top six areas of enquiries received 2021-22



Enquiry summary 9

Age discrimination

An enquirer asked if it is unlawful for banks to discriminate against home loan applicants on the basis of their age.

The National Credit Code compels lenders to take an applicant's age into account for the purpose of assessing their ability to repay the loan.

Enquiry summary 10

Religious conviction discrimination

A man put forward his name for a volunteer position with a government organisation. He noticed a LGBTQIA+ inclusive banner in the organisation's promotional material. The man took objection on the basis of his religious conviction, stating that homosexuality was a sin. The organisation replied that as he objected to their diversity and inclusion policies, he would not be accepted as a volunteer.

The EO Act does not cover volunteer work.

In 2021-22 a majority of the enquiries were from individuals (88.4%) including 4.3% from prisoners. Other enquiries included the following:

- Private enterprise (4.1%)
- Government agencies (3.4%)
- Non-government organisations (2.7%)

Of the individual enquirers, 49.7% were from women and 45.7% were from men, and four (0.3%) enquirers identified as gender diverse, with the remainder (4.3%) where gender identity was not recorded.

Eighty-three 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 (4.6%), 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 issue.

Enquiry summary 11

Gender identity discrimination

A gym owner with mostly Muslim female clients said a woman wanted to join shortly after transitioning from male to female. Most of the Muslim clients regarded the new client as a man and said they would not attend if a man is there. The gym owner disclosed that the new client looks very masculine. The gym owner was advised about the limitation of the EO Act regarding gender history, but that the new client could lodge a complaint if barred from joining and she had a certificate of gender re-assignment.

Alternatively, the client could lodge a complaint under the Federal Sex Discrimination Act 1984 (Cth) alleging gender identity discrimination in the areas of goods and services and access to places.

Of the 1,428 enquiries received, 80.4% related to the Act and 19.1% were referred to organisations including:

- The Australian Human Rights Commission (6.7%)
- Non-government organisations, mainly community legal centres (5.6%)
- WA Government departments or agencies (5.3%).

The remainder of enquiries (1.6%) were deemed outside of jurisdiction and the enquirers, where possible, were referred to an appropriate body for assistance. This included agencies such the Fair Work Commission, Fair Work Ombudsman, unions, community legal centres or the relevant union or employer body.

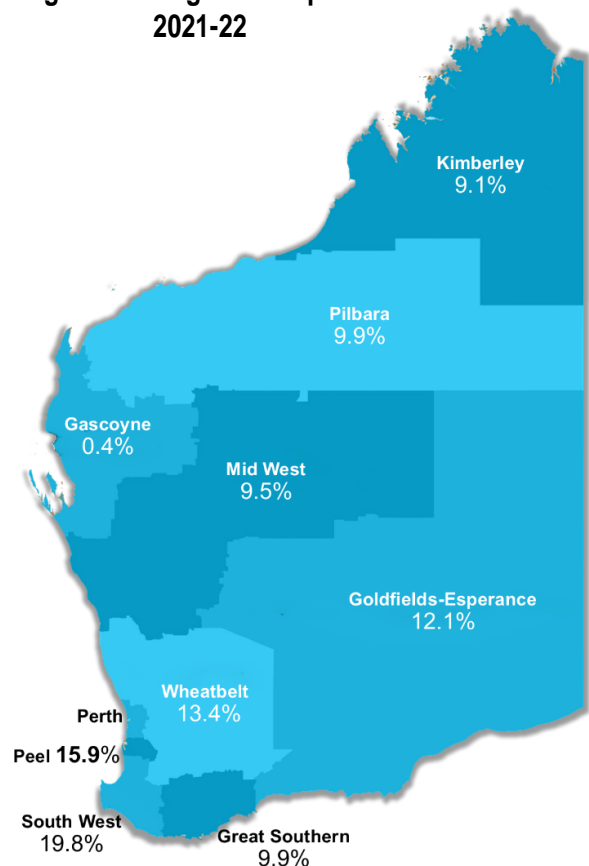
Residence of enquirers

The Commission was only able to capture the postcodes of 892 enquirers. The majority of these nominated Western Australia (WA) as a place of residence, and of these 70% lived in the Perth metropolitan region and 26% lived outside the metropolitan region, and very small number of enquirers were from interstate or overseas.

Of the WA enquirers from non-metropolitan regions, 19.8% lived in the South West region, 15.9% in the Peel, 13.4% in the Wheatbelt, 12.1% in the Goldfields-Esperance, 9.9% in the Pilbara and Great Southern, and 9.1% in the Kimberley. Smaller numbers of enquirers lived in other regions of WA.

Map of WA with percentages of enquirers by region

Figure 6: Regional enquiries received 2021-22



Enquiry summary 12

Age discrimination

A 65 year-old enquirer applied for a job at a supermarket. When they didn't get the job, they asked the interviewing manager if it was because of their age and the manager replied "yes, but I can't say that".

This is an example of direct discrimination in the area of employment.

Enquiry summary 13

Sex discrimination

A man was punched by a female staff member at a staff Christmas party and he complained to his employer. An investigation was held by standards and integrity unit and they said they could see no problem because it was a party outside of work even though it was a staff party. He believes it was because he is male.

If the employer organised or approved this party, and the incident occurred as alleged, the employer's failure to investigate the matter and take disciplinary action against the female could arguably amount to sex discrimination in the area of employment.

Enquiry summary 14

Race discrimination

A man started at a job and was told by the manager they 'pick on white males here'. He was then set unrealistic tasks and when he complained he was told by the same manager to complete it in his lunch break. He was ultimately fired for 'not fitting in'.

If the man could prove that the manager made the alleged remarks, and that his dismissal was caused, at least in part because of his race, he could lodge a complaint of race discrimination in the area of employment.

Avenue of redress for unlawful discrimination

Handling complaints

Nature of complaints

For the Commissioner to accept a complaint of unlawful discrimination for investigation, the allegation needs to fit under a section of 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 (see table 15), and 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 or lodging a complaint of unlawful discrimination or agreeing to be a witness. Advertising is the situation where any form of advertising includes an express statement which indicates a potential 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:

- 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*.

Administratively all incoming allegations are classified as potential complaints. Where a potential complainant has not clearly identified a ground and area of complaint, they are supplied with information about what constitutes unlawful discrimination under the Act.

They are also informed about the option to lodge a complaint with the Australian Human Rights Commission, in relevant cases. In this way, potential complainants are able to make an informed decision on how to proceed.

Complaints are allocated to officers who have delegated investigation and conciliation functions of the Commissioner. The substantive decision in relation to complaints however remain with the Commissioner.

In any matter accepted as a complaint the complainant needs to provide a minimum level of substance to the allegation before the matter can progress.

Once the Commissioner is satisfied there is sufficient substance, the allegation is put to the respondent/s who will be requested to provide a response. If deemed appropriate, a conciliation conference will be held. In some cases, conciliation may occur through exchange of communication between the parties.

If conciliation does not result in resolution to the complaint, the officer dealing with the file will prepare a report for the Commissioner summarising the position of the respective parties.

Should the Commissioner determine the complaint is to be dismissed under section 89 of the Act as lacking in substance, vexatious, frivolous or misconceived, the complainant has the right to require the matter be referred to the Tribunal for determination. In this case the complainant is responsible for their legal costs.

If the complaint is not dismissed, the Commissioner will refer it to the Tribunal and the complainant may request assistance from the Commissioner to progress the matter there. This is generally in the form of legal assistance from a Commission legal officer.

Numbers of complaints

In 2021-22 the Commission received 518 new complaints. This is an 8% decrease on the 564 complaints received in 2020-21.

The ebb and flow of complaints is consistent with the pattern over a 30-year period; the number of complaints received has risen and fallen over time with the lowest annual number of lodged complaints being 240 received in 1987-88 and the highest being 795 in 2011-12 (see Appendix B).

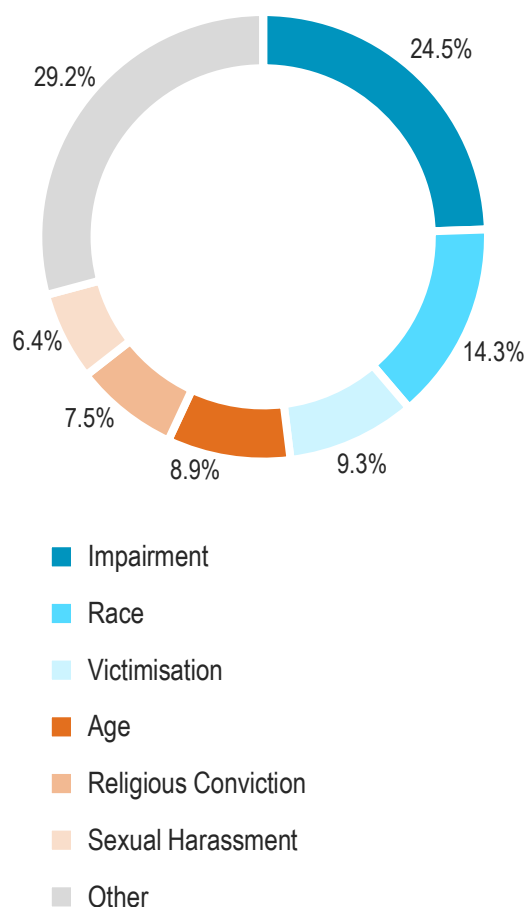
These fluctuations reflect factors including the economic cycle, the COVID-19 pandemic and in some years, such as 2011-12, a result of increased activity by some advocacy agencies. Over this period there have also been different methodologies in accepting complaints, which affects numbers.

Of the various grounds of unlawful discrimination under the Act, complaints of impairment discrimination have remained the highest for many years, generally followed by race.

In the past year, the highest number of complaints received was again impairment discrimination (24.5%). Impairment covers complaints lodged by people with physical, psychological, sensory or other impairments, as well as short term injury. Race was the next highest ground (14.3%), and victimisation (9.3%). Figure 7 shows the six highest grounds received.

Employment/work includes seven categories, with the largest category consisting of employees and applicants. Employment is the area of public life which has the highest number of allegations of unlawful discrimination and in 2021-22 a total of 58.3% of all complaints related to employment. The area with the second highest number of complaints was the provision of goods and services with 23.9% (Figure 8). These percentages represent only a mild fluctuation from the 2020-21.

Figure 7: Top six grounds of complaints received 2021-22



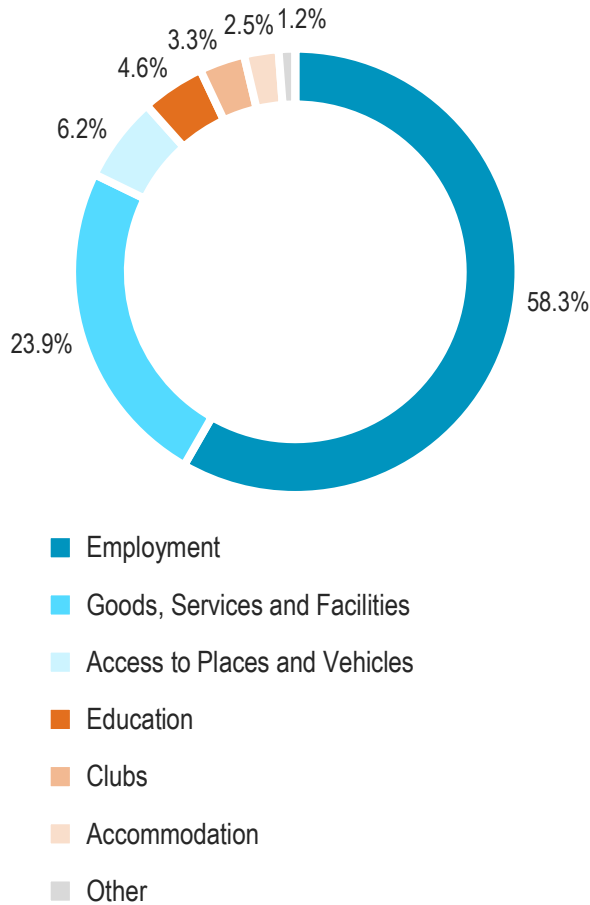
Complaint summary 1

Impairment discrimination in employment

A woman received an eye injury while off duty, had time off work, and then obtained medical clearance to return to work driving large vehicles on a mine site. Her employer referred her for placement on the respondent's job site, but after one week, the respondent advised her due to her eye injury she could not continue to work on the site driving large vehicles.

Outcome: Conciliated with compensation of \$20,000.

Figure 8: Top six areas of complaints received 2021-22



Complaint summary 2

Sexual harassment in employment

A woman alleged sexual harassment and grooming by her supervisor. Following an internal complaint to management, mediation was held, resulting in the woman being placed in another position, although less favourable treatment continued from her supervisor. The woman resigned and was asked not to return to the organisation.

Outcome: Conciliated with compensation of \$30,000.

Work/employment complaints

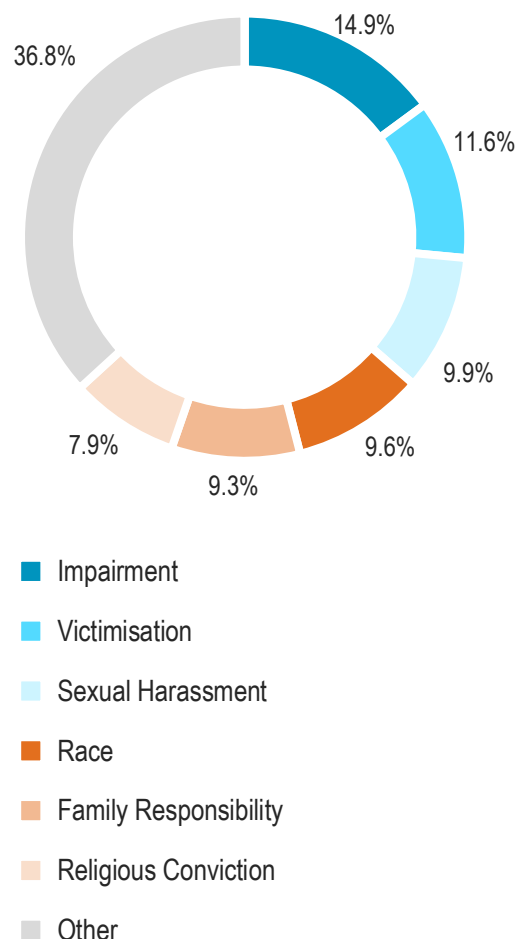
Figure 9 shows the six highest grounds on which complaints are lodged in the area of 'work'.

The largest percentage of complaints in work were impairment based at 14.9% followed by victimisation at 11.6%.

In the year, sexual harassment constituted 9.9% of complaints down from 20.4% the previous year.

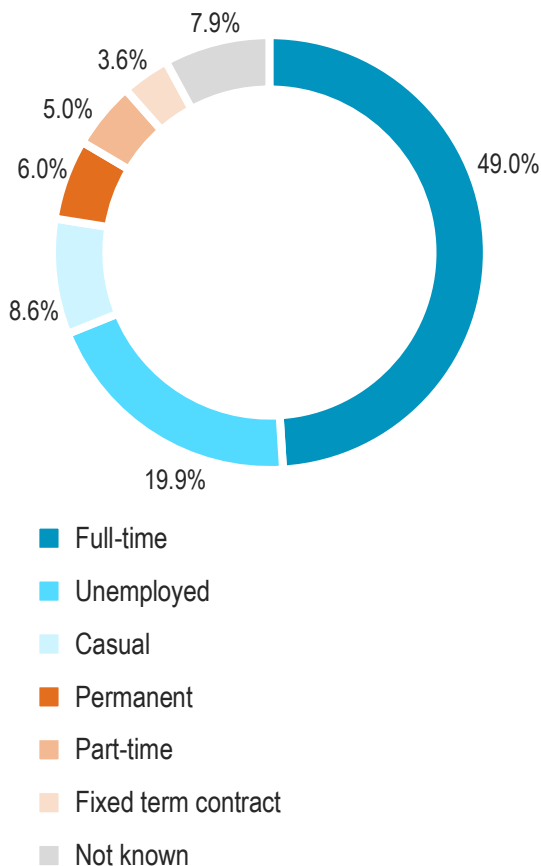
Complaints of religious conviction had a significant increase, and these formed 7.9% of complaints and were primarily on the issue of vaccine mandates.

Figure 9: Top six grounds in work/employment 2021-22



Of the 302 (58.3%) complaints received in employment/work, figure 10 provides a breakdown of the employment status of complainants, with the largest percentage being full-time at 49.0%, followed by unemployed 19.9%.

Figure 10: Complainant employment status 2021-22



Job applicants

In 2021-22, the Commission received 48 complaints from people alleging discrimination when they had applied for a job. Of the 48 applying for a job, 75% received no offer while 25% received an offer which was withdrawn.

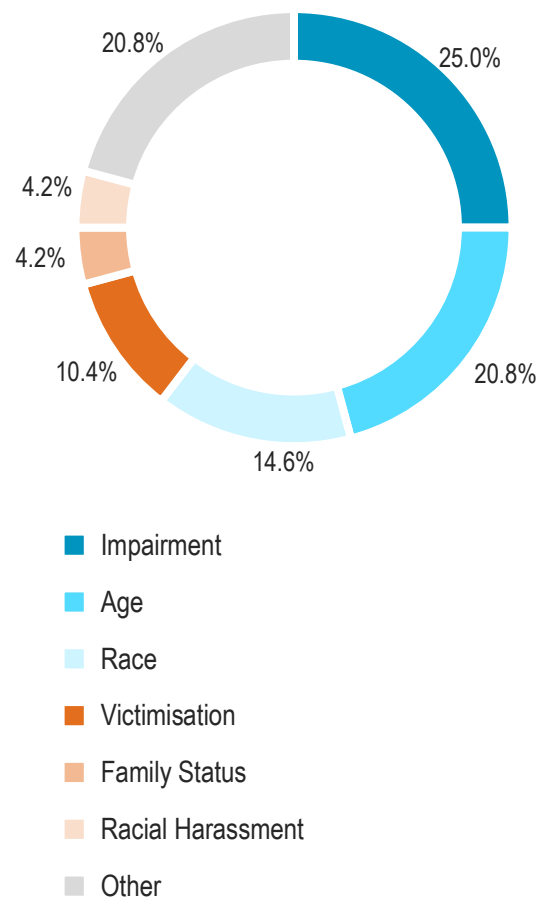
Of these complaints, 12 alleged discrimination on the ground of impairment, 10 on the ground of age and seven on the ground of race. The remainder alleged discrimination on other grounds.

Fifty-seven applicant complaints were closed in 2021-22, and of these complaints 36.8% were withdrawn, 24.6% dismissed and 21.1% lapsed. The balance were conciliated (17.5%). Complaints on the ground of race have very high rates of withdrawal at 50%.

Similarly, complaints on the ground of age and impairment have high rates of withdrawal at 28.5% and 20.0% respectively. The confidentiality associated with job application processes results in an imbalance of power and access to information for complainants and can cause complaints to be withdrawn.

The higher rate of non-conciliated outcomes may be due to the difficulty job applicants have in proving discrimination has occurred. Often, complainants provide some, but not conclusive, evidence that discrimination may have occurred because it is very difficult to prove when they are only provided with limited information or feedback as part of the job application process.

Figure 11: Job applicant employment complaints received by ground 2021-22



COVID-19 complaints

Complaints related to the COVID-19 pandemic increased sharply as government mask mandates and employment regulations were passed. In 2020-21 (7.8%) of complaints lodged with the Commissioner related to COVID-19, but in this reporting year the number of complaints increased sharply to 19.9% of complaints.

Nearly half of the COVID-19 complaints were lodged in the area of employment (44.7%), with smaller numbers in the area of goods and services (38.8%) and access to places and vehicles (13.6%).

The highest number of COVID-19 complaints were on the ground of impairment (51.5%) which included people who had or claimed to have, valid mask exemption medical certificates, but were denied entry to shops, prevented from entering workplaces or boarding planes to mines sites. The second largest number of COVID-19 complaints were on the ground of religious conviction (18.4%), predominately in the area of employment, which include people stating they were unable to comply with employer requirements to be vaccinated for reasons including an assumption that some COVID-19 vaccines may contain traces of foetal matter. A number of people lodged complaints on the ground of political conviction (14.6%), again mostly in the area of employment, stating they were politically opposed to the government's employment vaccine mandates.

The outcomes of COVID-19 related complaints differed from outcomes in non-pandemic years. A higher proportion of COVID-19 related complaints were dismissed (45.8%) because the State Government vaccination mandates and regulations under the *Public Health Act 2016* overrode the provisions of other state statutes including the Equal Opportunity Act. Other complainants could not provide evidence supporting allegation of religious conviction discrimination, which in some instances were personal religious views, rather than doctrinal prohibitions.

Complaint summary 3

Religious conviction discrimination in employment

A state government employee objected to being vaccinated on the ground of religious conviction.

Outcome: The complaint was dismissed as misconceived as the Public Health Act 2016 overrode other written laws, including the EO Act, in respect to Directions issued by the Chief Health Officer. The employer also had a reasonableness defence in regard to religious discrimination complaint relating to vaccination.

Complaint summary 4

Impairment discrimination in employment

A woman alleged impairment discrimination after she provided her mining company employer with a medical certificate saying she was medically exempted from wearing a face mask. The exemption was not accepted, and the company refused to allow her back on site. The woman was required to use her annual leave for the time she was not allowed back on site. She subsequently resigned.

Outcome: Conciliated with \$1600 as reimbursement of the time taken as annual leave while not being allowed back on site, and up to the time of her resignation.

Complaint summary 5

Religious conviction discrimination in employment

A government employee declined to be COVID-19 vaccinated on the basis that her religious beliefs prevented her from using vaccines derived from human foetal material. She alleged religious conviction discrimination when she was terminated.

Outcome: This complaint was dismissed as lacking substance when the response did not substantiate the allegations - the reasons were personal religious beliefs and not doctrinal prohibitions.

Lodgement of complaints

The Act requires complaints to be in writing, and written complaints can be lodged by email, in person, by post or via the Commission's website. People who have difficulty writing may be assisted by the Commission to scribe the complaint. Complaints may be in any language and their translation to English is arranged by the Commission as required.

In 2021-22 lodgement of complaints on the Commission's website was 71.8% and 21.2% by email.

The number of complaints received by post and by hand was 3.7% and 3.3% respectively.

Complaint summary 6

Pregnancy discrimination in employment

A business manager in a manufacturing and retail business advised her employer she was pregnant and proposed a date she could proceed on parental leave. She alleged pregnancy discrimination when her employer restructured her job and moved her into a lower paid and lower status position. When she requested an office uniform for herself, her supervisor labelled her a "smart ass", "a bitch" and a "funny lady", for which she alleged sex discrimination. When her husband became unwell, she asked for family responsibility leave but was forced to take personal leave for which she alleged family responsibility discrimination.

Outcome: Conciliated with an apology and compensation of \$11,800.

Complaint summary 7

Impairment discrimination in accommodation

A man alleged indirect discrimination on the ground of impairment in area of accommodation after being denied a residency at a school college because his impairment prevented him from attending classes on a full-time basis, which was a requirement of the college.

Outcome: Conciliated with an acknowledgment of the complaint and apology.

Complainants

The Commission receives complaints primarily from individuals, and occasionally from groups, who allege unlawful discrimination has occurred in WA according to the grounds and areas of the Act.

This section looks at the demographic characteristics of the people who have lodged complaints. This data is routinely collected from complainants to assist the Commission to identify trends and continually improve its complaint handling service.

Due to the change in electronic complaint handling system in the reporting year, there was a slight decline in capturing the demographic information on our complainants. The Commission has reviewed this and put in place steps to ensure a higher return rate for 2022-23.

Characteristics of complainants

Gender

In 2021-22 a higher number of women lodged complaints (53.5%) compared to men (45.2%) and one complainant identified as non-binary. This is consistent with previous years.

Whilst the total number of complaints lodged is relatively even between men and women on grounds such as race, impairment and racial harassment, there are gender variations with some grounds.

Grounds where there are significant variations include sexual harassment (women 29 complaints, men 4), sex (women 26 complaints, men 5), and family responsibility (women 21, men 6) and pregnancy (women 15).

Two grounds where historically more men than women lodge complaints are age, which continued with men lodging 27 complaints compared to 19 by women, and also sexual orientation (men 11 and women 3).

Complaint summary 8

Pregnancy discrimination in employment

A pregnant woman asked her employer about maternity leave and was told this was not available, and termination of her contract would be the outcome. She felt she was being pushed out of the business and resigned.

Outcome: Conciliated with the employer agreeing to discuss a return to work and made an ex-gratia payment of \$5,928.

Birthplace

As in prior years most complaints were lodged by people born in Australia (61.8%). This figure includes 12.7 % of First Nations people: Aboriginal people (11.2%) and Torres Strait Islander people (1.5%).

Just under 200 complaints (31.1%) were lodged by people born outside Australia, which is roughly proportionate of the WA overseas born population (32.2%) according to the 2021 Census. There was no relevant information provided on 7% of complainants.

Of 161 complaints lodged by people born overseas, the highest number were from people born in the following countries: United Kingdom (31), India (23), China (13) and New Zealand (11).

Complaint summary 9

Race discrimination in provision of goods and services

An Aboriginal woman lodged a race complaint because of the way she was treated when shopping at a supermarket, saying she was racially profiled and accused of stealing.

Outcome: Conciliated with training on cultural awareness provided to staff, and compensation of \$800.

When complainants born outside of Australia are categorised by geographical regions, the greatest number came from Europe, including the UK and Europe (34.8%), followed by Asia (31.1%) and Africa and the Middle East (18.6%). Fewer complainants were born in NZ and Oceania.

There was a decrease (44.4%) from people born in Africa and the Middle East, and an increase (19.0%) from people born in Asia.

Language

Thirty-two complainants (6.2%) specified they spoke a language other than English at home. Of this group, the highest percentage were Cantonese speakers (25%), followed by Arabic (12.5%).

Accredited interpreters were used as required in meetings and conferences. Accredited translators were engaged when complaint statements and other documents were submitted in languages other than English or when there was a need to translate documents into a complainant's preferred language.

While no Aboriginal and Torres Strait Islander complainants stated they spoke a language other than English, demographic data indicates some complainants were likely to speak 'Aboriginal English', and in some instances one or more Aboriginal languages.

Complaint summary 10

Age discrimination in employment

An older applicant for an advertised position with a wholesale company alleged they were asked for their age and felt this was discriminatory and offensive. They sought an explanation from the company but did not receive a reply and lodged a complaint with the Commission. On receipt of the complaint, the respondent acknowledged the question about age was inappropriate and explained it was not intended to be used in a discriminatory manner. The company offered an apology and assurance they would not repeat the age question.

Outcome: Conciliated with an acknowledgment of the complaint and apology.

Occupation

Of the 518 complaints received in the current year, 240 or 46.3%, listed their work status as 'in paid employment', 19.5% said they were 'looking for work', and 8.5% were 'students'.

These percentages are similar to past years.

Age

This reporting year didn't see any significant shift in the age cohorts lodging complaints, with the three primary groups having a slight decline. The highest number of complaints were again lodged by people aged 35-44 years (23.2%), followed by 25-34 years (18.9%) and then 45-54 years (17.4%). The age group with the most significant increase was 13-17 years with a doubling of complaints to 21 (4.1%).

There were some differences in grounds of discrimination lodged according to age. The list below provides the highest ground(s) of discrimination lodged by each age group:

- 0-12 years – sex 40%, impairment 30%
- 13-17 years – age 33.3%, sex 28.6% and impairment 14.3%
- 18-24 years – sexual harassment 32.4% and race 20.6%
- 25-34 years – impairment 21.4%, victimisation 10.2%, pregnancy, family responsibility and race - all 9.2%
- 35-44 years – race 20.8%, impairment 15% and victimisation 12.5%
- 45-54 years – impairment 34.4%, race 12.2%
- 55-64 years – impairment 34.4%, age 14.8%, race 11.5%
- 65-74 years – impairment 47.4% and age 31.6%
- 75+ years – age 33.3%, victimisation 33.3% and racial harassment 22.2%

Complainants with impairments

In the current reporting year 17% of complainants stated they had an impairment, but only a subset of these complainants lodged complaints on the ground of an impairment.

Under the Act 'impairment' includes anyone with a physical, intellectual or psychological impairment, a person who has had an impairment in the past, or someone assumed (imputed) to have an impairment. The Act also defines short-term and chronic medical conditions and injuries as being an 'impairment'.

In 2021-22, as outlined earlier, of the 518 complaints received, 24.5 % were on the ground of impairment (127). Of these impairment complaints, 40.9% were in the area of the provision of goods, services and facilities, and 35.4% were in the area of employment.

Of the complainants who lodged complaints on the ground of impairment, 52.0% related to a physical impairment, 29.9% to a mental health/psychosocial condition, and 7.1% to an intellectual impairment. Allegations related to complainants who were deaf or hard of hearing comprised 3.1%.

Imputed impairment, which includes medical history, comprised 3.1% of impairment complaints.

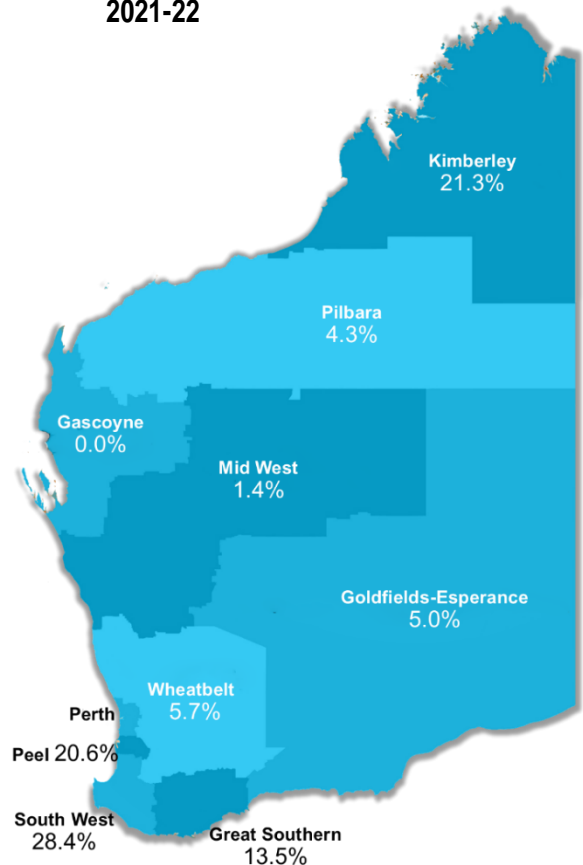
Complaint summary 11

Impairment discrimination in employment

A man alleged impairment discrimination when he was terminated after advising he had received a cancer diagnosis which required immediate hospitalisation and surgery. The employer claimed the Commission had no jurisdiction due to complicated employment arrangements. Following negotiations an agreement was eventually reached.

Outcome: Conciliated with an apology in conference and \$15,000 compensation.

Figure 12: Regional complaints received 2021-22



Residence of complainants

Sixty-seven percent of complainants in the reporting year lived in the metropolitan area which was less than the previous year. Consequently, this led to an increase to 27.2% of complaints from non-metropolitan areas and also a jump in complaints from interstate and overseas (1.7%).

Due to the high number of complaints received by email or the online form, the residence of 21 (4.1%) complainants was unknown.

Of the 141 WA complaints lodged by people living outside the metropolitan areas, the largest percentage lived in the South West (28.4%), Kimberley (21.3%), Peel (20.6%), and the Great Southern (13.5%).

The significant increase in the number of complaints from the Kimberley region from 5.5% in 2020-21 to 21.3% is likely attributable to the Commission's outreach visits in the latter part of 2021. These complaints were lodged against both private and public sector organisations in the region.

The Commission continues to work through its regional program to further improve the number of complaints lodged by people outside the metropolitan area.

Characteristics of respondents

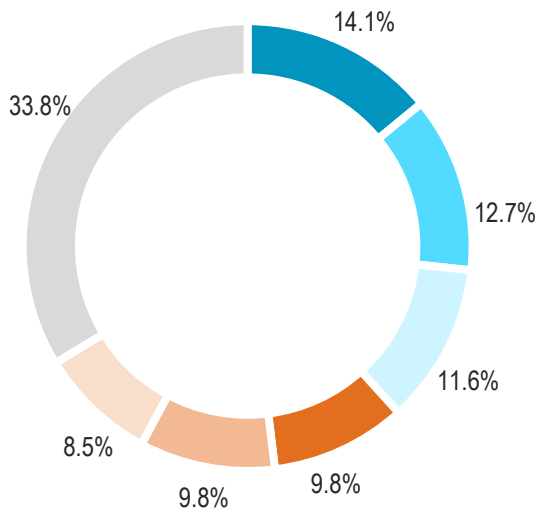
This year the two industry groups with the highest number of complaints with *Health Care and Social Assistance* at 14.1% and *Retail Trade* at 12.7%.

Other respondent groups included:

- Public administration and safety (11.6%)
- Arts and recreational services (9.8%).

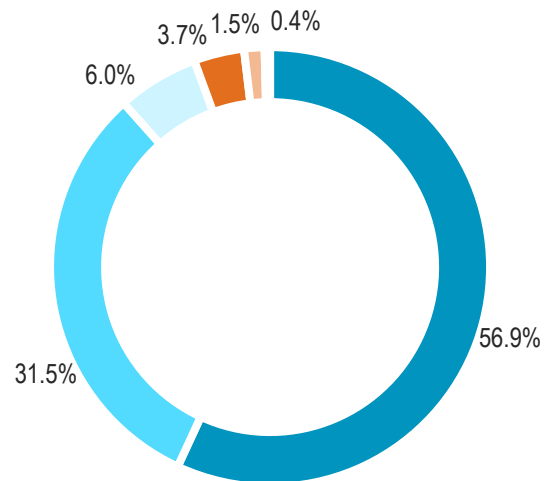
Complaints in the Rental, Hiring and Real Estate Services dropped to 3.3% from 9.9% in the previous year.

Figure 13: Respondent by industry 2021-22



- Health Care and Social Assistance
- Retail Trade
- Public Administration and Safety
- Arts and Recreation Services
- Education - School, Tertiary, Other Education
- Mining
- Other

Figure 14: Respondent by sector 2021-22



- Private Sector
- Public Sector
- Non Government Organisation
- Club
- Trade Union
- Other

There was a reduction in complaints against the private sector from 65.1% in 2020-21 to 56.9% in the reporting year. The sector includes large ASX-listed corporations to small businesses and sole traders and also individuals named as respondents in that sector.

Complaints against public sector employers and service providers, including state government agencies and local government and individual respondents, comprised an increase to 31.5%.

The balance of respondents came from organisations such as non-government organisations, clubs and unions.

Complaint summary 12

Religious conviction discrimination employment

A Muslim man in prison complained that he was unable to perform his afternoon prayers due to the required muster. He had sought alternatives but claimed he was ridiculed by the guards.

Outcome: Resolved with an acknowledgment of the complaint and a suitable adjustment.

Complaint summary 13

Sexual harassment in employment

A woman in the medical industry alleged her manager hugged and kissed her and made inappropriate sexual comments during her employment. The respondent denied the kiss and the sexual comments and said the hug did not have sexual intent.

Outcome: Conciliated with \$4,000 settlement and the complainant being satisfied that the process enabled the respondent to hear the situation from her perspective and get an understanding of the impact his behaviour had on her.

Complaint summary 14

Impairment discrimination in clubs

A young man with an untreatable disability had been a long-term member of a sports club. He alleged impairment discrimination when he was asked for information and proof about his disability, while other concessional members (e.g. aged), were not asked for proof.

Outcome: Conciliated as respondent's explanation was satisfactory to complainant, and sports related merchandise was donated to People with Disability which is part of the sports club's development program.

Complaints resolution

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

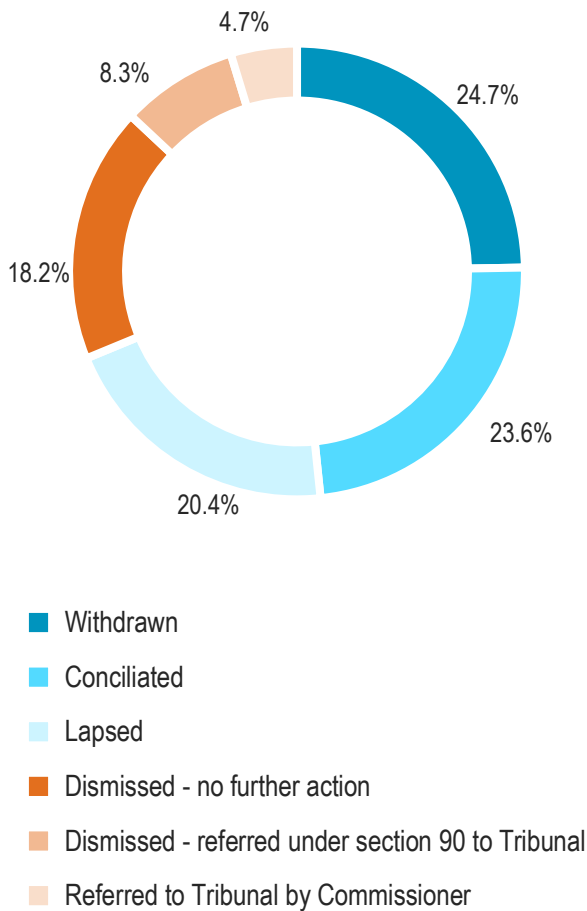
- **Resolved by conciliation** when complainant and respondent achieve a mutually agreed outcome
- **Withdrawn** by the complainant at any time. This may occur based on the initial response from the respondent, election to move to another jurisdiction, or an inability to substantiate the complaint
- **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 to the State Administrative Tribunal** by the Commissioner if the complaint cannot be conciliated and the Commissioner determines there is an arguable case
- **Dismissed** by the Commissioner if it is lacking in substance, misconceived, vexatious or frivolous. A complainant can in writing require a dismissed complaint be referred to the Tribunal.

In the 2021-22 year, there was a considerable increase in the number of complaints finalised jumping to 554 from 466 in the previous year.

Figure 15 shows that from the 554 complaints closed in the financial year, 131 complaints were resolved through conciliation (23.6%), whilst 101 were dismissed with no further action (18.2%), 46 were dismissed and then referred to the Tribunal by the complainant pursuant to section 90 (8.3%), 137 were withdrawn by complainants (24.7%), and 113 were lapsed (20.4%).

The remaining 26 matters were referred by the Commissioner to the Tribunal pursuant to section 93 of the Act for investigation (4.7%) which was a marked increase from the previous two years.

Figure 15: Outcome of complaints closed 2021-22



Complaint summary 15

Impairment discrimination in goods and service

A woman lodged a COVID-19 related complaint on the ground of impairment after she was refused service in a supermarket in spite of having a valid mask exemption. The store responded that the matter could have been handled better.

Outcome: The matter was conciliated with an apology.

Conciliated complaints

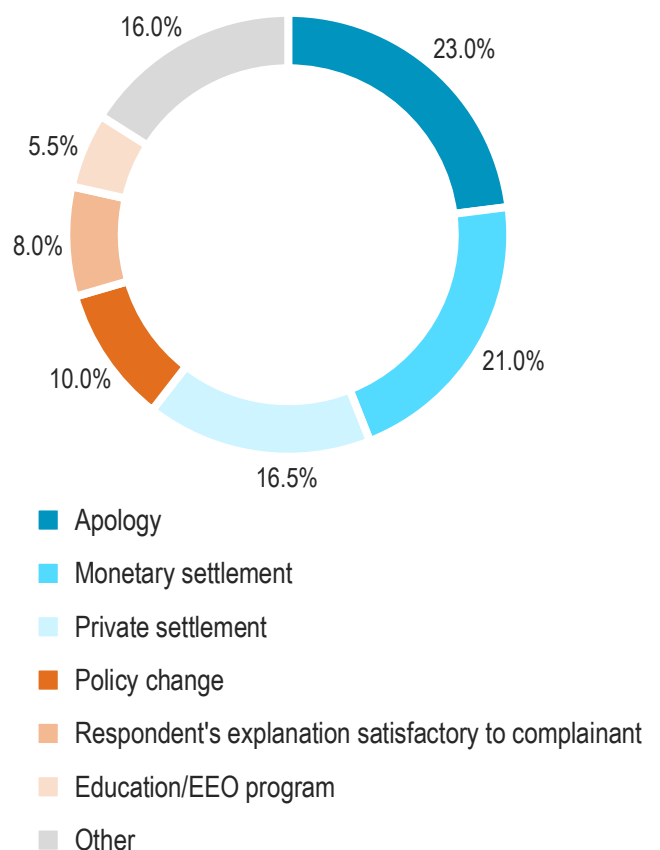
The Act currently requires complainants to establish on the balance of probability that discrimination may have occurred, so the burden of proof lies with complainants. However, as complainants are not always in a position to provide evidence, they may be faced with a dilemma about continuing with a complaint.

Where possible complainants and respondents are encouraged to seek to resolve the complaint through a mutually agreed set of outcomes.

Figure 16 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.

Outcomes involving a monetary settlement remained largely unchanged from previous years with 21% this year compared to 23% in the previous year. The most common outcome this year however was an apology in 23% compared to 17.9% in the previous year.

Figure 16: Conciliated outcomes of complaints closed 2021-22



One feature of the Commission's conciliation process is to bring complainants and respondents together in a non-adversarial environment to determine if a complaint can be resolved. A respondent's explanation allows some complainants to decide their matter has been resolved. In the reporting year 8% of complaints were resolved when the complainant accepted the respondent's explanation about the alleged discrimination.

Complaint summary 16

Impairment in employment

A person lodged a complaint against two mining industry respondents alleging imputed impairment discrimination in employment. Following on-going negotiations between all parties the matter was resolved.

Outcome: Conciliated with compensation of \$30,000.

Complaint summary 17

Impairment discrimination in access to places

A legally blind woman attended a restaurant with friends and was advised her guide dog was not allowed in the restaurant.

Outcome: Conciliated with the woman satisfied with the restaurant's apology and 'they had learnt a lesson'.

Complaint summary 18

Impairment in access to places

A person lodged a complaint on the ground of impairment when he was denied entry to a night club because security assumed he was intoxicated. He explained he was not intoxicated and had an acquired brain injury for which he provided evidence.

Outcome: Conciliated with the respondent addressing the issues raised in the complaint and the complainant given an accommodation, food and beverage voucher.

Time taken to resolve complaints

The Commission aims to investigate and conciliate or finalise complaints in a timely manner without compromising the ability of all participants to be treated fairly and achieve satisfactory outcomes.

In 2021-22 a total of 92.4% were finalised in under 12 months, a minor improvement to the previous year's outcome. The average length of time taken to resolve complaints was 5.1 months, which was a minor reduction to the previous year.

Complaint summary 19

Sexual harassment in employment

During a COVID-19 lockdown, a man working for a small company spoke to his employer about a work matter via a MS Teams hook up. During this meeting the man mentioned he was about to have an Astra Zeneca vaccination, and his boss said the AZ shot had negative 'side effects' on sex organs. During a subsequent Teams video meeting the boss sent the man a video clip of a man urinating in a toilet, and as he pulls his penis out of his trousers the penis falls into the toilet. The Boss then made several unwelcome ribald comments about 'dicks falling off'. The man was offended and lodged a sexual harassment complaint.

Outcome: Conciliated with settlement of \$8,000.

Complaint summary 20

Sexual harassment in employment

Although the Equal Opportunity Act sets a limit of \$40,000 on compensation, there is no limit for a conciliated settlement. For some complaints there may be more than one respondent.

An employee alleged sexual harassment against another employee, and that the employer was vicariously liable for the harassment.

Outcome: Conciliated with financial compensation of \$80,000.

Complaints referred to the State Administrative Tribunal

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

(i) **Referral by the Commissioner under section 93 of the Act, where:**

- the complaint cannot be resolved by conciliation; or
- attempts 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.

Where a complaint has not been resolved, a case report is provided to the Commissioner by the conciliation officer. The Commissioner may then refer a complaint to the Tribunal, if the Commissioner considers there is an arguable case.

The Commissioner must provide assistance to complainants who request the Commissioner to refer their complaints to the Tribunal under section 93 of the Act. This is usually done by assigning one of the Commission's legal officers to assist and represent the complainant.

(ii) **Referral under section 90 of the Act if the complaint is dismissed, and at the request of the complainant.**

The Commissioner does not provide assistance where a complaint has been dismissed and referred to the Tribunal under section 90. In the Tribunal, complainants can choose to represent themselves or engage representation, regardless of how a complaint is referred to the Tribunal.

When a matter is referred to the Tribunal for final determination, the complainant is referred to as the 'applicant' under the *State Administrative Tribunal Act 2004*.

Role of legal officers

The legal officers' day to day activities include assessing potential complaints of unlawful discrimination lodged with the Commission, providing advice to the Commissioner and conciliation officers regarding complaints under investigation, assisting complainants at the Tribunal where a complaint is referred under section 93, and preparing responses to exemption applications lodged in the Tribunal.

The legal officers prepare submissions on equal opportunity and human rights issues to both state and federal inquiries, review the Commission's publications, and draft ministerial and other correspondence in relation to legal matters.

Legal officers may also provide advice and guidance to State Government agencies in relation to issues such as recruiting and retaining staff by using the measures intended to achieve equality exceptions under the Act.

Legal officers also deliver presentations on the application of the Act to employers, tertiary institutions, community organisations, government agencies, and others.

Tribunal Decision:

Tassi & myOzexp Pty Ltd v Commissioner for Equal Opportunity [2021] WASAT 91

The operator of two backpacker hostels in Northbridge - Aberdeen Lodge and Palmerston Lodge (the Applicant) - applied to the Tribunal for an exemption from the application of the *Equal Opportunity Act 1984* (the Act) that would enable it to lawfully discriminate against persons on the grounds of their race and age in the area of accommodation.

The Applicant's director, Mr Tassi, indicated in the application that he wished to be able to refuse persons who are not 'genuine travellers' and 'not under 35 years of age' from staying at the hostels.

The Commissioner was joined as a party to the application, as is the case with all exemption applications. The Commissioner was represented by the Commission's Senior Legal Officer.

The Commissioner opposed the granting of an exemption and submitted that what the applicant was proposing amounted to indirect race discrimination and direct age discrimination, and that the interests served by lawfully permitting the proposed discriminatory conduct did not outweigh the detriment that would consequently flow.

The Commissioner submitted that a substantially higher proportion of people of Australian national origin and nationality would be excluded from the hostels, under the banner of not being 'genuine travellers', compared to people who were not Australian. An assessment as to whether a person was a genuine traveller was too subjective, imprecise, and too lacking in guidance to be considered reasonable.

In evidence before the Tribunal, Mr Tassi said the reason for the application was to reduce the risk of anti-social behaviour and drug use associated with local people who are attracted by the cheap rates. He said that if the exemption was granted, he would be willing to consider allowing travellers from Australia and New Zealand who are not Perth residents to stay at the hostels on a case-by-case basis.

The Tribunal accepted the Applicant's anecdotal evidence that antisocial behaviour by persons identified as homeless people, drug dealers, persons with mental health issues and FIFO workers and their guests has, from time to time, caused disruption and safety concerns at the two hostels, and that the majority of these people live locally and are of Australian descent.

However, the Tribunal observed that the evidence of this was of a general nature, and not sufficient to allow the extent or seriousness of the problem to be properly quantified. The Tribunal also identified that many of the problems identified by the Applicant are faced by all accommodation providers, and that the antisocial behaviour could be addressed by other means. Further, the proposed exemption would primarily be for the Applicant's commercial benefit, notwithstanding it would have a consequential benefit for some guests and hostel staff.

The Tribunal concluded that the balance did not weigh in favour of granting the exemption, and the application was dismissed.

Legal summary 1

Impairment discrimination in access to places

The complainant was an Aboriginal man with a mild intellectual disability. He also took medication for epilepsy and anxiety. He alleged in his complaint that he was refused entry to an entertainment venue in Perth because security officers thought he had been consuming alcohol and was intoxicated.

The complainant, who was accompanied by two friends, informed the officers that he did not drink and had been at his grandmother's funeral in the country earlier that day. He offered to take a breath test, but the officers refused.

The complainant then told the officers about his disability. One of the officers asked him if he took medication to which the complainant replied that he is prescribed Epilim and Diazepam. One of the officers allegedly told him that it was "a nice choice of drugs."

The complainant was offended and upset by this comment. He abandoned his attempt to enter the venue and left with his friends.

The Commissioner referred the complaint to the Tribunal pursuant to s 93 of the Act, after attempts at conciliation were not successful. A Commission legal officer assisted the complainant in presenting his case to the Tribunal. The Tribunal ordered the parties to attend a mediation conference.

The parties reached an agreement to settle the complaint at the conference. As part of the settlement, the venue operators agreed to undertake a trial to assess the viability of allowing a customer to take a breathalyser test in situations where the customer disputed that they were intoxicated, provide additional training in understanding the nature of different disabilities and the legislative framework that supports people with disability in Australia, and improve the customer complaint escalation process.

The venue also agreed to pay the complainant \$3000 in good faith for the alleged discrimination.

Legal summary 2

Race discrimination in accommodation

A married couple of Arab origin were tenants in a house managed by the respondent, a real estate agency.

The tenants bought their first home in Australia and negotiated an early end to their lease. However, there was a dispute about the state of cleanliness of the house, overgrown grass, etc, during final bond inspection, and the respondent decided to retain their bond.

During this dispute, the parties texted each other late at night. During one of these exchanges the property manager texted:

"This is Australia not the Middle East, and don't play games with me mate or you will lose!"

"You are a joke [name] and you left a disgusting uncleaned mess which is typical of Arabs."

"Disgusting filth both of you."

"It's a shame you have little respect for the property and owner, which is typical of your demographic."

The couple lodged a complaint of race discrimination in the area of accommodation with the Commission. The Commission investigated the allegations, and the parties attended a conciliation conference, however, the matter could not be resolved at that stage. The Commissioner referred the matter to the Tribunal under section 93 of the Act, providing legal assistance to the complainants.

The parties attended to a mediation conference at the Tribunal and agreed to settle the complaint by the respondent paying the couple \$5,000 for the hurt and humiliation his racist comments caused the complainants.

Legal summary 3

Sexual harassment in employment

A young woman was employed by the respondent as a marketing person for the company. Mr X, the founder of the company had passed the management of the business to his son but still participated in the business.

Mr X allegedly offered monetary rewards to the woman in exchange for sexual favours. She declined. He allegedly repeated his propositions and she rejected them again.

A couple of months later the complainant was due for a performance review prior to the end of her probationary period. There were some issues regarding the complainant's performance, and it was then that she raised her concerns about Mr X's conduct. The performance review was suspended for a couple of days, but the employer decided to dismiss her because of her performance. The company failed to investigate the allegations even after dismissing the complainant.

The complainant lodged a complaint with the Commission alleging sexual harassment and victimisation, although she withdrew her victimisation allegations during the course of the investigation.

The matter could not be resolved during conciliation and the Commissioner referred it to the Tribunal, providing her with assistance through a Commission legal officer.

The Tribunal listed the matter for mediation, where the parties negotiated a settlement whereby the respondents agreed to pay the complainant \$5,500 as compensation for hurt and humiliation arising from the alleged sexual harassment.

Legal summary 4

Pregnancy in employment

A company that imports Asian products had employed a young woman as a sales administrator on a full-time basis since December 2018.

In the first half of 2020 the woman found she was pregnant but chose not to disclose it to her employer in the first 3 months, but she disclosed it to a couple of co-workers in confidence.

In early July 2020 the woman suffered complications to her pregnancy and her doctors' advised hospitalisation for three weeks to save her baby.

The complainant then contacted her manager and informed her of the pregnancy, the associated complications, and her need to absent herself from work to be hospitalised for three weeks.

The manager appraised the company owner of the complainant's proposed absence from work, and he decided to stop engaging the complainant immediately.

The complainant eventually lost her unborn baby. The complainant lodged a complaint of pregnancy discrimination in the area of employment. The Commission investigated the matter and directed the parties to a conciliation conference, but the parties did not resolve the complaint.

The Commissioner referred the matter to the Tribunal and, at the complainant's request, provided assistance through a legal officer.

The Tribunal referred the matter to mediation, and the parties settled with the respondent agreeing to pay the complainant \$6,000 for the hurt and humiliation arising from the dismissal.

Significant issues

Current and emerging issues and trends

Sexual harassment

Sexual harassment continued to be a significant issue in 2021-22. Following the release of the Australian Human Rights Commission's landmark report 'Respect@Work: The National Inquiry into Sexual Harassment in Australian Workplaces' in the previous financial year, the issue came to the fore in Western Australia with its own Parliamentary inquiry into sexual harassment within WA's fly-in fly-out mining industry.

The Equal Opportunity Commission made a submission and gave evidence to that inquiry. In the submission the Commission recommended changes to the *Equal Opportunity Act 1984* (the Act), including removing the requirement for the complainant to show that objecting to the harassment put them at a disadvantage in connection with their employment, to put in place policies and procedures for a diverse leadership and workforce, and to streamline complaint processes to support victims of sexual harassment.

The report for that inquiry, Enough is Enough, was released in June 2022. Among the report's 24 recommendations it recommended the disadvantage requirement placed on often traumatised complainants be removed from the Act.

The Commission's community education and training team will assist with the State Government's Mental Awareness, Respect and Safety program (MARS program).

The program is designed to stamp out sexual harassment and assault, amongst other workplace misbehaviours in the resources sector. The team will be involved in the development of training initiatives.

In the 2021-22 the Equal Opportunity Commission conducted sexual harassment training for 264 participants, which indicates a demand for training for this now highly scrutinised workplace behaviour.

The Commission was interviewed on ABC National to comment on former federal Sex Discrimination Commissioner Liz Broderick's report into workplace culture at Rio Tinto.

Impacts of COVID-19

This year there has been a shift in impact on the Equal Opportunity Commission with regards to the COVID-19 pandemic.

At the beginning of the pandemic, false assumptions about various nationalities being potentially infected with COVID-19 led members of the public to make enquiries and lodge race discrimination complaints with the Commission. In 2021-22 COVID-19 enquiries and complaints mostly focused on federal and state government restrictions impinging on people's perceived human rights.

The number of COVID-19 related enquiries was very high. Of the 489 written enquiries, 330 related to COVID-19, however many enquirers were unable to nominate a ground of discrimination and corresponding area of public life under the Act for their enquiries to be accepted as complaints.

The influx of COVID-19 enquiries directly correlated to the state government mandates as the Commission saw an increase in COVID-19 complaints relating goods and services when mandated proof of vaccination were extended to restaurants, shops, and other service providers.

The Commission also saw similar trends with mask mandates, mainly on the ground of impairment.

The Review of the *Equal Opportunity Act 1984*

The Commission made a submission to the Law Reform Commission of Western Australia (LRCWA) Review of the *Equal Opportunity Act 1984* and encouraged stakeholders to do the same through events and other communications channels.

The LRCWA report was published after 30 June 2022 and the Government has indicated that most of the recommendations will be included in a bill.

Disclosures and legal compliance

Reference by the Minister

No references were made by the Minister pursuant to section 81 of the Act.

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 2021-22 Annual Report has further information on:

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

Appendices

Appendix A: enquiry and complaint tables

Enquiries

Table 1: Enquiries received by ground

	2021-22	%	2020-21	%
Age	64	4.5	79	6.3
Breastfeeding	2	0.1	7	0.6
Bullying	26	1.8	31	2.5
Family responsibility	27	1.9	32	2.5
Family status	16	1.1	15	1.2
Gender history	6	0.4	7	0.6
Gender identity	12	0.8	13	1.0
Human / civil rights	36	2.5	8	0.6
Impairment	327	22.9	294	23.4
Marital status	6	0.4	7	0.6
Political conviction	23	1.6	6	0.5
Pregnancy	19	1.3	28	2.2
Publication of name in fines enforcement registry website	0	0.0	5	0.4
Race	155	10.9	177	14.1
Racial harassment	8	0.6	14	1.1
Racial vilification	6	0.4	2	0.2
Religious conviction	42	2.9	22	1.8
Religious vilification	3	0.2	2	0.2
Sex	43	3.0	76	6.1
Sexual harassment	30	2.1	63	5.0
Sexual orientation	8	0.6	17	1.4
Spent conviction	13	0.9	11	0.9
Victimisation	16	1.1	0	0.0
Victimisation – <i>Public Interest Disclosure Act 2003</i>	1	0.1	5	0.4
All grounds	67	4.7	86	6.8
Other	125	8.8	80	6.4
Not applicable	347	24.4	169	13.5
Total	1428	100	1256	100

Table 2: Enquiries received by area

	2021-22	%	2020-21	%
Access to places and vehicles	117	8.2	31	2.5
Accommodation	64	4.5	45	3.6
Advertising	2	0.1	0	0.0
Clubs	22	1.5	22	1.8
Education	43	3.0	56	4.5
Employment	564	39.5	575	45.8
Goods, services and facilities	242	16.9	250	19.9
Land	0	0.0	0	0.0
Public place	5	0.4	5	0.4
Superannuation and insurance	3	0.2	3	0.2
Sport	5	0.4	6	0.5
All areas	60	4.2	70	5.6
Other	50	3.5	50	4.0
Not applicable	251	17.6	143	11.4
Total	1428	100	1256	100

COVID-19 enquiries

Table 3: COVID-19 enquiries received

	2021-22	%	2020-21	%
Written	184	55.8	18	58.1
Phone	145	43.9	12	38.7
Visit	1	0.3	1	3.2
Total	330	100	31	100

Table 4: COVID-19 enquiries received by ground

	2021-22	%	2020-21	%
Age	7	2.1	3	9.7
Breastfeeding	1	0.3	0	0.0
Family responsibility	4	1.2	2	6.5
Family status	2	0.6	0	0.0
Gender identity	1	0.3	0	0.0
Human / civil rights	26	7.9	1	3.2
Impairment	67	20.3	15	48.4
Marital status	1	0.3	0	0.0
Political conviction	16	4.8	0	0.0
Pregnancy	1	0.3	0	0.0
Race	2	0.6	3	9.7
Racial harassment	0	0.0	1	3.2
Religious conviction	13	3.9	0	0.0
Religious vilification	1	0.3	0	0.0
Victimisation	5	1.5	0	0.0
All grounds	5	1.5	1	3.2
Other	67	20.3	0	0.0
Not applicable	111	33.6	5	16.1
Total	330	100	31	100

Table 5: COVID-19 enquiries received by area

	2021-22	%	2020-21	%
Access to places and vehicles	62	18.8	3	9.7
Accommodation	2	0.6	0	0.0
Clubs	4	1.2	0	0.0
Education	4	1.2	1	3.2
Employment	120	36.4	12	38.7
Goods, services and facilities	46	13.9	13	41.9
Public Place	1	0.3	0	0.0
All areas	7	2.1	1	3.2
Other	12	3.6	0	0.0
Not applicable	72	21.8	1	3.2
Total	330	100	31	100

Complaints

About the complainant

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

In which country where you born?

Table 6: Birthplace of complainant

	2021-22	%	2020-21	%
Born in Australia	320	61.8	364	64.5
Born outside Australia	161	31.1	182	32.3
No survey returned / unspecified	37	7.1	18	3.2
Total	518	100	564	100

What is the main language spoken at home?

Table 7: Language of complainant

	2021-22	%	2020-21	%
Other	32	6.2	67	11.9
English	436	84.2	482	85.5
No survey returned / unspecified	50	9.7	15	2.7
Total	518	100	564	100

Do you consider yourself to have an ethnic background?

Table 8: Ethnic background of complainant

	2021-22	%	2020-21	%
Yes	95	18.3	162	28.7
No	417	80.5	384	68.1
No survey returned / unspecified	6	1.2	18	3.2
Total	518	100	564	100

Which of the following age group do you belong?

Table 9: Age of complainant

	2021-22	%	2020-21	%
0 – 12	10	1.9	12	2.1
13 – 17	21	4.1	10	1.8
18 – 24	34	6.6	50	8.9
25 – 34	98	18.9	104	18.4
35 – 44	120	23.2	145	25.7
45 – 54	90	17.4	120	21.3
55 – 64	61	11.8	69	12.2
65 – 74	19	3.7	27	4.8
75+	9	1.7	2	0.4
No survey returned / unspecified	56	10.8	25	4.5
Total	518	100	564	100

Which of the following best describes you currently?

Table 10: Occupation of complainant

	2021-22	%	2020-21	%
Homemaker	15	2.9	32	5.7
In paid employment	240	46.3	248	44.0
Looking for work	101	19.5	152	27.0
Pensioner	39	7.5	32	5.7
Retired	10	1.9	13	2.3
Student	44	8.5	53	9.4
No survey returned / unspecified	69	13.3	34	6.1
Total	518	100	564	100

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

Table 11: Disability of complainant

	2021-22	%	2020-21	%
Yes	88	17.0	109	19.3
No	424	81.9	439	77.8
No survey returned / unspecified	6	1.2	16	2.9
Total	518	100	564	100

Table 12: Complainant residence

	2021-22	%	2020-21	%
Metropolitan	347	67.0	407	72.2
Non-metropolitan	141	27.2	127	22.5
Other state / overseas	9	1.7	3	0.5
Not specified	21	4.1	27	4.8
Total	518	100	564	100

Table 13: Complainant represented

	2021-22	%	2020-21	%
Advocacy group	4	0.8	9	1.6
Community legal centre	11	2.1	15	2.7
Family member or friend	31	6.0	47	8.3
Privately funded solicitor	17	3.3	45	8.0
Professional association	0	0.0	10	1.8
Trade union	5	1.0	13	2.3
Not represented	450	86.9	425	75.4
Total	518	100	564	100

About the complaint

Table 14: How the complainants lodged their complaints

	2021-22	%	2020-21	%
Email	110	21.2	128	22.7
Hand	17	3.3	18	3.2
Post	19	3.7	26	4.6
Web	372	71.8	392	69.5
Total	518	100	564	100

Table 15: Complaints received by ground

	2021-22	%	2020-21	%
Age	46	8.9	46	8.2
Breastfeeding	0	0.0	2	0.4
Family responsibility	29	5.6	24	4.3
Family status	9	1.7	6	1.1
Gender history	1	0.2	1	0.2
Impairment	127	24.5	120	21.3
Marital status	5	1.0	3	0.5
Political conviction	20	3.9	5	0.9
Pregnancy	15	2.9	18	3.2
Publication of name in fines enforcement registry website	1	0.2	0	0
Race	74	14.3	94	16.7
Racial harassment	17	3.3	33	5.9
Religious conviction	39	7.5	14	2.5
Sex	31	6.0	39	6.9
Sexual harassment	33	6.4	72	12.8
Sexual orientation	14	2.7	9	1.6
Spent conviction	3	0.6	2	0.4
Victimisation	48	9.3	64	11.3
Victimisation – <i>Public Interest Disclosure Act 2003</i>	6	1.2	12	2.1
Total	518	100	564	100

Table 16: Complaints received by area

	2021-22	%	2020-21	%
Access to places and vehicles	32	6.2	27	4.8
Accommodation	13	2.5	36	6.4
Clubs	17	3.3	9	1.6
Education	24	4.6	15	2.7
Employment	302	58.3	353	62.6
Goods, services and facilities	124	23.9	119	21.1
Sport	6	1.2	5	0.9
Victimisation	0	0.0	0	0
Total	518	100	564	100

Table 17: Complaints received by gender – 2021-22

Ground	Female	Male	Non-binary	Mixed group	Total	%
Age	19	27	0	0	46	8.9
Family responsibility	21	6	1	1	29	5.6
Family status	5	3	0	1	9	1.7
Gender history	1	0	0	0	1	0.2
Impairment	66	61	0	0	127	24.5
Marital status	4	1	0	0	5	1.0
Political conviction	4	16	0	0	20	3.9
Pregnancy	15	0	0	0	15	2.9
Publication of name in fines enforcement registry website	0	1	0	0	1	0.2
Race	34	37	0	3	74	14.3
Racial harassment	4	12	0	1	17	3.3
Religious conviction	15	24	0	0	39	7.5
Sex	26	5	0	0	31	6.0
Sexual harassment	29	4	0	0	33	6.4
Sexual orientation	3	11	0	0	14	2.7
Spent conviction	2	1	0	0	3	0.6
Victimisation	26	22	0	0	48	9.3
Victimisation – <i>Public Interest Disclosure Act 2003</i>	3	3	0	0	6	1.2
Total	277	234	1	6	518	100

Table 18: Impairment complaints received – disability of complainant

	2021-22	%	2020-21	%
Blind and vision impairment	0	0.0	3	2.5
Deaf and hearing impairment	4	3.1	3	2.5
HIV or other organisms	0	0.0	0	0.0
Imputed impairment	4	3.1	4	3.3
Intellectual disability	9	7.1	9	7.5
Mental health / psychosocial	38	29.9	39	32.5
Physical disability	66	52.0	57	47.5
Not specified	6	4.7	5	4.2
Total	127	100	120	100

Table 19: Employment complaints received – employment status of complainant

	2021-22	%	2020-21	%
Casual	26	8.6	36	10.2
Fixed-term contract	11	3.6	19	5.4
Full-time	148	49.0	160	45.3
Part-time	15	5.0	32	9.1
Permanent	18	6.0	22	6.2
Unemployed	60	19.9	64	18.1
Other	0	0.0	3	0.8
Not specified	24	7.9	17	4.8
Total	302	100	353	100

About the respondents

Table 20: Respondent industry

	2021-22	%	2020-21	%
Accommodation and food services	35	6.8	69	12.2
Administrative and support services	15	2.9	23	4.1
Agriculture, forestry and fishing	0	0.0	0	0.0
Arts and recreation services	51	9.8	40	7.1
Construction	3	0.6	27	4.8
Education and training – school, tertiary other education	51	9.8	40	7.1
Electricity, gas, water and waste services	10	1.9	2	0.4
Financial and insurance services	7	1.4	8	1.4
Health care and social assistance	73	14.1	61	10.8
Information media and telecommunications	4	0.8	4	0.7
Manufacturing	4	0.8	3	0.5
Mining	44	8.5	23	4.1
Professional, scientific and technical services	7	1.4	23	4.1
Public administration and safety	60	11.6	54	9.6
- Correctional and detention services	20	3.9	29	5.1
- Police services	9	1.7	22	3.9
Rental, hiring and real estate services	17	3.3	56	9.9
Retail trade	66	12.7	48	8.5
Transport, postal and warehousing	21	4.1	14	2.5
Wholesale trade	3	0.6	12	2.1
Other services	18	3.5	6	1.1
Not specified	0	0.0	0	0.0
Total	518	100	564	100

Table 21: Respondent identity

	2021-22	%	2020-21	%
Club	19	3.7	12	2.1
Non-government organisation	31	6.0	24	4.3
Private enterprise	295	56.9	367	65.1
State government department / agency / authority / local	163	31.5	157	27.8
Trade union	8	1.5	0	0.0
Other	2	0.4	4	0.7
Total	518	100	564	100

Table 22: Size of organisation

	2021-22	%	2020-21	%
0 - 19	63	4.7	44	5.1
20 - 99	105	15.4	110	15.4
100 - 499	59	13.2	68	13.2
500+	236	41.4	187	41.4
Not specified	55	24.9	155	24.9
Total	518	100	564	100

How complaints were handled

Table 23: Outcome of complaints closed

	2021-22	%	2020-21	%
Conciliated	131	23.6	119	25.5
Dismissed – no further action	101	18.2	96	20.6
Dismissed – referred under section 90 to Tribunal	46	8.3	27	5.8
Lapsed	113	20.4	101	21.7
Withdrawn	137	24.7	121	26.0
Referred under section 93 to Tribunal by Commissioner	26	4.7	2	0.4
Total	554	100	466	100

COVID-19 complaints

Table 24: COVID-19 complaints received

	2021-22	%	2020-21	%
COVID-19 related	103	19.9	44	7.8
Other	415	80.1	520	92.2
Total	518	100	564	100

Table 25: COVID-19 complaints received by ground

	2021-22	%	2020-21	%
Age	1	1.0	3	6.8
Family responsibility	6	5.8	3	6.8
Family status	1	1.0	1	2.3
Impairment	53	51.5	25	56.8
Political conviction	15	14.6	1	2.3
Publication of name in fines enforcement registry website	1	1.0	0	0.0
Race	1	1.0	4	9.1
Racial harassment	0	0.0	0	0.0
Religious conviction	19	18.4	0	0.0
Sex	1	1.0	0	0.0
Sexual harassment	0	0.0	4	9.1
Victimisation	3	2.9	3	6.8
Victimisation – <i>Public Interest Disclosure Act 2003</i>	2	1.9	0	0.0
Total	103	100	44	100

Table 26: COVID-19 complaints received by area

	2021-22	%	2020-21	%
Access to places and vehicles	14	13.6	6	13.6
Accommodation	0	0.0	1	2.3
Education	3	2.9	0	0.0
Employment	46	44.7	23	52.3
Goods, services and facilities	40	38.8	14	31.8
Total	103	100	44	100

Appendix B: complaints received from 1985 to 2022

