

# 'Discrimination... have you got all day?'

Indigenous women,  
discrimination and complaints  
processes in NSW

**Public Interest Advocacy Centre and  
Wirringa Baiya Aboriginal Women's Legal Centre**

December 2001

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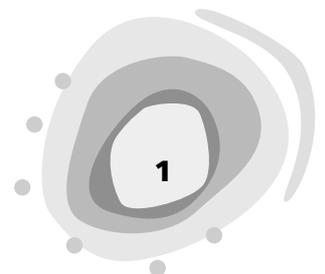
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WIRRINGA BAIYA ABORIGINAL  
WOMEN'S LEGAL CENTRE



Department for Women



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Bibi Barba of Boomalli Aboriginal Artists Cooperative

*Mother and Child*, dye-paint on silk

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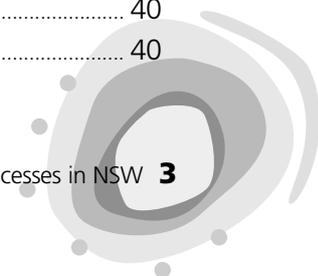
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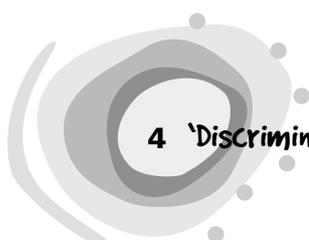
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# Introduction

## i Overview

This is the report of a research project conducted jointly by the Public Interest Advocacy Centre (PIAC) and the Wirringa Baiya Aboriginal Women's Legal Centre (Wirringa Baiya). The report examines Indigenous women's experiences of discrimination, their responses to discrimination and the factors which influence Indigenous women's understanding of their rights and access to discrimination complaints mechanisms. It identifies both barriers and aids to such access, and makes recommendations for reform to relevant government agencies, complaints bodies, Indigenous women's organisations and legal services.

The project was funded by the NSW Department for Women. The project proposal had the support of the Human Rights and Equal Opportunity Commission (HREOC), the Anti-Discrimination Board of NSW (ADB) and the Aboriginal and Torres Strait Islander Commission (ATSIC). This study is unprecedented in being the first study of Indigenous women's responses to discrimination that covers both rural and urban communities in NSW. Other studies have been confined to particular regions or communities, or have dealt with only particular aspects of discrimination.

## ii Reference group

The project was steered by a reference group from relevant organisations. The reference group provided advice on issues including the methodology of the project and the development of appropriate recommendations from the consultation findings. The reference group members were:

- Michelle Gardner, former Team Leader, Indigenous Team, ADB;
- Nathan Tyson, Team Leader, Indigenous Team, ADB;
- Jodie Ball, Senior Investigation/Conciliation Officer, Complaint Handling Section, HREOC;
- Winsome Matthews, Chairperson, Aboriginal Justice Advisory Council;
- Vickie Fair, Indigenous Women's Program, Women's Legal Resources Centre;
- Edwina Crawford, former Policy Officer, New South Wales Department of Aboriginal Affairs;
- Jenny Riley, Policy and Advocacy Officer, ATSIC; and
- Joyce Clagg.

## iii Methodology

The study deals mainly with Indigenous women's awareness of and access to the ADB and HREOC, as these are the main bodies which deal with complaints about discrimination. Some reference is made where relevant to other more specialised complaints bodies like the State and Commonwealth Ombudsman's Offices (which deal with complaints about government bodies) and the State and Commonwealth Industrial Relations Commissions (which deal with complaints about employment matters).

The study uses both quantitative and qualitative data. The quantitative material on the economic and social situation of Aboriginal women is drawn from data from the Australian Bureau of Statistics (ABS). The quantitative material on Indigenous women's use of complaints mechanisms comes from data collected by the ADB and HREOC.

The qualitative material is drawn from focus group consultations which were conducted in ten rural and urban locations in NSW, and from interviews with women who had used ADB and HREOC complaints processes. A total of 73 women participated in the focus groups and/or were interviewed for the project. The focus groups and interviews asked about Indigenous women's understanding of discrimination, their experience of discrimination, their responses to discrimination and their knowledge and use of discrimination complaints mechanisms.



They provide a rich source of qualitative information from Indigenous women themselves about their experiences. The questions used for the focus groups and interviews are attached as Appendices 3 and 4. The data from the consultations was recorded, transcribed and analysed according to major themes.

The focus groups were organised by project staff contacting Indigenous agencies in the locations selected. These local agencies then organised and promoted the focus groups among Indigenous women in their local community. The focus group consultations were conducted by Wurringa Baiya Coordinator, Cleonie Quayle and PIAC Solicitor, Alexis Goodstone. The interviews with women who had complained to the ADB and HREOC were organised by letters being sent by these agencies to Indigenous women who had lodged complaints, asking them to contact project staff if they were willing to participate in the project. Some women who had lodged complaints were also contacted through the focus groups. The interviews with women who had complained to the ADB and HREOC were conducted mostly via telephone, by PIAC Solicitor, Alexis Goodstone and PIAC Principal Policy Officer, Dr Patricia Ranald.

A summary report containing the findings and recommendations of the project has also been published and distributed to, among others, the women who participated in the focus groups and interviews.

## iv Terminology

The project partners and reference group considered and debated the appropriate term for describing Aboriginal people and Torres Strait Islander people in this report. While we acknowledge the distinct and separate identity of each of these groups, the term 'Indigenous' has been chosen to refer to or cover both groups of people in this report.

## v Outline of the report

- Chapter 1** discusses definitions of discrimination, the Australian historical experience of race and gender discrimination, and the intersection of both race and gender discrimination in the experience of Indigenous women. It then briefly surveys the economic and social situation of Indigenous women in NSW to establish the context of contemporary discrimination.
- Chapter 2** surveys previous relevant studies of the use of complaints mechanisms to assist in identifying themes for this study.
- Chapter 3** examines the legislative framework of discrimination complaints at NSW and Commonwealth levels and the discrimination complaints processes of both the ADB and HREOC. The processes of the NSW and Commonwealth Ombudsman and the NSW and Commonwealth Industrial Commission are also briefly examined.
- Chapter 4** analyses the statistical data on discrimination complaints from Indigenous women provided by both the ADB and by HREOC.
- Chapter 5** analyses the qualitative information gathered in the focus groups under the major themes which emerged from them.
- Chapter 6** analyses the qualitative information gathered in the interviews with women who had used ADB and HREOC complaints processes.
- Chapter 7** draws conclusions and makes recommendations about ways of improving Indigenous women's access to discrimination complaints processes.

# Chapter 1

## Indigenous women and discrimination: the intersection of race and gender

### 1.1 Introduction

This chapter discusses definitions of discrimination, the Australian historical experience of race and gender discrimination, and the intersection of both race and gender discrimination in the experience of Indigenous women. It briefly surveys the economic and social situation of Indigenous women to establish the context of contemporary discrimination.

### 1.2 Discrimination

In general terms, discrimination is any practice that makes unfair distinctions between individuals or groups to disadvantage some and advantage others. Chapter 3 conducts a more detailed discussion of anti-discrimination legislation and legal definitions of discrimination.

In NSW, under the *Anti-Discrimination Act 1977* (Anti-Discrimination Act) it is unlawful to discriminate against a person on the basis of race, sex, marital status, homosexuality, disability, age and transgender status. Sex includes discrimination on the basis of pregnancy and sexual harassment.

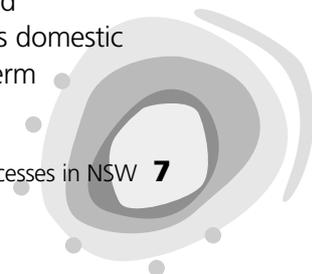
There are four relevant federal laws which deal with discrimination. The *Racial Discrimination Act 1975* (Cwlth) (Racial Discrimination Act) makes racial discrimination unlawful, the *Sex Discrimination Act 1984* (Cwlth) (Sex Discrimination Act) makes discrimination on the basis of sex unlawful, the *Disability Discrimination Act 1992* (Cwlth) (Disability Discrimination Act) make discrimination on the basis of disability unlawful and the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth) (HREOC Act) deals with other areas of discrimination, including discrimination on the basis of religion, political opinion, national extraction or social origin, age, medical record, criminal record and sexual preference.

### 1.3 Discrimination based on race

The Indigenous women interviewed for this study overwhelmingly reported that they experienced discrimination based on race, or based on a combination of race and gender and, in some cases, disability. Their experiences are embedded in the context of the social and economic position of Indigenous people in Australia resulting from a history of dispossession, disempowerment and oppression.

Indigenous people were dispossessed following the eighteenth century occupation of Australia as a British colony whose legal system refused to recognise that the land was inhabited. Colonial administrations oversaw the invasion of Indigenous peoples' land and refused to recognise their culture or languages. Many died from introduced diseases, and others were killed when they resisted invasion. Survivors were often systematically removed from their land and forced to live on reserves or missions, where they had no civil or political rights, no rights to education or property, and often suffered physical and sexual abuse. Others worked for meagre food and clothing rations or low wages in pastoral and other rural industries (Reynolds 1981; Royal Commission into Aboriginal Deaths in Custody 1991).

Up until the 1970s, many Indigenous children were forcibly removed from their families and communities and placed in non-Indigenous families or in institutions. Many were trained as domestic workers or labourers and taught to 'assimilate' with white Australia. Many suffered long term detrimental effects and, in some cases, physical and/or sexual abuse (HREOC 1997).



Citizenship rights and access to education and equal wages were only won in the 1960s after many years of struggles. This period also saw the development of the struggle for Indigenous land rights.

The legacies of this history of dispossession and oppression are starkly visible today. Indigenous people have a life expectancy 20 years below that of other Australians, higher rates of infectious diseases and other illnesses linked to poor diet and sub-standard housing, lower school retention rates, lower labour force participation rates, higher unemployment rates and higher rates of imprisonment than other Australians (ABS 1998; Australian Institute of Health & Welfare 1999).

The 1996 Census figures for NSW reflect this history. Indigenous people in NSW comprise 1.7% of the NSW population. Table 1 shows that the median age of Indigenous people is 14 years below that of the non-Indigenous population. Table 2 shows that this is largely due to Indigenous peoples' shorter life expectancy. Only 2.5% of Indigenous people are over 65, compared with 12.6% of the general population. This reflects the lower life expectancy discussed above.

**Table 1: Median Age (years)**

	NSW population	Indigenous population
All	34.4	19.9
Women	35.1	20.9
Men	33.7	18.9

(Australian Bureau of Statistics 1998: 2)

**Table 2: Elders and Youth as a percentage of population, NSW**

	NSW Population	Indigenous Population
Over 65	12.6%	2.5%
Under 15	21.1%	40.7%

(Australian Bureau of Statistics 1998: 2)

Tables 3 and 4 show that Indigenous men and women have lower employment rates than the general population. This is related to poverty, poor health, lack of access to employment and training opportunities, racism and discrimination. The participation rates of both Indigenous and non-Indigenous women are lower than those of men. This reflects the fact that caring responsibilities for children or other family members mean that many women have periods in their lives when they are not in the paid workforce. Unemployment rates of both Indigenous men and women are over triple those of the general population. Unemployment levels would be even higher but for Community Development Employment Programs (CDEP) in Indigenous communities. CDEP enables communities to pool social security payments and provide part-time employment and training for those who would otherwise be unemployed.



**Table 3: Percent of Population Employed, NSW**

	NSW population	Indigenous population
All	55.7%	39.0%
Women	47.9%	33.1%
Men	63.9%	46.3%

(Australian Bureau of Statistics 1998: 27)

**Table 4: Unemployment Rate, NSW (%)**

	NSW population	Indigenous population
All	8.8%	27.0%
Women	7.9%	24.0%
Men	9.5%	29.3%

(Australian Bureau of Statistics 1998: 27)

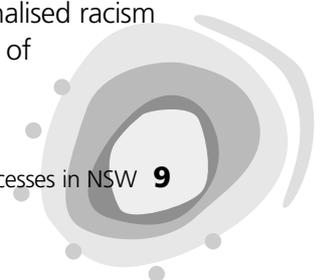
Table 5 shows that lower proportions of Indigenous people are employed in managerial and professional occupations, with higher proportions in clerical, sales and service occupations and in trades and labouring occupations. This reflects the history of discrimination and exclusion and lack of equal access to education and training opportunities.

**Table 5: Major Occupations - Percent of total employment population, NSW**

	NSW population	Indigenous population
Managers & administrators	9.1%	4.2%
Professionals	17.9%	11.4%
Technicians & associate professionals	11.1%	8.4%
Advanced clerical, sales & service workers	4.8%	2.8%
Intermediate clerical, sales & service workers	16.2%	19.5%
Elementary clerical, sales & service workers	8.7%	7.8%
Intermediate production & transport workers	8.4%	10.6%
Tradespeople & related workers	12.7%	12.7%
Labourers & related workers	8.2%	17.0%

(Australian Bureau of Statistics 1998: 34)

The continuing economic and social disadvantage showed by these figures contributes to, and is compounded by, systemic discrimination. The Royal Commission into Aboriginal Deaths in Custody examined the history of Aboriginal people's contact with the law. It showed that institutionalised racism in the criminal justice system still resulted in disproportionately high levels of imprisonment of Indigenous people, resulting in the continuing tragedy of Indigenous deaths in custody (Royal Commission into Aboriginal Deaths in Custody 1991).



The experience of social and economic disadvantage, systematic discrimination in Australian society, and discrimination by government authorities and the formal legal system provide the context of Indigenous women's experience of discrimination and of their responses to it.

## 1.4 Discrimination based on sex and gender

Gender is distinct from sex. Sex refers to the biological characteristics which distinguish women and men. Gender refers to the socially and culturally constructed characteristics and patterns of behaviour which are ascribed to women and men, but which may differ in different societies (Oakley 1974). Assumptions about gender characteristics have often been used to exclude women from economic, social and political participation. For example, it was argued that women's roles as child bearers and carers meant that they did not need the same access as men to education, paid work or to political and civil rights.

Hence white women in colonial Australia were defined as socially and economically dependent on men and were denied citizenship rights, education, access to equal work and equal pay. White Australian women won the right to vote in federal elections in 1902, with some states granting voting rights sooner and some later. However, both Indigenous women and men were excluded from citizenship after federation (Lake 1998).

Women's disadvantage in the labour market must be placed in the broader social context of economic dependence, vulnerability to domestic violence, lack of access to fertility control and childcare. After long struggles women won the rights to equal pay for work of equal value in 1972 and to an equal minimum wage in 1974. However, Australia still has the most sex-segregated labour market in the world. Women are concentrated in lower-paid 'female' occupations, including cleaning, catering, clerical work, sales, nursing and teaching. The skills of these occupations are often undervalued. In 1998, women in Australia working full-time earned 87.5% of male full-time average earnings (Thornton 1998; Mitchell 1998).

Women's economic and social disadvantage means they face many obstacles in access to the legal system, including:

- ▶ Lack of awareness of the law and of legal services, resulting from poverty, isolation, and lack of education;
- ▶ Government agencies' lack of awareness of women's needs and experiences;
- ▶ Failure of legal service providers to provide accurate and appropriate assistance;
- ▶ Legal costs, as women are generally poorer than men;
- ▶ Lack of child care facilities at legal venues (ALRC 1994a).

In addition, women remain under-represented in the legal profession and in the judiciary, and the legal system remains male-dominated. These obstacles are compounded for Indigenous women by their experience of both race and gender discrimination.

## 1.5 Indigenous women

Indigenous women's specific experience of racism means that they share aspects of gender disadvantage in the contemporary workforce and in society but also have different and specific experiences. For example, Indigenous women were in the past often the primary breadwinners for their families, employed as domestic servants but also in 'male' occupations like cattle herding and stock work, for the same meagre pay. The latter is an example where the conventional assumptions about what was suitable work for white women was over-ridden by assumptions about race (Langton & Barry 1998).

For Indigenous people, poverty can still eclipse the gender gap. Table 6 shows weekly individual gross median incomes for NSW comparing Indigenous men and women with men and women for the total population. The median income is the mid-point of income for the population. Half the population has incomes below this, and half above.

**Table 6: Median Income, NSW**

	NSW population	Indigenous population
All	\$298	\$228
Women	\$226	\$202
Men	\$415	\$203

The table shows that Indigenous men and women share a common level of poverty, with median incomes far below those of both non-Indigenous men and women. The gender gap is much sharper for non-Indigenous women, whose incomes are only 54% of those of non-Indigenous men. However, the incomes of non-Indigenous women are still higher than those of both Indigenous men and Indigenous women. Poverty levels in Indigenous communities are related to lack of access to employment opportunities and reliance on social security payments.

Indigenous women suffer high levels of family and community violence. They comprise 16% of all female homicide victims but only 1.5% of the population. Domestic violence and rape are under-reported by all women, but Indigenous women may be particularly reluctant to report them because of their experience of racism in the criminal justice system. Studies have also found that those Indigenous women who do wish to use the legal system suffer from inequitable access to both Indigenous legal services and to legal aid (ALRC 1994a: 56).

Indigenous women are doubly disadvantaged by both race and gender. Their experience of race affects their experience of gender, and the two cannot be easily separated.

The public debate surrounding Indigenous women's evidence about women's secret business related to a sacred site on Hindmarsh Island was an example of the intersection between race and sex discrimination. As one commentator put it:

*...I do not believe that the experience of discrimination as lived by [these women]...can be so easily compartmentalised. They cannot fragment their identities... And I do not believe that the people meting out the discrimination practise it in such neat and categorised ways. These women are experiencing a specific brand of discrimination which is not about race or gender but all about the nexus between the two. It is an experience of discrimination which is all about being an Aboriginal woman. (Duff 1996: 51)*

This intersection is particularly significant in light of the law's tendency to imply identities by its general statements. If the "reasonable person" is implicitly white, then the "Indigenous person" is implicitly male. This may mean that issues of Indigenous affairs become male issues, and consultation with Indigenous people becomes consultation with Indigenous men.

This tendency can be explained in part as the result of projecting white gender relations onto Indigenous society. As a male-dominated white vision historically rendered white women invisible, the projection of this onto Indigenous women has led to a distorted view of Indigenous society. This resulted in the "invisibility" of Indigenous women in Indigenous affairs and consultation (Scutt 1990b).

This invisibility has often led to the exclusion of Indigenous women and their voices from official consultation and decision-making. Payne argues that:

*Aboriginal women need to be systematically included in decision making. Currently, all too often, only Aboriginal men are being consulted and this dispossesses Aboriginal people of our place in society, causing attitudes which promote social disruption and violence. Women need to be included in decision making processes otherwise further subjugation and dispossession of Aboriginal women and communities will continue. (Payne 1990, cited in Paxman & Corbett 1994: 6)*



Indigenous women interviewed about issues of discrimination in the NSW Northern Rivers region emphasised that women played an important role in the education and maintenance of law and order in their community. They wanted to work with their men to solve community problems. At the same time, they argued some problems are women's business and some are men's business, and that there were different views between men and women on some issues. The report on the interviews concluded, "While [Aboriginal] women struggle with their men against racism they at the same time struggle against them in relation to sexism" (Northern Rivers Community Legal Centre 1998: 18).

Indigenous women themselves are not a homogenous group. Experiences may vary for urban and rural women, and for women with different access to education and different types of employment. A woman's identity may be different at different times, for example, as wife, mother, student or employee. Taken as a whole, however, Indigenous women often experience discrimination based on both race and gender .

## 1.6 Conclusions

In examining Indigenous women's access to discrimination complaints mechanisms in NSW, this project recognises that individual complaints mechanisms cannot themselves address the complex social and economic situation of Indigenous women. A wide variety of economic and social policies and programs are needed to address these issues. These broader issues are beyond the scope of this project, however this chapter has attempted to situate the project in that broader context.

This chapter has surveyed the social and economic position of Indigenous people in Australia resulting from a history of dispossession, disempowerment and oppression. It has also briefly examined historical discrimination and the current social and economic position of indigenous women in Australia.

The social and economic situation of Indigenous women, in terms of life expectancy, employment and median income, reveal more similarities with Indigenous men than with non-Indigenous women. However, Indigenous women themselves emphasise that within their own communities they have specific experiences as women which can disadvantage them and which need to be addressed. The methodology of this study attempts to record this experience of the intersection of race and gender discrimination through individual and group interviews.

# Chapter 2

## Previous studies of access to discrimination complaints and other legal mechanisms

### 2.1 Introduction

There are few specific studies of Indigenous women's access to discrimination complaints mechanisms. This chapter reviews previous studies and summarises themes that are relevant and useful to this study.

### 2.2 NSW ADB survey of discrimination complaints handling

In 1997 a survey on the NSW ADB was conducted by consultants and published by the NSW Law Reform Commission. Some initial information was collected by telephone but most was collected through a survey form sent to complainants. This methodology may have contributed to the fact that only 5% of the respondents to this survey were Indigenous people. This is a slightly lower proportion than the 8% of complaints in that year to the ADB from Indigenous people. Many Indigenous men and women have limited literacy skills and may not respond to written material. The other methodological limitation of the study was that it did not separate Indigenous responses by gender, and so does not provide specific information about Indigenous women.

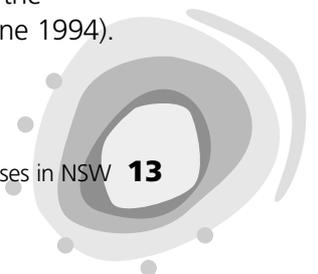
The study found that a majority of Indigenous and non-Indigenous people surveyed found the ADB staff courteous and helpful, had understood their complaint and kept them informed about its progress. Most also said they would recommend to others that they should contact the ADB if they suffered discrimination. However, 45% of all complainants felt the process took too long. Furthermore, only 32% of all complainants felt successful in achieving their original objectives in making the complaint. This compared with 33% of Indigenous people surveyed (NSW Law Reform Commission 1997: 31). Most complainants were satisfied with the fairness of the process. However, a higher proportion of Indigenous people were dissatisfied with the fairness of the process; 39% of Indigenous people believed that their complaint was not handled fairly compared with 29% of all complainants (NSW Law Reform Commission 1997: 38).

The study also recorded recommendations made by complainants to improve the complaints handling process. These included reductions in delays, increases in staff, better access to ADB offices through extended hours and more locations and more publicity and information about the ADB. Some complainants also wanted the ADB to provide more active support to complainants and to have greater powers to investigate matters on behalf of complainants (NSW Law Reform Commission 1997: 51–2).

This study did not specifically record the views of Indigenous women. However, the limited results of the study do point to some issues about access to complaints mechanisms and can inform the framework of this study.

### 2.3 Studies focussing on Indigenous women

A study by the Sex Discrimination Commissioner on the *Sex Discrimination Act 1984* (Cwlth) in 1994 consulted directly with Indigenous women in Queensland. The main aims of the project were to find out how much Indigenous women knew about the Sex Discrimination Act, inform them about the legislation and their rights, and to hear their stories about discrimination (McCaskill & Molone 1994).



Three other studies did not deal specifically with discrimination complaints mechanisms, but consulted Indigenous women about their access to general legal information and services.

The Dubai Jahli project in 1991 asked women in seven rural and two urban locations about their access to legal information and legal services, and how they thought such access could be improved (NSW Ministry for the Status and Advancement of Women 1991).

A 1992 study by the Women's Legal Resources Centre asked women in the west and far west of NSW about domestic violence, family law and sexual assault matters (Women's Legal Resources Centre 1992).

In 1998 the Mabourah Dubai Project asked Indigenous women about their access to the Northern Rivers Community Legal Centre, and sought to establish an Advisory Council of Indigenous women to represent their communities in law and service delivery reform (Northern Rivers Community Legal Centre 1998).

These four studies collected information on Indigenous women's experience of access to discrimination complaints and other legal mechanisms, and made recommendations for improving their access. The main themes of the results are summarised below.

### **Lack of confidence in the formal legal system**

Given the experience of Indigenous people in Australian legal systems it is understandable that there may be a lack of trust in the law and legal processes. Many Indigenous women have experienced the law more as a weapon of discrimination than as a shield against it. This distrust can lead to a lack of confidence in anti-discrimination mechanisms and a reluctance to use them (Gardner 1994: 4). This makes it all the more important for complaints bodies to take steps to provide information and confidence-building in Indigenous communities.

### **Need for culturally appropriate information**

The studies indicated that pamphlets and posters are a major way in which information about anti-discrimination legislation is sent to communities. Written information is not always in appropriate cultural forms for Indigenous communities and does not always reach them unless there are active community workers with knowledge of the issues. Reports stressed that written material should contain examples relevant to Indigenous women's experience. They also suggested videoed role-plays as an alternative to written material. Many women reported that they preferred personal presentation of material with an opportunity to ask questions (McCaskill & Molone 1994: 9; Northern Rivers Community Legal Centre 1998: 23-4).

### **Need for Indigenous staff**

This emerges as a key issue in all reports of previous consultation sessions with Indigenous women. Many reported that if they had a legal problem they would see the Aboriginal Legal Service solicitor, even though they knew that they dealt only with criminal law matters. They felt "much happier approaching an organisation that has Aboriginal staff" (Northern Rivers Community Legal Centre 1998: 22).

Women interviewed for the Queensland HREOC consultation also emphasised the need for the permanent employment by HREOC of Indigenous staff. The report recommended the employment of Indigenous staff "to handle complaints of sensitivity affecting Aboriginal and Torres Strait Islander people due to the complex cultural family and community structure" (McCaskill & Molone 1994: 11). Women in the far west of NSW also wanted designated Indigenous positions in mainstream services, as well as specialist Indigenous services (Women's Legal Resources Centre 1992: 2).

The experience of the NSW ADB and the Victorian Equal Opportunity Commission indicates that Indigenous peoples' use of complaints procedures is more likely to increase if Indigenous staff are employed. In 1983, the first designated Aboriginal Conciliation Officer was instated by the ADB to fulfil the dual function of investigation/conciliation of complaints, and outreach/education work with Indigenous communities. From 1983 to 1993 the Board continued to have one person in this designated position. There were also two other Indigenous people working in general positions for the ADB at this time. Indigenous communities came to know these Indigenous workers' presence and regularly asked for

them in preference to other staff. These and other pressures led to the establishment of a better-staffed Indigenous unit within the ADB and to an increase in the numbers of complaints from Indigenous people (Gardner & Lowe 1995: 3).

The Victorian Equal Opportunity Commission had very few complaints from Indigenous people before its Koori Outreach Program was established. In 1993-94, after the establishment of the program, 34 of only 108 complaints lodged nationally by Aboriginal and Torres Strait Islander people under the Racial Discrimination Act were made at the Victorian program (Gardner & Lowe 1995: 4).

## **Culturally appropriate legislation and procedure**

Some studies suggest that the federal jurisdiction, in which the Racial Discrimination Act and the Sex Discrimination Act are separated, presents particular difficulties for Indigenous women. For a woman to use the Sex Discrimination Act, she must discern that she is being discriminated against on the grounds of sex or gender. Aboriginal women, it is suggested, who “see race and gender as closely intertwined” may not easily be able to do this (Selfe & Thomas 1993: 175).

Indigenous women who participated in the Queensland HREOC Consultation made the following comments on the complaint handling process:

*The system will scare a lot of potential complainants.*

*Aboriginal and Torres Strait Islander people are disadvantaged even before they lodge complaints.*

*... too bureaucratic and too much white fella's way.  
(McCaskill & Molone 1994: 8)*

For some Indigenous women, the requirement of both the NSW ADB and HREOC that complaints must be in writing presents difficulties. The ADB acknowledges:

*We are often told that the seeming formality of the procedures, such as having to lodge a complaint in writing, discourages some Aboriginal [people].  
(author unknown 1993: 1)*

*Further, the process requires willingness to go to conciliation with the other party and possibly to a hearing. In small communities, the conciliation process may aggravate hostility from the person who has been complained about, particularly where that person is the only service provider of that service in the town. There is also the fear that if one person lodges a complaint, then the whole community will be labelled as troublemakers. These factors may result in Indigenous women in smaller communities being unwilling to take the formal step of complaint.  
(author unknown 1993: 1)*

## **Physical isolation and communication problems**

Many women in rural areas reported practical difficulties in gaining physical access to advice about the complaints process, and to the complaint handling agency. Most country towns do not have public transport. Few women had access to a car or held a driving licence. Even complaints mechanisms accessed by the telephone are problematic, since many Indigenous families do not have a telephone in their homes. Some Indigenous communities do not have telephones at all or have only one which is in a public place. Using telephones at another family's home or a local Indigenous organisation makes privacy difficult.



## Delay

Women in the studies were critical of the one to two year or more average time for complaints to be resolved. The long drawn-out nature of the complaints process was described as “off-putting”. One participant said her reaction to it was “I’ll just give up” (McCaskill & Molone 1994: 8). Indigenous people are often in rented accommodation and have to move house frequently. This means the complaints body can lose contact with them before the complaint is heard.

## 2.4 Conclusions

Previous research and consultations have identified a range of issues which impact on Indigenous women’s access to legal information and complaints mechanisms. These issues include lack of trust in legal processes, the need for culturally appropriate information, a culturally appropriate process and Indigenous staff, difficulties with distance and access to telephones, and the lengthy nature of some complaints processes. These themes informed the choice of questions for the consultation focus groups and interviews that form the basis for this report.

# Chapter 3

## Discrimination law and process

### 3.1 Introduction

This chapter examines the legislative framework of NSW and Commonwealth anti-discrimination law. It then surveys the discrimination complaints processes of the ADB and HREOC. Next it examines other complaints mechanisms which have some jurisdiction over discrimination matters. These are the NSW and Commonwealth Ombudsman's Offices, and the NSW and Australian Industrial Relations Commissions. In all cases arrangements made for access by Indigenous people are noted. The conclusion makes comparisons and foreshadows issues for recommendations in Chapter 7.

### 3.2 Discrimination complaints in the ADB and HREOC

#### The legislative framework

##### Unlawful discrimination

In NSW, anti-discrimination law is primarily contained in the Anti-Discrimination Act. At the Commonwealth level, there are four relevant pieces of legislation; the Racial Discrimination Act; the Sex Discrimination Act; the Disability Discrimination Act and the HREOC Act.

In general terms, discrimination is any practice that makes distinctions between individuals or groups so as to disadvantage some and advantage others. In most anti-discrimination legislation, *direct* discrimination occurs when a person is treated "less favourably", on the grounds of their status (eg sex), than a person of another status (the opposite sex) is or would be treated in the same or similar circumstances. This includes discrimination on the grounds of characteristics which are thought to relate generally to people of a particular status. The exception to the "less favourable" treatment test is the Racial Discrimination Act which defines direct discrimination as any act involving "a distinction, exclusion, restriction or preference" based on race which restricts a person's enjoyment of their human rights (s9).

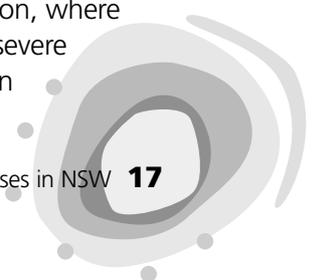
*Indirect* discrimination does not concern itself so much with discriminatory behaviour but more with policies and practices which may have a discriminatory effect. Indirect discrimination occurs when a rule, practice or policy which on its face appears to be neutral, in effect has a disproportionate impact on the group of which the complainant is a member.

There is no requirement to prove an intent to discriminate to establish unlawful discrimination. Further, if an act is done for two or more reasons, it is enough to prove that one of those reasons was discriminatory.

In both the NSW and federal jurisdictions, complaints may be lodged by individuals on their own or on others' behalf, or by representative bodies where they have a sufficient interest in the complaint. The representative proceedings provisions of the federal laws are broader, allowing complaints by representatives on behalf of unnamed individuals.

##### Grounds of discrimination, other unlawful acts

At the state level, the Anti-Discrimination Act makes discrimination on the grounds of race (including colour, nationality, descent and ethnic, ethno-religious or national origin), sex (including pregnancy), marital status, disability, homosexuality, age, transgender status and responsibilities as a carer unlawful. It also prohibits sexual harassment and racial, transgender, homosexual or HIV/AIDS vilification, where vilification is defined as "by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person". Victimisation of a person for bringing or assisting with a discrimination complaint under the Act is also unlawful.



At the federal level, the Racial Discrimination Act covers discrimination on the grounds of race, colour, descent or national or ethnic origin. It also covers offensive behaviour based on racial hatred, incitement to breach the Act and victimisation. The Sex Discrimination Act covers discrimination on the grounds of sex, sexual harassment, marital status, potential pregnancy, pregnancy, family responsibilities (employment only) and victimisation. The Disability Discrimination Act covers discrimination and harassment on the grounds of disability (or that of an associate) and victimisation.

The HREOC Act does not make discrimination unlawful, but gives the President of HREOC the power to investigate and conciliate breaches of human rights by the Commonwealth and discrimination in employment on a wide variety of grounds, including age, religion, sexual preference, political opinion, medical record, criminal record and trade union activity.

### **Scope of the legislation**

Discrimination is unlawful on the above grounds generally in specified areas only. These areas include work, education, the provision of goods and services, accommodation, and the membership and benefits provided by registered clubs.

The Racial Discrimination Act prohibits acts of discrimination in these areas, as well as prohibiting race discrimination in general terms, referring to any act involving racial discrimination “which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life” (s9). It also gives persons of any race, colour, descent or national or ethnic origin a right of “equality before the law” (s10).

There are specific and general exceptions under the Acts which limit the scope of the legislation. For example, discrimination by private schools, on the ground of disability, is not prohibited under the state anti-discrimination legislation (s49L(3)(a) Anti-Discrimination Act), whereas it is under federal anti-discrimination legislation (s22 Disability Discrimination Act). A more general exception under most Acts exists for “special needs programs” or “measures intended to achieve equality”. For example under the Racial Discrimination Act, measures taken for the sole purpose of advancing a race in order to ensure they enjoy human rights are not discriminatory (s8). This enables employers to take positive steps to secure the advancement of people of a particular race so that they may enjoy human rights equally with other groups. It also protects laws such as Aboriginal land rights laws.

### **Choosing jurisdiction**

There are many considerations when deciding whether to bring a complaint under state or federal legislation. For some complainants, there may be no choice of jurisdiction. The complaint may be covered by only one of either the state or federal legislation. For others, there may be a choice of jurisdiction.

The coverage of the various Acts is different, and this may be the crucial factor in some cases. Age discrimination, for example, is only unlawful under state anti-discrimination law. For employees of state government agencies, complaints about sexual harassment or sex discrimination in employment can be made only under state law. In general the federal Acts contain fewer exceptions and defences than their state counterparts.

State anti-discrimination law provisions may be invalid and therefore unavailable where they are inconsistent with a federal law. The most common effect of this rule relates to employment in a Commonwealth department or agency. If there are federal laws or awards that regulate such employment, state anti-discrimination law may be overridden and therefore unavailable.

The Anti-Discrimination Act sets a maximum limit for damages, whereas there are no such limits under Commonwealth law.

Under the federal legislation, complaints must be lodged within 12 months of the date of the alleged discrimination (s46PH(1)(b) HREOC Act). At the state level, the time limit is six months (s88(3) Anti-Discrimination Act). In both jurisdictions, however, there is a discretion to accept matters that fall outside these time limits.

Some of the considerations in choosing between state and federal law relate to process and are discussed below.

## **The process**

### **Making a complaint**

Complaints under the Anti-Discrimination Act are lodged with the ADB. Complaints under the Racial Discrimination Act, Sex Discrimination Act, Disability Discrimination Act and HREOC Act are lodged with HREOC. Both the NSW ADB and HREOC offices are based in Sydney, and the ADB also has offices in Newcastle and Wollongong. Complaints under the federal legislation from states outside NSW may be made through equal opportunity agencies with whom HREOC has a cooperative arrangement.

Complaints to the ADB and HREOC must be in writing (s46P HREOC Act; s88 Anti-Discrimination Act). Both have a form which may be used or a letter may be written. A friend or relative may assist in writing a letter of complaint as long as the complainant signs it. There are provisions in both jurisdictions for assistance with or alternatives to a written complaint. In the ADB, it is possible to record a complaint on an audio cassette, although in that case a letter must also be sent containing some basic details. In HREOC, if a person requires assistance to formulate a complaint or to reduce it to writing, staff are available to assist, for example by helping them fill in the complaint form, meeting with the complainant and taking a statement of complaint or taking a statement over the phone and sending it to the person for signing. In fact, HREOC has an obligation to take reasonable steps to provide appropriate assistance to a person who requires assistance to formulate a complaint or reduce it to writing (s46P(4) HREOC Act).

Lodging a complaint with the ADB or HREOC is free.

After a complaint is received by the ADB or HREOC, a letter is sent to the complainant advising that the complaint has been received.

### **Initial assessment**

The complaint is then assessed to ensure that it can be investigated under the relevant legislation. If the conduct complained of does not reveal a potential breach, the complainant is sent a letter advising of this, providing reasons and, where possible, suggesting other bodies which may be more appropriate to deal with the complaint. If it does reveal a potential breach, the complaint will be allocated to one of the ADB or HREOC complaint handlers. The complaint handler will generally contact both parties by telephone to explain the complaint handling process and what will happen next. Usually, the same complaint handler will deal with the complaint throughout the investigation and conciliation process.

### **Investigation of Complaints**

Following initial assessment, the ADB/HREOC complaint handler will contact the respondent to obtain their side of the story. The investigation, conducted generally via correspondence, aims to further ascertain whether the complaint appears to involve unlawful discrimination, and whether there are any reasons that the ADB or HREOC should decline to deal with the complaint. Each party is informed of the other's responses.

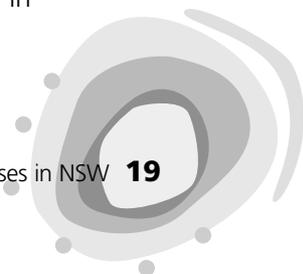
The ADB/HREOC may decide, at any stage in this process, to terminate the complaint for a number of reasons, for example if there is insufficient evidence or the incident occurred too long ago.

### **Conciliation**

Once the ADB/HREOC decides that a complaint appears to involve discrimination that is against the law, they will attempt to facilitate a settlement that both parties agree on. Conciliation may take place via a face-to-face meeting, correspondence or phone calls. It will most often consist of a meeting between the two parties.

The aims of a conciliation conference are to allow both parties to discuss the alleged discrimination and the issues surrounding it, to educate both parties about their rights and responsibilities and to attempt to resolve the complaint. A complainant is expected to suggest a proposal for settling their complaint prior to or at the conference. If both sides can agree, the complaint is settled and an agreement is usually signed setting out the steps both parties agree to take.

Conciliation proceedings are generally considered confidential, so that nothing said or done in conciliation can be used later in the determination of the complaint.



## Hearing

If a complaint to the ADB is not conciliated, it may be referred to the Equal Opportunity Division of the Administrative Decisions Tribunal of NSW (ADT). The ADT hears arguments and evidence and makes an enforceable judicial decision that must be obeyed.

Where parties do not reach agreement in HREOC, the matter is 'terminated'. This may give rise to a complainant's right to pursue the matter in the Federal Court of Australia (Federal Court) or the Federal Magistrates Service (FMS). This right must be pursued within 28 days of the HREOC termination date (s46PO(2) HREOC Act).

This was not always the case. Between 1992 and 1995, the federal anti-discrimination legislative regime provided that following unsuccessful conciliation, matters could be heard by HREOC Commissioners and determinations could then be lodged in the Federal Court and enforced. In 1995, the enforcement provisions of HREOC were found to be unconstitutional by the High Court in the case of *Brandy*<sup>1</sup>. As a consequence, the *Human Rights and Legislation Amendment Act 1995* (Cwlth) was passed by the federal parliament. A complainant who wished to enforce a determination of HREOC had to apply to the Federal Court for a full re-hearing to obtain an enforceable determination. This situation was changed again in 2000, to remove HREOC's hearing function and create the current system as described above (Clifford 2001: 2–4). More recently, the FMS was established to hear, among other matters, discrimination complaints under federal anti-discrimination law.

Lodging a complaint in the ADT is free and parties before the ADT generally pay their own legal costs, if they have representation.

The application fee for discrimination complaints is \$50 in both the Federal Court/FMS. People can apply to have this fee waived if payment would cause financial hardship. In terms of legal costs, as in most courts, the general rule that the losing party pays the winning party's legal costs applies. A number of decisions of the Federal Court and FMS to date have revealed a willingness to alter this traditional costs rule in favour of genuine applicants who are unsuccessful, particularly in public interest cases, ie in a number of cases, the Federal Court/FMS have ordered parties to pay their own legal costs (Clifford 2001: 9). However, this process relies on the discretion of the individual magistrate or judge and still leaves complainants facing the risk of having to pay both their own costs and those of the other party.

A recent study clearly demonstrates the impact on complainants of the risk of a cost award in the event that they are unsuccessful. The study found that the prospect of Federal Court proceedings to enforce HREOC determinations, as occurred prior to recent amendments, has resulted in complainants withdrawing complaints or accepting unsatisfactory settlement offers (Cabassi 1999).

Diagrams showing the ADB and HREOC complaint handling processes are attached as Appendices 1 and 2.

## Indigenous Units and Outreach Programs

### ADB

Since 1993 the ADB has had an Indigenous Team which handles complaints and conducts an outreach program to provide culturally appropriate services to Aboriginal and Torres Strait Islander people and communities in NSW.

Indigenous people who contact the ADB can request that an Indigenous officer handle their complaint. If people ring and identify themselves as Indigenous, they are offered the option of talking to an Indigenous officer. The Newcastle and Wollongong offices do not have Indigenous staff. If people identify themselves as Indigenous, they are offered to be transferred to the Sydney Indigenous Team.

At the time of writing, the Indigenous Team had three full-time staff, all of which are designated Indigenous positions, ie only open to Indigenous applicants. Two are education officers (one man and one woman) and one is a complaint handler. The complaint handler is also the Team Leader. In addition, there is an Indigenous officer in the general complaints area who is available to assist the Indigenous Team when required (Interview with ADB Manager).

1 *Brandy v HREOC and Ors* (1995) 183 CLR 245.

Management considered that because of rising complaint numbers for the ADB as a whole there was a backlog of complaints and more resources were needed overall and in the Indigenous Team. Management considered that the Indigenous Team required at least two additional complaint handling positions, firstly to address existing delays and backlogs and secondly, to ensure timely and efficient service delivery in the future. The waiting time in May 2001 for allocation of non-urgent complaints was 12 months and this had doubled since the previous year when it was six months. In the first four months of 2001 there was a 51% increase in the number of complaints compared with the same period in the previous year. These figures all refer to total complaints not just Indigenous complaints. The ADB had applied for additional staff for the Indigenous Team (Interview with ADB Manager).

In addition to complaint handling, the Team produces and distributes culturally appropriate information and resource materials for Indigenous communities on discrimination and how to complain. It also runs regular training sessions for community and government agencies. It makes regular visits to Indigenous communities in urban and rural areas to raise awareness about discrimination issues and conducts education and liaison sessions with other government agencies and non-Indigenous community organisations (ADB 1997–00).

## HREOC

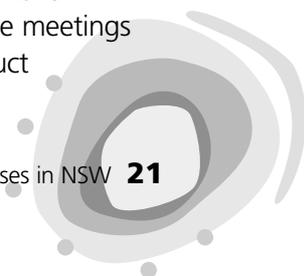
In the Australian Public Service, Commonwealth agencies can have identified positions. Identified positions require that the occupant has an understanding of issues affecting Aboriginal and Torres Strait Islander people and an ability to communicate effectively and sensitively with them. Appointment to an identified position is on the basis of merit and eligibility is not confined to Aboriginal and Torres Strait Islander people. This means that these positions do not have to be filled by an Indigenous person. In this report, we refer to such positions as 'identified'.

Under Chapter 4 of the Public Service Commissioner's Directions the head of a commonwealth agency can also identify opportunities for employment as open to Aboriginal or Torres Strait Islander people only. Any measure of this nature has to be identified as open to Indigenous Australians, be notified in the Gazette and must comply with commonwealth law, which would include the Racial Discrimination Act. For the vacancy not to constitute discrimination under the Racial Discrimination Act the Agency Head would need to be satisfied that the employment opportunity constitutes a special measure for the purposes of section 8 of the Racial Discrimination Act. In this report, we refer to such vacancies as 'designated'.

The HREOC Complaint Handling Section does not have an Indigenous complaints unit, or identified or designated positions or vacancies. At the beginning of this project there were no Indigenous complaints staff but by its conclusion two had been appointed. Over the last four years, there have been two time periods totalling at least six months when there have been no Indigenous complaints officers. When this is the case, Indigenous complainants who ask to speak to an Indigenous person may be referred to an Indigenous policy officer as an initial contact. However they would then be referred back to a non-Indigenous complaints officer if they have a complaint to pursue (Interview with HREOC Director, Complaint Handling Section).

Current HREOC policy is that it prefers to recruit complaint handling staff through the general recruitment process rather than create specific vacancies that are only open to Indigenous people and have to justify these positions as special measures or have identified positions. To encourage Indigenous people to apply for positions in the Complaint Handling Section, all positions are advertised in the *Koori Mail* and all advertisements state that applications are encouraged from Aboriginal and Torres Strait Islander people. Also, for Investigation/Conciliation Officer positions an essential criteria is knowledge and understanding of discrimination and human rights issues, particularly those issues facing Aboriginal and Torres Strait Islander people (Interview with HREOC Director, Complaint Handling Section).

The HREOC complaints section does not have a specific Indigenous outreach strategy. Twice a year presentations are made to and meetings are held with particular key complaint stakeholder groups by Senior Investigation/Conciliation Officers and these include Indigenous groups. Recent visits have included locations in the Northern Territory and Western Australia. In addition, staff organise meetings with key stakeholder groups when they travel to capital cities and regional centres to conduct conciliation conferences.



In the 2000-01 reporting year staff in the Complaint Handling Section met with community organisations and legal centres in the following NSW locations: Armidale, Taree, Newcastle, Wollongong, Albury-Wodonga and Lismore.

HREOC has limited culturally-specific promotional material. One resource is the *Tracking Your Rights* resource folder, which is ideal for Indigenous community workers. The *Tracking Your Rights* video is a valuable education tool about discrimination, with Indigenous stories, characters and actors.

Outside of the Complaints Handling Section, HREOC has an Aboriginal and Torres Strait Islander Social Justice Commissioner and three specific policy units which conduct educational and policy development work in relation to race discrimination and Indigenous issues. These units are the Social Justice Unit, the Native Title Unit and the Race Discrimination Unit and they have between 10 and 15 staff, including some Indigenous staff. Specific projects relevant to Indigenous communities have included the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (HREOC 1997) and the more recent community consultations conducted in relation to the World Conference Against Racism. In 1996 HREOC received a cut to its budget over a three-year period of 40% and this had a greater impact on policy areas. Management maintains this did not mean that less educational work was being done, as the work had been reorganised to keep an educational focus (Interview with HREOC Director, Complaint Handling Section).

### 3.3 Discrimination complaints to the Ombudsman

#### The NSW Ombudsman

The Office of the NSW Ombudsman is an independent statutory organisation which investigates conduct in the public sector, for example, whether administrative action is against the law, unreasonable, unjust, oppressive or improperly discriminatory. It was established under the *Ombudsman Act 1974* (NSW). When allegations are made about public officials and authorities, the NSW Ombudsman may investigate whether the law and reasonable administrative practice have been followed.

Any individual who has a grievance about a state or local government agency, official, employee or police officer may make a complaint. A complaint may also be made by a corporation, organisation, association or public authority who has an interest in the problem. Joint complaints and complaints on behalf of other people may also be made.

Initial inquiries are made by telephone. However, if a formal complaint is to be made, it must be in writing. The Office has a Youth Officer to assist young people and a special unit to assist Indigenous people. All complaints are confidential and free of cost.

The NSW Ombudsman investigates complaints where appropriate and has the power to make recommendations to relevant public officials or authorities. If the complaint is of public significance, the NSW Ombudsman has the power to report its findings and recommendations to the NSW Parliament.

Complaints can be declined if they are premature, more than 12 months old, trivial, vexatious or in bad faith, or because there is insufficient evidence, other means of resolution are available or the complainant has no interest in the complaint.

#### Measures to ensure access for Indigenous people

Four Indigenous officers are employed for handling complaints from Indigenous people and raising awareness of the NSW Ombudsman in Indigenous communities. One of these is in the general complaints team and three are in the Aboriginal Complaints Unit (ACU), which is part of the police complaints team. These are designated Indigenous positions. The ACU was established in 1996, following recommendations of the Royal Commission into the NSW Police Service. It handles complaints about police from Indigenous people and facilitates communication between Indigenous communities, legal services, police and the NSW Ombudsman.

Officers visit correctional centres and juvenile justice centres to take complaints from Indigenous inmates.

The office has also initiated Aboriginal Community Consultative Committees in regional communities to give Indigenous people the chance to raise policing issues and minor complaints in a culturally appropriate forum where they feel comfortable voicing their concerns (NSW Ombudsman 1999: 148, NSW Ombudsman 2000: 144).

The Indigenous Complaints Officer for non-police matters liaises with Indigenous communities to inform them about the Ombudsman's office and deals with complaints about correctional facilities, public authorities and local councils. There are plans to monitor complaints by Indigenous people to identify systemic discrimination issues in NSW public authorities (NSW Ombudsman 2000: 144).

## **The Commonwealth Ombudsman**

The Commonwealth Ombudsman investigates complaints made by the public and other organisations regarding administration and conduct problems in Commonwealth agencies, business enterprises and some private organisations.

The Commonwealth Ombudsman's jurisdiction and power is derived from the *Ombudsman Act 1976* (Cwlth). The Commonwealth Ombudsman's office investigates complaints from individuals about the actions or decisions made by Commonwealth and ACT agencies, some government business enterprises such as Australia Post and Telstra, and some private organisations contracted by Commonwealth agencies to provide services. The Ombudsman investigates complaints to see if the actions or decisions are wrong, unreasonable, discriminatory, unfair, or have legal implications (Commonwealth Ombudsman 1996: 1; Commonwealth Ombudsman 1999: 5).

Complaints can be made in person, by fax, over the telephone, in writing and through the Internet. The lodging of complaints and the Commonwealth Ombudsman's services are free of charge. Like the NSW Ombudsman, the Commonwealth Ombudsman conducts an investigation where appropriate and then makes findings and recommendations for fixing the problem. If the problem is systemic the Ombudsman may present a discussion paper to the agency or federal parliament recommending procedures be reviewed and changed to avoid further complaints.

It is normal practice where a complaint involves specific allegations of discrimination to refer the complainant to the ADB or HREOC. Management estimates that very few complaints involving discrimination were dealt with by the Ombudsman (Correspondence from the Commonwealth Ombudsman's Office).

### **Measures to ensure access for Indigenous People**

The Commonwealth Ombudsman's Office has two Indigenous officers specifically dedicated to Indigenous outreach and complaint investigation at a national level. One is based in Darwin and handles public contact and complaints from northern Queensland and north-western Western Australia and the other, seconded from ATSIC, conducts an outreach program for Indigenous communities particularly in rural areas (Interview with Outreach Officer July 2000).

The Commonwealth Ombudsman's office has also undertaken a community awareness and access program which includes an element of outreach to Indigenous communities. These include participation in National Aboriginals and Islanders Day Observance Committee (NAIDOC) activities and the appointment of an 'ethnic affairs' consultant to examine methods of improving access to people of diverse cultural and linguistic backgrounds (Commonwealth Ombudsman 1999: 21-22).

## **3.4 Discrimination complaints in the Industrial Relations Commissions**

### **NSW Industrial Relations Commission**

The NSW Industrial Relations Commission (NSW IRC) is governed by the *Industrial Relations Act 1996* (NSW) (Industrial Relations Act), which amended previous similar legislation. It has responsibility for making industrial awards, setting employment conditions, approving enterprise agreements, resolving industrial disputes and hearing claims relating to unfair dismissals. The NSW Act applies to employees under NSW state awards and/or employed by the state government.

The NSW IRC does have jurisdiction to deal with issues of discrimination in employment. Section 169(1) of the Industrial Relations Act directs the NSW IRC “in the exercise of its functions, [to] take into account the principles contained in the *Anti-Discrimination Act 1977*”. Furthermore, s 88(f) empowers the NSW IRC to have regard to “such other matters as the NSW IRC considers relevant” in the determining of claims. Issues of discrimination may also arise in claims of “harsh, unreasonable or unjust” termination of employment under s84 of the Act.

Applications must be filed in person at the Industrial Registry. The legislation is based on the concept of collective bargaining, so individuals often seek advice from unions or employer associations. The matter is then referred to conciliation. Most applications are settled by conciliation. In the case of unfair dismissals, the NSW IRC can order re-instatement, re-employment, remuneration and compensation (s89). Settlement is most commonly a moderate financial payment. If the matter is not settled by conciliation, it can be listed for arbitration and decision.

## **Australian Industrial Relations Commission**

The Australian Industrial Relations Commission (AIRC) is governed by the *Workplace Relations Act 1996* (Cwth) (Workplace Relations Act), which amended previous legislation. The Act applies to employees under Commonwealth awards or employed by the Commonwealth government.

The role of the AIRC is more limited in some respects than that of the NSW IRC, for three reasons. Firstly, the AIRC jurisdiction has some constitutional limitations. Secondly, the Workplace Relations Act had the overall effect of reducing the role of the AIRC as an independent overseer and arbitrator of industrial disputes and working conditions. It encouraged employers to deal directly with individual employees without dealing with unions, through individual contracts called Australian Workplace Agreements. Apart from adherence to certain minimum conditions, the content of these individual agreements is not under the jurisdiction of the AIRC and not publicly available. The agreements are monitored by a new body, the Office of the Employee Advocate. Thirdly the Workplace Relations Act limits the jurisdiction of the Commission to 20 “allowable matters” specified in s89A.

The AIRC does have jurisdiction to deal with issues of discrimination in employment, however, only in relation to the 20 “allowable matters” mentioned above. Section 93 directs the AIRC to take account of the principles embodied in the Commonwealth Racial Discrimination Act, the Sex Discrimination Act and the Disability Discrimination Act. Section 170CK(2)(f) makes it unlawful for an employer to terminate a permanent employee’s employment on the ground of the employee’s race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin. Section 93A directs the AIRC to take account of the principles embodied in the Family Responsibilities Convention, in particular those which seek to prevent discrimination against workers who have family responsibilities. Section 170BA directs the AIRC to have regard to the principles of equal remuneration for men and women workers for work of equal value.

If a dispute based on discrimination is lodged with the AIRC, the AIRC must first attempt to settle the matter by conciliation. If conciliation is unsuccessful, the complaint proceeds either to arbitration in the AIRC or to a court for determination. The AIRC or the court have the discretion to make a number of different orders, including that the employee be reinstated and that compensation be paid (ss 170CH and 170CR).

## **Time frame**

The main advantage of both industrial jurisdictions is that, for cases which are employment related and likely to be settled by conciliation, they can provide a quicker process. In the NSW IRC, 75% of cases are settled by conciliation, 19% do not proceed and 6% are arbitrated. Most conciliated applications are heard within four weeks and settled with one or two conciliation sessions (Interview with IRC Registry Official). The AIRC reported that its average time from lodgement to finalisation of award and termination of employment matters was two months (AIRC 2000). Thus the time frame for dealing with conciliated complaints is far shorter in both jurisdictions than for HREOC or the ADB.

## Measures to ensure access for Indigenous people

Both industrial jurisdictions are based in part on the concept of collective bargaining, which means that individuals are often represented by unions or employer associations. The commissions themselves do not have outreach programs.

The NSW Department of Industrial Relations has a public enquiry service for both employees and employers about award entitlements. It also inspects workplaces for award compliance. In March 1999 the department established an Indigenous workplace services unit. This unit provides information to Indigenous people about awards and conducts workshops on employment issues for Indigenous organisations if requested to do so (NSW Department of Industrial Relations 2000).

The Commonwealth Department of Employment, Workplace Relations and Small Business has an award information and inspection service but does not advertise specific services in this area for Indigenous people. The Office of the Employee Advocate provides information about individual workplace agreements but does not have any specific services for Indigenous people (Department of Employment, Workplace Relations and Small Business, 2000).

Unions also conduct education programs for their members about working conditions and rights in the workplace. Some unions with significant numbers of Indigenous members like the teaching and public sector unions have Indigenous caucuses and employ Indigenous organisers. Others do not (Interviews with unions).

## 3.5 Conclusions

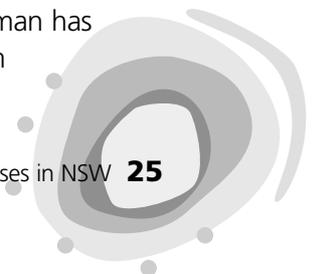
For discrimination which occurs in NSW, there are both state and federal anti-discrimination laws which may be utilised. Sometimes complainants will have a choice between complaining under state or Commonwealth anti-discrimination law and sometimes not.

The processes of making a complaint to both the ADB and HREOC are similar. Both require complaints in writing, then proceed to a conciliation process. If this fails, there is the option of a more formal process through the NSW ADT or the Federal Court/FMC. The Federal Court/FMC process can result in costs being awarded against the complainant. ADB and HREOC statistics on complaints by Indigenous women are examined in Chapter 4.

The ADB has an Indigenous Team, staffed by three Indigenous officers (two of whom conduct outreach/education and one of whom is a complaint handler), with another Indigenous officer on call from the general complaints area. The Indigenous Team handles complaints and conducts an education outreach program which produces specific material for Indigenous communities and conducts regular visits to urban and rural Indigenous communities in NSW. The ADB management has applied for more staff for the Indigenous Team because of rising complaint numbers and backlogs of complaints. The higher number of complaints to the ADB by Indigenous people than to HREOC, discussed in Chapter 4, may be related to greater awareness of the ADB. This may be due to Indigenous staff conducting a targeted and culturally appropriate Indigenous outreach strategy.

HREOC does not have an Indigenous complaints unit, or identified or designated positions. At the beginning of this project there were no Indigenous complaints staff but by its conclusion two had been appointed. Outreach is conducted by complaints and policy staff and includes outreach to Indigenous organisations and communities. In 1996 HREOC received a cut to its budget over a three-year period of 40% and this had a greater impact on policy areas. There is little culturally-specific information and resources, other than *Tracking Your Rights*. Low numbers of Indigenous complaints to HREOC, discussed in Chapter 4, may be related to low levels of Indigenous people's awareness of HREOC's services. If more resources were provided for community education, and more Indigenous staff appointed, complaints numbers might rise, giving rise to the need for more complaints handling staff.

The Ombudsman's offices deal with complaints about government agencies. The NSW Ombudsman's Office has three Indigenous Officers who deal specifically with complaints about police, and another Indigenous officer who deals with more general complaints. The Commonwealth Ombudsman has two Indigenous officers and has recently conducted a specific Indigenous outreach program but it is not clear whether this program will be funded in future.



The NSW IRC and Commonwealth AIRC deal only with complaints about employment. Both have legislation which enables them to deal with complaints about discrimination in employment. Neither commission has any special arrangements for dealing with Indigenous people. The NSW Department of Industrial Relations provides a specific information service for Indigenous people but the equivalent Commonwealth Department does not. In both commissions, employees are often advised and represented by unions. Thus their experience of the process depends in part on the accessibility of unions to Indigenous people. Some unions employ Indigenous organisers and have structures to ensure the views of Indigenous members are heard.

These issues are explored further in Chapters 5 and 6 which analyse Indigenous women's experiences of discrimination and of making complaints to discrimination complaints mechanisms. Recommendations to address these issues are made in Chapter 7.

# Chapter 4

## Statistics from complaints bodies

### 4.1 Introduction

This chapter surveys the statistical data available on complaints from the ADB and HREOC. The data includes the number and nature of complaints by Indigenous women compared to Indigenous men and the general population, the outcome of complaints (ie declined, conciliated, withdrawn or referred to hearing) and the length of time taken to finalise complaints. This is followed by a brief discussion of statistical data from the NSW and Commonwealth Ombudsman's offices, and the NSW and Commonwealth Industrial Relations Commissions.

### 4.2 HREOC and ADB Statistics

The ADB publishes comprehensive statistics on all complaints, including complaints by Indigenous people and complaints by women. However, complaints by Indigenous people are not broken down by sex and complaints by women are not broken down by ethnicity. It is therefore not possible to determine the number or nature of complaints by Indigenous women from ADB annual reports. This data was, however, manually extracted from the ADB database and provided for the project<sup>2</sup>.

The ADB collects information about the ethnic background of complainants on a voluntary basis except in complaints of race discrimination or racial vilification where the person lodging the complaint must state their race and/or demonstrate that they belong to the group that has allegedly been vilified. Not all complainants provide information on their ethnicity. In 1999–00 only 44% of complainants provided the ADB with information on their ethnicity (ADB 1999-00, 25)<sup>3</sup>.

HREOC annual reports do not contain statistics on the ethnicity of complainants, except for complaints lodged under the Racial Discrimination Act, and these are not broken down by sex. Statistics on the sex of complainants is published, however, these are not broken down by ethnicity. It is therefore not possible to determine the number or nature of complaints by Indigenous people or Indigenous women from HREOC annual reports to date. This data was, however, manually extracted from the HREOC database in relation to Indigenous complainants from NSW and provided for the project. Data on all complaints from people in NSW were also manually extracted.

For HREOC, in 1998 it became mandatory for ethnicity data to be entered for each complainant for complaints under the Racial Discrimination Act, and from 14 April 2000 for complaints under the Sex Discrimination Act, Disability Discrimination Act and HREOC Act. Prior to these dates, ethnicity data was usually entered when the demographic survey, which is sent to all complainants, had been completed and returned, or the ethnicity of the complainant was known to the officer(s) handling the complaint. Completing the survey is voluntary. There is a return rate on the survey of between 60% and 70% (HREOC correspondence)<sup>4</sup>. From the 2000–01 annual report onwards HREOC will be reporting on complaints received by sex for each Act and complaints received by ethnicity of complainant for each Act.

- 2 As a result, the ADB statistics presented in this report are a mixture. The statistics relating to Indigenous women are from the ADB database, while the statistics relating to the total numbers of Indigenous complaints and to the total numbers of all complaints are from annual reports. There is a small degree of variation between these statistics, however this does not affect the substantive trends.
- 3 Data on complaints received by ethnicity in this report in relation to the ADB are therefore not absolute but highly indicative.
- 4 Data on complaints received by ethnicity in this report in relation to HREOC are therefore not absolute but highly indicative.



The ADB statistics used in this report span a three year period from July 1997 to June 2000, and the HREOC statistics a similar three year period from January 1998 to December 2000. ADB statistics were made available going back to 1991. However, HREOC statistics were supplied only from 1998 to April 2001. The earlier ADB statistics and the HREOC statistics for 2001 were not used for reasons of consistency and so that relevant comparisons could be made.

A complaint to the ADB or HREOC may be on the basis of multiple grounds and/or multiple areas. The ADB statistics record the area and the main ground of each complaint. The HREOC statistics record each ground and area of complaint separately.

When comparing numbers, it also needs to be kept in mind that HREOC treats matters that do not allege a ground of complaint covered by their legislation as written enquiries, whereas the ADB counts them as complaints under "other/unknown"<sup>5</sup>.

### 4.3 Indigenous population of NSW

There are 101,845 Indigenous people living in NSW, which is 1.7% of the total NSW population. There are 51,420 Indigenous women in NSW, making Indigenous women 0.86% of the total NSW population. Of these 51,420 Indigenous women, 47,657 identify as Aboriginal, 2,667 as Torres Strait Islander and 1,096 as both (ABS 1996).

### 4.4 Numbers of complaints by Indigenous women

Tables 7 and 8 provide the numbers of complaints received by the ADB and HREOC from 'Indigenous women', 'Indigenous total', and 'all complaints'. The 'Indigenous total' and 'Indigenous women' total are then expressed as percentages of 'all complaints'.

The 'Indigenous total' includes complaints from Indigenous women, Indigenous men, Indigenous organisations and complaints from Indigenous people where the gender is not apparent. In general, however, the number of Indigenous men who complained will be very close to the number of 'Indigenous total' minus 'Indigenous women'.

**Table 7: Numbers of complaints received by the ADB**

	1997–98	1998–99	1999–00	Annual Average
<b>Number:</b>				
Indigenous women	37	51	44	44
Indigenous total	101	95	91	96
All complaints	1,312	1,250	1,381	1,314
<b>% of all complaints:</b>				
Indigenous total	8%	8%	7%	7.3%
Indigenous women	3%	4%	3%	3.3%

5 For example, in 1999–00, HREOC received over 500 written enquiries (nationally).

**Table 8: Numbers of complaints received by HREOC (NSW only)**

	1998	1999	2000	Annual Average
<b>Number:</b>				
Indigenous women	5	11	7	8
Indigenous total	15	19	12	15
All complaints	335	403	434	391
<b>% of all complaints:</b>				
Indigenous total	4%	5%	3%	3.9%
Indigenous women	1%	3%	2%	2.0%

The ADB receives an average of 96 complaints from Indigenous people in NSW each year, out of a total average of 1,314 complaints each year. About half of these, or an average of 44 complaints, are from Indigenous women. HREOC has a significantly lower number of complaints overall and from Indigenous people. It receives approximately 15 complaints from Indigenous people in NSW each year, out of a total average of 391 complaints each year. About half of these, or an average of 8 complaints, are from Indigenous women.

Indigenous complainants are over-represented in complaints statistics compared to the general NSW population. While making up 1.7% of the population, Indigenous people account for an average of 7.3% of complaints to the ADB, and an average of 3.9% of complaints to HREOC. This is most likely because the incidence of discrimination against Indigenous people is much higher than against non-Indigenous people. Indigenous women are similarly over-represented. While making up 0.86% of the NSW population, Indigenous women account for an average of 3.3% of complaints to the ADB and 2.0% of complaints to HREOC.

The greater use of the ADB than HREOC by all complainants may be due to a number of factors. More areas of state government activity covered by anti-discrimination legislation impact directly on peoples' lives than commonwealth government activity, making it more likely that a complaint would be directed to the ADB than HREOC. HREOC is a national body that has always covered state and territory jurisdictions apart from NSW, including jurisdictions that have not had their own anti-discrimination bodies until more recently. Historically they have therefore relied more on HREOC, possibly resulting in less of a focus on NSW. Lastly, the NSW ADB was established in 1977, whereas HREOC was established in 1986. The ADB has therefore had longer to build links with communities and develop a profile as a discrimination complaints body in NSW.

As a proportion of all complaints, complaints by Indigenous people, including Indigenous women, are a greater proportion of complaints to the ADB than to HREOC. As stated above, while 7.3% of complaints to the ADB are from Indigenous people, only 3.9% of complaints to HREOC are from Indigenous people. This may be because the ADB employs Indigenous officers and has an outreach program that contributes to its profile in Indigenous communities, as well as the factors mentioned above.

## 4.5 ADB grounds of complaint

Table 9 provides the number of complaints received by ground of complaint from Indigenous women by the ADB between 1997–98 and 1999–00. It also provides the average annual number of complaints by ground over this period.

Table 10 provides the number of complaints received by ground of complaint from all complainants by the ADB between 1997–98 and 1999–00. Again, averages are also provided.

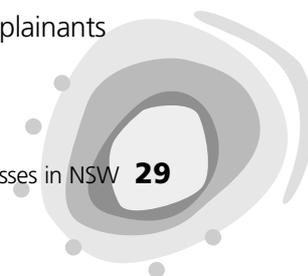


Table 11 provides the number of complaints received by ground of complaint as an average percentage of all complaints, for Indigenous women and all complainants, between 1997–98 and 1999–00.

**Table 9: Number of complaints received by ground (Indigenous women), ADB**

	1997–98	1998–99	1999–00	Annual average
Race	28	36	34	32.7
Racial vilification	2	4	1	2.3
Sex	4	1	1	2.0
Marital status	1	1	1	1.0
Disability	0	2	1	1.0
Age	0	4	1	1.7
Compulsory retirement	1	0	1	0.7
Homosexuality/vilification	0	1	0	0.3
Transgender/vilification	0	0	0	0.0
HIV/AIDS vilification	0	0	0	0.0
Victimisation	1	2	0	1.0
Other/Unknown (A)	0	0	4	1.3
Total	37	51	44	44.0

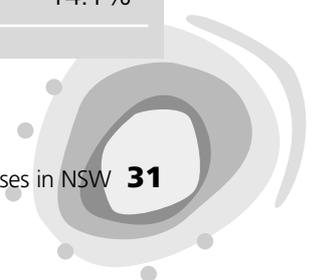
(A) 'Other' means that the complainant has stated a ground that is not covered by the Anti-discrimination Act. 'Unknown' means the complainant has not stated a ground.

**Table 10: Number of complaints received by ground (all complainants), ADB**

	1997–98	1998–99	1999–00	Annual average
Race	255	240	259	251.3
Racial vilification	38	26	28	30.7
Sex	261	281	288	276.7
Marital status	22	30	20	24.0
Disability	274	207	288	256.3
Age	102	89	112	101.0
Compulsory retirement	5	1	1	2.3
Homosexuality/vilification	71	65	76	70.7
Transgender/vilification	18	46	18	27.3
HIV/AIDS vilification	0	3	0	1.0
Victimisation	57	116	91	88.0
Other/Unknown	209	146	200	185.0
Total	1,312	1,250	1,381	1,314.3

**Table 11: Complaints received by ground as a percentage of total complaints, ADB**

	Average % 1997–98 to 1999–00	
	Indigenous women	All complaints
Race	74.2%	19.1%
Racial vilification	5.3%	2.3%
Sex	4.5%	21.0%
Marital status	2.3%	1.8%
Disability	2.3%	19.5%
Age	3.8%	7.7%
Compulsory retirement	1.5%	0.2%
Homosexuality/vilification	0.8%	5.4%
Transgender/vilification	0.0%	2.1%
HIV/AIDS vilification	0.0%	0.1%
Victimisation	2.3%	6.7%
Other/Unknown	3.0%	14.1%



From these tables, it is clear that Indigenous women complain to the ADB mainly on the grounds of race. An average of 32.7 race discrimination complaints and 2.3 racial vilification complaints are lodged by Indigenous women each year. Race discrimination complaints make up an average of 74.2% of all complaints lodged by Indigenous women each year. If racial vilification complaints are added, this rises to an average of 79.5% of all complaints lodged by Indigenous women each year.

The next biggest ground of complaint for Indigenous women is sex. An average of two complaints of sex discrimination complaints are lodged by Indigenous women each year. Sex discrimination complaints make up an average of 4.5% of complaints lodged by Indigenous women each year. If marital status and homosexuality/homosexual vilification complaints are added, grounds relating to sex or sexuality make up an average of 7.6% of complaints lodged by Indigenous women each year. Indigenous women are thus 10.5% more likely to lodge complaints on the grounds of race or racial vilification than on the grounds of sex or sexuality. The numbers of complaints lodged by Indigenous women on other grounds such as disability and age are minimal.

By comparison, the complaints lodged by the general population, as shown in Table 4, reveal a different pattern. The main grounds of complaint of the general population are sex, race and disability discrimination, and these are more evenly spread at around 20–30% each of total complaints. Sex discrimination complaints make up an average of 21% of all complaints. When marital status, homosexuality/homosexual vilification and transgender/transgender vilification are added, grounds relating to sex and sexuality make up an average of 30.3% of all complaints. Race and racial vilification complaints make up an average of 21.4% of all complaints, and disability discrimination complaints make up an average of 19.5% of all complaints.

### 4.6 HREOC grounds of complaint

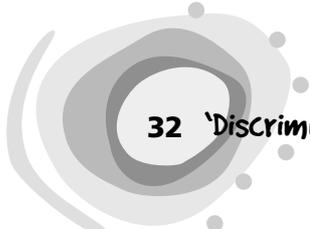
Table 12 provides the number of complaints received by ground of complaint from Indigenous women in NSW by HREOC between 1998 and 2000. It also provides the average annual number of complaints by ground over this period.

Table 13 provides the number of complaints received by ground of complaint from all complainants in NSW by HREOC between 1998 and 2000. Again, averages are also provided.

Table 14 provides the number of complaints received by ground of complaint as an average percentage of all complaints, for Indigenous women and all complainants in NSW, between 1998 and 2000.

**Table 12: Number of complaints received by ground (Indigenous women), HREOC (NSW)**

	1998	1999	2000	Annual Average
Racial Discrimination Act	4	7	4	5.0
Sex Discrimination Act	2	4	4	3.3
Disability Discrimination Act	0	2	1	1.0
HREOC Act	0	0	0	0.0
Victimisation	0	0	0	0.0
Total	6	13	9	9.3



**Table 13: Number of complaints received by ground (all complainants), HREOC (NSW)**

	1998	1999	2000	Annual Average
Racial Discrimination Act	99	108	113	106.7
Sex Discrimination Act	111	131	181	141.0
Disability Discrimination Act	135	156	218	169.7
HREOC Act	50	72	82	68.0
Victimisation		5	3	2.7
Total	395	472	597	488.0

**Table 14: Complaints received by ground as a percentage of total complaints, HREOC (NSW)**

	Average % 1998–00	
	Indigenous women	All complaints
Racial Discrimination Act	53.6%	21.9%
Sex Discrimination Act	35.7%	28.9%
Disability Discrimination Act	10.7%	34.8%
HREOC Act	0%	13.9%
Victimisation	0%	0.5%

Complaint numbers by Indigenous women to HREOC are low, making generalisations about the types of complaints difficult. However, it is clear that Indigenous women complain to HREOC mainly on the grounds of race. An average of five complaints of discrimination under the Racial Discrimination Act are made by Indigenous women to HREOC each year.

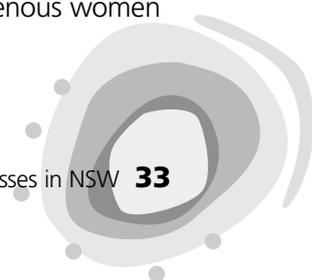
The next biggest ground of complaint for Indigenous women is sex. An average of just over three complaints of discrimination under the Sex Discrimination Act are made by Indigenous women to HREOC each year<sup>6</sup>.

The only other complaints lodged by Indigenous women are complaints under the Disability Discrimination Act, at an average of one each year. Indigenous women did not make any complaints under the HREOC Act between 1998 and 2000.

By comparison, complaints lodged by the general population reveal a different pattern. The main ground of complaint of the general population is disability discrimination (34.8% of complaints), followed by sex discrimination (28.9%), followed by race discrimination (21.9%). Complaints under the HREOC Act make up an average of 13.9% of complaints each year and complaints of victimisation an average of 0.5% of complaints each year.

The grounds of complaint by Indigenous women to the ADB and HREOC are similar, being primarily about race discrimination. However, the proportion of race discrimination complaints to the ADB is significantly higher than to HREOC. In both jurisdictions, the next biggest ground of complaint by Indigenous women is sex. Sex discrimination complaints are proportionately higher to HREOC than the ADB.

<sup>6</sup> As noted in Chapter 3, employees of state government agencies are excluded from making complaints about sex discrimination and sexual harassment under the Sex Discrimination Act.



## 4.7 ADB areas of complaint

Table 15 provides the number of complaints received by area of complaint from Indigenous women by the ADB between 1997–98 and 1999–00. It also provides the average annual number of complaints by ground over this period.

Table 16 provides the numbers of complaints received by area of complaint from all complainants by the ADB between 1997–98 and 1999–00. Again, averages are also provided.

Table 17 provides the number of complaints received by area of complaint as an average percentage of all complaints, for Indigenous women and all complainants between 1997–98 and 1999–00.

**Table 15: Number of complaints received by area (Indigenous women), ADB**

	1997–98	1998–99	1999–00	Annual Average
Employment	11	14	15	13.3
Goods and services	16	20	16	17.3
Accommodation	8	7	6	7.0
Education	0	2	2	1.3
Registered clubs	0	2	3	1.7
Racial vilification	2	4	1	2.3
Homosexual vilification	0	0	0	0.0
HIV/AIDS vilification	0	0	0	0.0
Transgender vilification	0	0	0	0.0
Other/Unknown	0	2	1	1.0
Total	37	51	44	44.0

**Table 16: Number of complaints received by area (all complainants), ADB**

	1997–98	1998–99	1999–00	Annual Average
Employment	731	752	811	764.7
Goods and services	277	244	303	274.7
Accommodation	50	50	52	50.7
Education	39	32	51	40.7
Registered clubs	32	33	30	31.7
Racial vilification	38	26	28	30.7
Homosexual vilification	19	6	20	15.0
HIV/AIDS vilification	0	3	0	1.0
Transgender vilification	0	22	0	7.3
Other/Unknown	126	82	86	98.0
Total	1,312	1,250	1,381	1,314.3

**Table 17: Complaints received by area as a percentage of total complaints, ADB**

	Average % 1997-98 – 1999-00	
	Indigenous women	All complaints
Employment	30.3%	58.2%
Goods and services	39.4%	20.9%
Accommodation	15.9%	3.9%
Education	3.0%	3.1%
Registered clubs	3.8%	2.4%
Racial vilification	5.3%	2.3%
Homosexual vilification	0.0%	1.1%
HIV/AIDS vilification	0.0%	0.1%
Transgender vilification	0.0%	0.6%
Other/Unknown	2.3%	7.5%

From these tables, it is clear that Indigenous women complain to the ADB mainly in the areas of goods and services, employment and accommodation. An average of 17.3 (39.4%) complaints about goods and services, 13.3 (30.3%) about employment and 7 (15.9%) about accommodation are made each year by Indigenous women. The remaining Indigenous women's complaints are about racial vilification (5.3%), registered clubs (3.8%) and education (3%).

When this is compared to the general population, as shown in Table 10, a very different pattern emerges. The general population complains mainly about employment, which out of an average 1,314.3 complaints per year, makes up an average of 764.7 complaints a year (58.2%). This is by far the largest area of complaint. Goods and services is the next substantial area, making up an average of 274.7 complaints a year (20.9%). The remaining complaints by the general population are about accommodation (3.9%), education (3.1%), racial vilification (2.3%), registered clubs (2.4%), homosexual vilification (1.1%) and HIV/AIDS and transgender vilification (both less than 1%).

The substantial difference in the numbers of employment related complaints may be due to lower levels of employment in the Indigenous population.

## 4.8 HREOC areas of complaint

Table 18 provides the number of complaints received by area of complaint from Indigenous women in NSW by HREOC between 1998 and 2000. It also provides the average annual number of complaints by ground over this period.

Table 19 provides the numbers of complaints received by area of complaint from all complainants in NSW by HREOC between 1998 and 2000. Again, averages are also provided.

Table 20 provides the number of complaints received by area of complaint as an average percentage of all complaints, for Indigenous women and all complainants in NSW, between 1998 and 2000.

**Table 18: Number of complaints received by area (Indigenous women), HREOC (NSW)**

	1998	1999	2000	Annual Average
Employment	1	2	2	1.7
Goods and services	0	1	0	0.3
Land, housing and other accommodation	0	2	1	1.0
Education	1	1	1	1.0
Clubs	0	0	0	0.0
Racial Hatred (multiple areas) (A)	2	0	2	1.3
Other s9 RDA (multiple areas) (B)	1	3	0	1.3
Rights to equality before the law	0	2	0	0.7
Commonwealth programs	0	1	0	0.3
Access to premises	0	0	1	0.3
Incitement to unlawful acts	0	0	0	0.0
Other	0	0	0	0.0
Total	5	12	7	8.0

(A) Complaints of racial hatred might be in a range of areas, including: media, disputes between neighbours, personal conflict, sport, employment, goods and services, racist propaganda, entertainment and public debate.

(B) The Racial Discrimination Act prohibits racial discrimination in specific areas but also, under section 9, in general terms, provides that racial discrimination is prohibited in "the political, economic, social, cultural or any other field of public life".

**Table 19: Number of complaints received by area (all complainants), HREOC (NSW)**

	1998	1999	2000	Annual Average
Employment	187	215	237	213.0
Provision of goods and services	61	63	67	63.7
Land, housing and other accommodation	3	6	7	5.3
Education 1	5	13	15	14.3
Clubs	4	4	5	4.3
Racial Hatred	18	12	10	13.3
Other s9 RDA	4	14	10	9.3
Rights to equality before the law	6	14	3	7.7
Commonwealth programs	4	8	12	8.0
Access to premises	18	12	18	16.0
Incitement to unlawful acts	2	0	1	1.0
Other	31	54	55	46.7
Total	353	415	440	402.7

**Table 20: Complaints received by area as a percentage of total complaints, HREOC (NSW)**

	Average % 1998–00	
	Indigenous women	All complaints
Employment	20.8%	52.9%
Goods and services	4.2%	15.8%
Land, housing and other accommodation	12.5%	1.3%
Education	12.5%	3.6%
Clubs	0.0%	1.1%
Racial Hatred	16.7%	3.3%
Other s9 RDA	16.7%	2.3%
Rights to equality before the law	8.3%	1.9%
Commonwealth programs	4.2%	2.0%
Access to premises	4.2%	4.0%
Incitement to unlawful acts	0.0%	0.2%
Other	0.0%	11.6%

As stated above, complaint numbers to HREOC are low, making generalisations difficult. A few comments, however, may be made.

Indigenous women appear to mainly complain to HREOC about employment. An average of 1.7 complaints of discrimination about employment are made by Indigenous women each year. This is followed by complaints about racial hatred (average 1.3 complaints) and complaints under s9 of the Racial Discrimination Act (average 1.3 complaints). These cover a range of areas of public life. This is followed by complaints about education (average 1 complaint) and land, housing and other accommodation (average 1 complaint). Complaints on other grounds are even lower.

When this is compared to the general population, as shown in Table 13, some similarities and some differences emerge. The general population complains mainly about employment. However, whereas employment related complaints make up an average of 20.8% of complaints by Indigenous women, they make up an average of 52.9% of complaints by the general population. Goods and services is the next substantial area for the general population, while it is almost last on the list for Indigenous women.

## 4.9 Outcomes of complaints received

Complaints received by the ADB and HREOC are finalised in different ways, the four main ones being:

- ▶ Declined/terminated – complaints may be declined, for example if they do not reveal a breach of the relevant discrimination law, if they are past the time limits provided by the ADB (six months) or HREOC (12 months), or if they are ‘vexatious, misconceived, lacking in substance or frivolous’;
- ▶ Settled/conciliated – complaints may be settled at any stage of the complaints process, including before, during or after conciliation;
- ▶ Withdrawn – complainants may withdraw complaints for a number of reasons, including delay, no longer wanting to pursue the matter, resolving the matter through other means, and through investigations revealing that unlawful discrimination is unlikely to be made out;
- ▶ Referred for hearing – in the case of the ADB, complaints are referred to the ADT, and in the case of HREOC, cases are terminated, giving rise to a right to lodge proceedings in the Federal Court/FMC (formerly complaints were referred to HREOC’s hearing section).

In the ADB, an average of 25% of complaints are declined, 42% withdrawn, 20% settled/conciliated and 11% referred for hearing. An average of 1% is dealt with in other ways, including referral to HREOC. These figures are calculated by averaging the outcome of complaints finalised for the years 1996–97 to 1999–00 from ADB annual reports.

In HREOC, an average of 43% of complaints are declined, 23% withdrawn, 25% settled/conciliated and 9% referred for hearing. These figures are calculated by averaging the outcome of complaints finalised for the years 1996–97 to 1999–00 from statistics provided for the project by HREOC.

HREOC declines almost twice as many complaints as does the ADB. Almost twice the number of complainants withdraw their complaints from the ADB compared to HREOC.

## 4.10 Time for processing complaints

Tables 21 and 22 provide the rate of finalisation of all complaints (from receipt to finalisation) for the ADB and HREOC in the periods 1998–99 and 1999–00.

**Table 21: Rate of finalisation of complaints, ADB**

	1998–99	1999–00
Within 3 months	34%	36%
Within 6 months	49%	53%
Within 12 months	65%	74%
Over 12 months	35%	26%

**Table 22: Rate of finalisation of complaints, HREOC**

	1998–99	1999–00
Within 3 months	29%	27%
Within 6 months	51%	53%
Within 12 months	77%	83%
Over 12 months	23%	17%

Complaints are finalised quicker by HREOC than by the ADB. In 1999–00, for example, 27% of all complaints were finalised by HREOC within three months, 53% within six months and 83% within 12 months. In the same period, only 36% of all complaints were finalised by the ADB within three months, 53% within six months and 74% within 12 months. Around 17% of complaints to HREOC and 26% of complaints to the ADB take over 12 months.

Further, HREOC has improved its performance since then. In 2000–01, 88% of matters were finalised by HREOC in 12 months, and average time from receipt to finalisation was seven months<sup>7</sup>. It is likely that delays at the ADB in 2000–01 will increase. The ADB has noted that increases in complaints numbers without corresponding increases in staff have contributed to delays. For example, the waiting time in May 2001 on allocation of non-urgent complaints was 12 months (Interview with ADB Manager).

## 4.11 Ombudsman's offices statistics

No statistics on the gender or ethnicity of complainants are recorded in the NSW or Commonwealth Ombudsman's Annual Reports. In May 2001 the Commonwealth Ombudsman's office indicated that it was developing a new data base which might address this issue (correspondence from Ombudsman's Office). However both have recognised the importance of access by Indigenous people to their services by employing Indigenous officers and conducting Indigenous outreach programs, although in the case of the Commonwealth it is not clear whether this will be funded in future. Since the Ombudsman's Offices may be the only appropriate mechanism for some complaints about government agencies, it is important that there are appropriate services for Indigenous communities and that information is available about the numbers of Indigenous men and women who use the services of both offices. Recommendations about this are made in Chapter 7.

<sup>7</sup> HREOC's Complaint Handling Section has conducted a Customer Satisfaction Survey since December 1997. In the 2000–01 reporting year 68% of complainants and 70% of respondents felt that the Commission dealt with the complaint in a timely manner. For the 1999–00 reporting year 60% of complainants and 70% of respondents were satisfied with the timeliness of the complaint handling process.



## 4.12 Industrial relations statistics

Neither the NSW or Commonwealth IRCs keeps statistics of the gender or ethnicity of individual applicants (Correspondence from commissions). Only arbitrated cases are available on the public record in both jurisdictions, and these represent only a small percentage of total cases. Thus there is no statistical information available about the complaints made to either commission by Indigenous women. Since the commissions may be the most appropriate complaints mechanism for some complaints about discrimination in employment, especially unfair dismissal, it is important that information is available about the numbers of Indigenous men and women who make applications to both commissions. Recommendations about this are made in Chapter 7.

## 4.13 Conclusions

The ADB publishes statistics on the number and nature of complaints lodged by Indigenous people, however these are not broken down by sex. HREOC has not published statistics on the ethnicity of complainants except for complaints lodged under the Racial Discrimination Act to date. It is therefore not possible to determine the number or nature of complaints by Indigenous women to the ADB or HREOC from annual reports. Additional statistics, however, were provided for the project. From the 2000–01 annual reports onwards, however, HREOC will be reporting on complaints received by sex and ethnicity of complainant for each Act.

The ADB received an average total of 1,314 complaints per year between 1997–98 and 1999–00. An average of 96 complaints per year came from Indigenous people. About half of these, or an average of 44 complaints per year, came from Indigenous women. HREOC received an average total of 391 complaints per year in NSW between 1998 and 2000. An average of 15 complaints per year came from Indigenous people. About half of these, or an average of eight complaints per year, came from Indigenous women. The absolute numbers and percentages of Indigenous people, including women, who complain to the ADB are far larger than the numbers and percentages who complain to HREOC. Indigenous complainants are over-represented in ADB and HREOC complaints statistics compared to the general NSW population. This is most likely because the incidence of discrimination against Indigenous people is much higher than against non-Indigenous people.

Indigenous women complain to the ADB and HREOC mainly on the ground of race discrimination. An average of 80% of complaints by Indigenous women per year to the ADB (between 1997–98 and 1999–00) and 54% of complaints by Indigenous women per year to HREOC (between 1998 and 2000) were on the grounds of race or racial hatred. The next biggest ground of complaint for Indigenous women is sex discrimination. Complaints on other grounds are minimal. By comparison, the general population mainly complains to the ADB on the grounds of sex, race and then disability, and to HREOC on the grounds of disability, sex and then race. Complaints by the general population are more evenly spread among these grounds.

Indigenous women complain to the ADB mainly about goods and services (average 39%). This was followed by employment (28%) and accommodation (20%). The general population complains to the ADB mainly about employment, which is by far the largest area of complaint (58%), followed by goods and services (21%). The areas of complaint to HREOC are slightly different. Indigenous women mainly complain to HREOC about employment (average 21%). This was followed by racial hatred (16.7%) and complaints under s9 of the Racial Discrimination Act, which cover all areas of public life (16.7%). The general population complains to HREOC mainly about employment (52.9%), followed by goods and services (15.8%).

Of the above mentioned complaints, many are declined or withdrawn. In the ADB 25% of complaints are declined, 42% withdrawn, 20% settled/conciliated and 11% referred for hearing. In HREOC 43% of complaints are declined, 23% withdrawn, 25% settled/conciliated and 9% referred for hearing.

Complaints are finalised on average more quickly by HREOC than by the ADB. For example, in 1999–00, 17% of complaints to HREOC and 26% of complaints to the ADB took over 12 months to finalise.

Recommendations in relation to the collection and publication of statistics are made in Chapter 7.

# Chapter 5

## Indigenous women's experiences of and responses to discrimination

### 5.1 Introduction

This chapter analyses the material from the focus groups. It describes the methodology, the locations and the demographic information of the women who participated. The results of the focus group discussions are organised under five categories: women's understanding of the meaning of discrimination; their experiences of discrimination; their responses to it; their knowledge of their rights and where to go to for assistance; and, their use of discrimination complaints mechanisms, in particular the ADB and HREOC.

### 5.2 Methodology

Focus group locations were chosen to reflect the wide range of communities in which Indigenous women live. Ten locations in rural, regional and metropolitan NSW were selected, with advice from the project reference group. Locations of different sizes, percentage of Indigenous population, physical location and isolation were chosen.

Wirringa Baiya contacted Indigenous organisations in each location, such as refuges, housing organisations, resource centres and land councils. These organisations were contracted to organise a group of women to attend a focus group. The focus groups lasted for two to three hours, and participants were provided with lunch and brochures and information from Wirringa Baiya, PIAC, the ADB, HREOC, the Ombudsman and other relevant agencies. Focus groups included 4–12 women, and 67 women participated.

The questions used for the focus group consultations are attached as Appendix 3.

### 5.3 Focus group localities

To ensure that individuals cannot be identified in this report, the names of the women and of the locations have been omitted. The localities chosen were a mixture of rural, regional and metropolitan, and are described as follows:

- Three rural towns in Western NSW (Western Towns 1, 2, 3);
- Three rural towns on the Eastern Coast of NSW (Eastern Towns 1, 2, 3);
- One larger regional industrial town (Regional Town);
- Two outer suburbs of Sydney (Outer Suburbs 1, 2);
- One inner city suburb (Inner Suburb).

The labour force and income figures from the 1996 census for these locations show the same general patterns as the NSW figures, with higher unemployment rates and lower median incomes for both Indigenous men and women. But there are some significant regional variations.

There were three smaller towns with relatively large Indigenous populations and fewer job opportunities — Western Towns 1 and 2 and Eastern Town 3. In these towns, Indigenous men and women had the highest rates of unemployment (34–40%) and much lower median incomes (\$155–197) (ABS 1996). This was also the case in the Inner Suburb.



In larger rural towns and the regional town, which had smaller Indigenous populations, both Indigenous men and women had slightly lower rates of unemployment and slightly higher median incomes.

In the outer suburbs, Indigenous peoples' unemployment rates and median incomes were closest to those of non-Indigenous people. Unemployment rates were lower and median incomes higher.

Indigenous men's incomes were also higher than Indigenous women's incomes. However, both were still below the median incomes for non-Indigenous men and women.

## 5.4 Demographic information

The following tables show the demographic information collected from the 67 Indigenous women who participated in the focus groups.

**Table 23: Age**

	No. of participants
Age 15–20	4
Age 21–30	8
Age 31–40	20
Age 41–50	18
Age 51–60	13
Age 61–70	1
Age 71–80	1
Unknown	2
Total	67

**Table 24: Marital status**

	No. of participants
Married	20
Unmarried, with partner	13
Single	34
Total	67

**Table 25: Children**

	No. of participants
Children	61
No children	6

Of the 61 women with children, the average number of children was between 3 and 4.

**Table 26: Employment status**

	No. of participants
Employed	33
Unemployed	24
CDEP	10
Total	67

Women who participated in the focus groups were asked whether they were currently working, and if so, what they did. Employed women in many cases worked for Indigenous community organisations, including Indigenous medical health services and Indigenous refuges, or government. Women who worked were not asked whether they did so on a full or part-time basis.

**Table 27: Social security status**

	No. of participants
Receiving benefits	33
Not receiving benefits	33
Unknown	1
Total	67

Benefits includes single parent benefits, disability pension, age pension and unemployment benefits. Some people worked part-time and received some social security payments.

**Table 28: Formal education**

	Completed	Not completed	Unknown
Primary school	63	1	4
High School	32	31	4
TAFE course	30	33	4
University course	9	54	4

## 5.5 Understanding the meaning of discrimination

The first question asked was: 'What do you think discrimination is?' Women generally had an accurate and sophisticated understanding of the meaning of discrimination.

They described it as "being treated unfairly", "being treated unequally", "being judged", "being treated differently", "not being treated as an individual", "not having freedom", "having your rights violated" and "not getting equal opportunities or access". Women said discrimination meant people made assumptions about you, it meant not getting a fair go and it involved stereotyping. One said discrimination is "when someone doesn't respect you for who you are".



Women generally identified that discrimination could be on the basis of race and sex. Some women's responses indicated that they thought discrimination referred only to race. One woman said discrimination was being "treated different to the Anglo race". The only other forms of discrimination identified were on the basis of age and "discrimination against single mothers".

One woman said "I call it a value judgment because people are making an assumption about you because of what you look like, or the colour of your skin, or where you live, or it can be anything". Another thought discrimination could be on the basis of the way you dress or your hairstyle.

Some women said it was hard to put into words.

## 5.6 Experiences of discrimination

### Introduction

The second question asked was: "Have you experienced discrimination? Give examples." The question was often met with comments such as "Where do we start?" or "Have you got all day?".

#### High incidence of discrimination

Almost all of the Indigenous women in all of the focus groups said they had suffered discrimination. In all groups except one, the women reported that racial discrimination was a common occurrence, a part of daily life. Discussion of women's experiences of discrimination generally took up a significant amount of time in each focus group, and had to be cut short, as the women had plenty of examples to share. Some of these examples were of a minor nature and some involved more serious discrimination with severe and detrimental effects.

### The impact of discrimination

Women's experiences of discrimination resulted in a range of impacts. For some, the effects of discrimination were short-lived, and forgotten about soon after. For others, the impact was serious and long lasting, practically, financially and/or emotionally.

### Grounds and areas

The examples were consistent with the nature of complaints lodged by Indigenous women in the ADB and HREOC in terms of both grounds and areas (see Chapter 4). The majority of examples were of race discrimination. There were very few examples of sex discrimination, sexual harassment, discrimination on the grounds of being a single mother<sup>8</sup> and discrimination on the grounds of criminal record<sup>9</sup>. Some raised the fact that the grounds of discrimination they experienced were sometimes a mixture, for example many thought that being Indigenous single mothers made them very susceptible to discrimination in obtaining and keeping accommodation.

In terms of areas of discrimination, women gave examples of discrimination in the provision of goods and services, accommodation, employment, education, pubs and clubs, and by the police.

#### Regional and demographic differences

Women in Western Town 1 reported the highest levels of racial discrimination in all areas. There was greater racial tension between the Indigenous and non-Indigenous communities there than in any of the other locations, and the discrimination reported was more blatant and severe<sup>10</sup>. This may be partly related to the relatively high percentage of Indigenous people with lower education and employment opportunities who are economically and socially vulnerable to discrimination.

8 While there is no prohibition in anti-discrimination legislation of discrimination on the grounds of being a single mother, discrimination on the basis of sex or marital status, or both, will in many instances cover this type of discrimination.

9 While HREOC may accept and attempt to conciliate a complaint of discrimination on the ground of a criminal record, such discrimination is not unlawful. Complaints of discrimination on this basis cannot be made to the ADB.

10 As a result of the high level of discrimination reported, PIAC, Wirringa Baiya and a number of other agencies have formed an inter-agency community legal education project, 'Working it Out'. This project provides culturally appropriate legal education to a number of Indigenous communities in western NSW.

The group that reported the lowest levels of discrimination were from Western Town 2. Many of the women from this group were from a town nearby, which has long been a very multicultural community. The women from this nearby town, who were all community health workers, saw their town community as working relatively well together, with no segregation and little discrimination. One thought that there was a bit of discrimination there, “but it’s what comes into the town, not in the town itself”.

Otherwise, there were no obvious differences between the different regions in terms of the severity of discrimination or the types of discrimination encountered by Indigenous women.

Individual and systemic issues

Women raised individual examples of discrimination which involved specific incidences where they, family, friends or members of the Indigenous community had been discriminated against, as well as broad systemic issues, such as lack of employment opportunities for Indigenous people and bad relations with police.

### **Increasingly indirect**

Many women commented on the increasing subtlety of discrimination. The women thought that since there is now more awareness that discrimination was unacceptable and unlawful, it is expressed in more indirect forms. One woman said that “People don’t call you a ‘black’ or an ‘Abo’ anymore, but it comes across in different forms”.

### **Visibility**

Some women commented that their experiences of discrimination, as compared to other Indigenous people, sometimes had to do with the colour of their skin, particularly where the discriminator did not know them. That is, some darker skinned women said that they suffered worse discrimination because of their colouring, and some lighter skinned women said that because people often did not know they were Indigenous, at least at first glance, they managed to escape some discrimination.

### **Discrimination within the Indigenous community**

Some women commented that as well as experiencing discrimination from the dominant culture, there was also discrimination in the Indigenous community, against non-Indigenous people, and sometimes between different groups of Indigenous people.

### **Discrimination in the provision of goods and services**

There were many examples of discrimination in the provision of goods and services, including discrimination by shops, credit unions, hire-car companies, restaurants and hospitals.

Many women spoke of being or having been treated like second class citizens in various shops. In fact, this issue was raised in every focus group. Women spoke about being served only after non-Indigenous customers who arrived later, not being served until requested, sneered at, ignored and given “the look”. Many said they had been watched closely by shop attendants or “followed around like a criminal” as they did their shopping. This was compared to the friendly and courteous way the same shops appeared to treat non-Indigenous customers. A number said that encountering racism in shops had led them to change their shopping routine. Others found it more difficult to avoid racist attitudes. Discrimination against Indigenous people, particularly against youth, was also raised in the context of equal access to shopping centres. In Outer Suburb 1, one woman knew seven Indigenous young people who were barred from the local centre.

Women from Western Town 1 spoke of being routinely treated less favourably than non-Indigenous customers. One woman said “We as Indigenous people when we go into the shops, we’re being looked at and watched at all times like a dog”. In Western Town 1, the women were keenly aware that at the same time they were being treated less favourably, it was their money which was contributing significantly to shops’ profits.



The women in Western Town 1 believed that young Indigenous people in particular were discriminated against by the shops, many of which had signs up in their windows stating something like: "No children under the age of 16 allowed in this shop unless accompanied by an adult". The women felt that these signs were enforced disproportionately if not predominantly against Indigenous children and young people, and not against non-Indigenous children and young people, and that this was as a result of racist attitudes and generalisations. Young Indigenous people were "assumed to be criminals", and were routinely prevented from entering many of the shops in town.

One woman in Western Town 1 told the group that her daughter had been banned from the local chemist when she was three years old (for taking a lipstick and walking into the street with it), which was over eight years ago. To this day, the young girl, who is now School Captain of her primary school, is barred from the chemist, even under the supervision of her mother. The chemist is the only chemist in town. The girl's mother noted the difficulties that arise when, for example, she is ill or someone from the family has needed something from the chemist, and she cannot send her daughter in to town to get it.

As well as shops, there were examples in many of the focus groups of discrimination by restaurants, cafés and other food outlets. One woman went to a pizza place for dinner with a group of women some years ago while attending an Indigenous women's conference. She and her group sat and waited to be served, hardly noticing the long delay as they talked and unwound from the day. When they finally asked for menus, they realised that they were largely being ignored by the restaurant staff. They asked for a menu a couple of times, and finally, after one and a half hours, managed to order. Not long after, their pizzas came. They were piled with slops.

One woman also reported discrimination by banks and credit unions, which she had little doubt was racially motivated. Another told of how the employees at her credit union treated her rudely and questioned her over signatories every time she went there to cash her wage cheque. This was despite the fact that she used the same branch, and often saw the same teller, each fortnight.

Another told of how she had once hired a car to travel to a funeral. The car broke down and she considered that the treatment she received was racist. They did not receive an equivalent replacement car, they had to drive to pick it up, and they nearly missed the funeral.

Discrimination by doctors and hospitals was also raised, particularly by the Inner and Outer Suburb focus groups. One woman said she had a bowel operation at an outer suburban hospital about five years previously. The day after the operation, she was still lying in soiled bedclothes when she asked the nurse if she could have clean pads and a change of bed linen. She overheard the nurse saying to someone else "I'm not changing that black women's' bed". Another woman saw a doctor who told her that "all Indigenous women get herpes". In relation to broader health issues, one community health worker said that she had found it difficult to receive support and funding for Indigenous specific programs because of current government policies of mainstreaming.

In Western Town 1, many members of the Indigenous community lived in the same part of town, on the old mission. Women reported that in the past, for many years, Indigenous people who lived there did not receive mail and that the area was not cleaned by the local council, while other parts of town were.

## **Discrimination in accommodation**

Many women reported difficulties in securing rental accommodation, which they believed was as a direct result of their race. Some thought their difficulties stemmed more or equally from being single mothers. Some women said that they generally knew they could only get second rate private rental accommodation in their towns because they were Indigenous. This meant poor quality properties in need of repair (ie. "the bottom of the barrel"), with landlords who rarely made any repairs.

One woman told of how once she had obtained rental accommodation quite easily, as she has a fair complexion. However, as soon as the landlord saw her children, who had darker skin, they "were sent packing". Others had also been told flats and houses were available over the phone, but upon attending the real estate agent, "all of a sudden there were no places vacant".

Another woman said after putting in an application for a rental property, she was rung and informed that her application had been successful, and that as soon as they let the owner know, it would be finalised. They rang her later and said that the owner would not “support her application”.

One woman was denied rental accommodation by a real estate agent — her application was continually put aside. Upon making further inquiries, she was told by a staff member “we don’t let your type in, black people”.

One woman was left standing outside a motel she was staying at while attending a conference. She sat outside for a couple of hours on her own until she was finally seen by security guards inside and let in. She said that there were security cameras there and she thought the motel staff did not let her in on purpose because she was Aboriginal.

One woman thought that the database accessed by real estate agents, which recorded information about tenants who had formerly broken a lease, left damaged property etc, discriminated against women because it did not take circumstances like domestic violence into account — it prevented women from obtaining accommodation when the reasons for previously breaking a lease or having caused damage may have been beyond their control. A number of community workers in the focus group this was raised in commented on the use of such databases to identify clients of theirs, resulting in difficulties securing accommodation.

## **Discrimination in employment**

Many women were concerned about what they perceived to be the high unemployment rate of Indigenous people in their town or city. They said that employment opportunities for Indigenous people were mainly in Indigenous community organisations and designated Indigenous positions in mainstream government agencies. In some towns, other options included seasonal work (generally for men) or working for government benefits as part of CDEP. One woman said “You’ve got to be born into jobs (here), there’s never a black face in the shops”. The manager of the CDEP in Western Town 1 said that despite heavy subsidies available through government training schemes, employers in town were strongly opposed to employing Indigenous people.

Of particular concern to the women was the lack of employment opportunities for their children and the community’s youth. Barriers in accessing employment were seen as a strong disincentive for Indigenous school children. One woman said “A lot of them ask us why aren’t our kids going through to Year 12 and that. I said well, they get to Year 9 and they can look around the community to see that there’s no way for them to get jobs. I say where do you see a black person in the shop?”

One woman gave an example of discrimination in employment from 15 years ago, the effects of which remain today. She had been training to be a nurse, and came to the final interview, which was with the matron. The matron, on interviewing her, and on recognising that she was Indigenous, and finding out that she had 12 brothers and sisters, told her that she had better go home and help her mother take care of the family and that it was inappropriate for her to pursue nursing. As a result of this and several other knockbacks, which she perceived to be on racist grounds, the woman never became a nurse.

In addition to discrimination in obtaining employment, employed women also reported discrimination in the workplace. One woman was a pre-school teacher who said that at the pre-school she was employed at, “one of the non-Aboriginal workers used to always treat the non-Aboriginal kids better, like by letting them paint first while the Aboriginal kids had to wait”.

A few women talked about the difficulties of working in a mainstream service as an Indigenous employee. One woman was a government employee who worked with Indigenous clients; another was a teacher who taught Indigenous studies. The government worker was racially harassed by her supervisors and co-workers over a two year period. The teacher observed discrimination in her classroom, which was half Indigenous and half non-Indigenous. She talked about a few “nasty spaces” around issues such as Abstudy, sacred places and different kinship systems. She was responsible for establishing a Koori room at the education centre, which had raised some eyebrows among staff and students. Another woman was an Indigenous Community Liaison Officer for the police. She felt and saw discrimination from within the police force, for example sometimes witnessing police officers treating detainees in a racist manner. At the same time, she was called names by Indigenous detainees in custody because she worked for the police.

One woman thought that Indigenous employees were generally less trusted than non-Indigenous employees. Her daughter, a teacher, was constantly being checked on at work. "There's an assumption if you're black that you don't know anything". One woman thought that in order to survive in a mainstream job, you had to "unzip your Aboriginality at the front door".

One woman thought that Indigenous health workers who have a set award based on 8:30 am – 5 pm, Monday to Friday, were disadvantaged in wage terms compared to mainstream health workers. The latter got paid when they were called out, while Indigenous workers only received a \$1,200 component built into their wage for after hours work. Being on call 24 hours a day, seven days a week resulted in many after hours visits which were not well compensated by such a small payment.

Two women spoke about having been sexually harassed at work, one by a male and one by a female supervisor. Both eventually resigned from their jobs because they did not know how else to deal with this.

## **Discrimination by clubs and pubs**

Many women in the group had been banned from various pubs and clubs in their lifetime, some more regularly than others. Many viewed these bans as in almost all cases totally unreasonable in the circumstances. Sometimes, minor arguments with bar or other staff following discriminatory treatment would rapidly escalate, police would be called and confrontations would become violent, with arrests and charges the result. This was particularly the case in the Western and Eastern Towns.

One woman from Outer Suburb 1 felt that many pubs and clubs discriminated unfairly against Indigenous people. She was at a pub one night in the early 1990s, eating dinner with her 8-year-old son. The rule at that pub was that children under 18 were allowed in that part of the premises until 8:30 pm. The bartender, who had previously made sexual advances towards her, which she had refused, approached and told her that her son would have to leave. As it was only 8 pm, she began arguing with him. Following this incident, the woman was banned from the club for 12 months. She said of the staff at the pub, "They treat Indigenous women like bitches and sluts ...and men like dogs. The majority of Indigenous people are barred from that pub".

One woman from Western Town 1 told the group about an incident when she was at a pub with some friends. They had bought some drinks and played a few rounds of darts. When they returned to the bar for more beers, they were asked for identification. An argument followed and the police were called. Following this, they were banned for life from the pub. Another 39-year-old woman from Western Town 1 produced a pension card as proof of age at a club, but was refused entry. She argued with the bouncer because he had just let other people in without identification. The police were called. Five police cars arrived. Following this incident, she was barred from the club for life. This was compared to a non-Indigenous man who, on the same night, was drunk and disorderly and exposed himself, and who was not barred. This woman was on the local women's refuge committee. The refuge were going to hold a function at the club, but did not because she would have been unable to attend.

A woman from Inner Suburb told of how she was refused entry to a nightclub. The bouncer said that the manager had given orders that they were barred. She asked on what basis and wouldn't stop pressuring him for an answer. He finally said "I'm not allowed to let any blacks in the door".

## **Discrimination by the police**

A number of women raised the issue of the police not protecting Indigenous victims of domestic violence. They thought police had an attitude that "they'll work it out for themselves". One woman was in a taxi with her partner about eight years ago. There was a violent confrontation and she asked the taxi to pull up at a police station, where she got out of the taxi and began calling for help. Two policemen came out and walked towards her. When they saw the situation, they walked back inside. She called out "Hello, this man's about to bash me". She went up to the police door and it was locked. She could see about seven or eight policemen working inside. One finally came out and the woman asked for an Aboriginal Community Liaison Officer (ACLO) but they said that none was on duty. She said she had an Apprehended Violence Order out against the man with her, and they asked whether she had a copy, and did not help her.

The women also spoke about the over-policing of Indigenous communities, and how they, their partners and children were often picked on, harassed and treated unfairly by the police. For example, one woman told of observing the police in Western Town 1 approach two Indigenous young men in a pub and start asking them questions. This turned into an argument and before long, the police were taking them in to be charged. The woman viewed the behaviour of the police as harassment. She said to one of them, "Excuse me, (name), but do you wake up with a chip on your shoulder for hatred towards blacks?", and he said "Yes I do and I know you're name and you're barred", and he told the publican to put her name on the list. She ended up being barred for a month.

Women spoke of discrimination by police against their loved ones. There was concern that police don't treat Indigenous young people with any respect. One woman was sitting with a group of young Aboriginal people at the youth centre, and some police came along and didn't notice her, and said to them "What are you doing here, you little boongs, why don't you go home or I'll lock you up". One woman's son had been bashed by the police when he resisted arrest, resulting in his hospitalisation. In Outer Suburb 1, concern was raised over the strip searching of two Indigenous children while at school.

Other issues raised included ACLOs not being provided on request, and complaints to police not being followed through, particularly verbal complaints.

### **Discrimination in education**

Many women talked about discrimination in schools against their children, by teachers and by non-Indigenous children. One said she sometimes wished that Indigenous people had their own schools, because "we wouldn't have to go through all this racism". The women were tired of their children coming home crying and of having to constantly defend and protect them. Many spoke of having children suspended or expelled as young as nine and 10 years old. Some felt that there were different behavioural standards for Indigenous children at schools, and that schools did not give them appropriate education.

One young woman told of how a teacher at her high school had called her a "dumb, black street kid who would never get your HSC". He said to her once "Why don't you leave now? You're a waste of time and a waste of space".

### **Discrimination in other areas**

One woman in Eastern Town 2 raised an incident of possible racial vilification. She said that just last week, a colleague working alone one day at an Indigenous agency had gone downstairs to have a smoke and saw fresh graffiti on the front door saying: "The Ku Klux Klan was here". She was so nervous that the writer may come back with a group that she contacted other Indigenous workers in town, who encouraged her to close the office for the rest of the day if she felt unsafe, which she did. Some women in Western Town 1 also said that vigilante groups operated in their town, though the details of this were not provided.

A number of women said they had experienced discrimination by neighbours. One woman's next door neighbour regularly harasses her, calling her names and making racist comments. Her grandchildren are too terrified of him to play in her yard. His Indigenous neighbour on the other side had sold up and moved because she could not stand it anymore. Even his grandchildren call her names like "black bitch". He says if he ever knew his place was next door to where Indigenous people live, he never would have bought it<sup>11</sup>.

Another woman was also harassed by her neighbours to such an extent that she moved into her mother's house for a short period because she felt unsafe. This was while she tried to convince the Department of Housing to re-house her elsewhere, which they would not do. She eventually had to move into private rental accommodation.

11 This kind of discrimination may be covered by the racial hatred provisions of the Racial Discrimination Act, which cover offensive behaviour based on racial hatred that takes place other than in private. An Apprehended Violence Order to cease the harassment would also be a legal option in her case.



Other examples were of personal offensive encounters. One said that something that really annoys her is being asked “how much Indigenous” she is. She said “I say, well, I’m — Indigenous! They go, well, how much are you, a sixteenth? And I say ‘Ohhhh, those old terms! Geez, we’re not living in the sixties.’ I say ‘today’s the year 2000 and I don’t look at things like that and nor do our people.’ I’m proud of who I am. It doesn’t matter how much I’ve got in me. It’s me, it’s who I am.”

Another woman said that a nurse asked her son, at his child’s birth, whether the child had had a Hepatitis B shot. She said that all Asians and Aborigines should have it, and asked him “how much” Indigenous he was. He responded “From the knees down!”. Some woman thought it was a racist practice to single out certain racial or cultural groups for Hepatitis B vaccines.

## 5.7 Responses to discrimination

Women’s responses to discrimination varied, from avoidance to confrontational. Most women said they felt intense anger at being unjustly treated.

### Avoidance and withdrawal

Some women said that they were so used to being treated in a discriminatory manner that they no longer worried or thought about it. One woman said “You’ve got no power, you’ve got no rights. You’re just black. It’s been a reality for too many years you know.” These women often said they would attempt to avoid or withdraw from the discriminatory conduct so, for example, they would shop or eat elsewhere if faced with racist restaurants or shops. Of all the examples of discrimination raised in the focus groups, only very few had been challenged, acted upon, formally complained about or even reported or recorded in any way.

Two women said they resigned over sexual harassment at work without lodging a complaint. One woman resigned over discrimination directed at the kindergarten children where she worked. Another moved temporarily to her mother’s, and then left public housing for private rental accommodation following racial harassment from neighbours. The woman whose bed sheets were not changed following an operation at a hospital, called her sister straight away, discharged herself from the hospital and went home. As a result of the early discharge, she suffered complications and had to see her local doctor soon afterwards.

The pre-school teacher who said that Indigenous children at her kindergarten were discriminated against by a co-worker, resigned from the job after nine years of working there because her concerns were not taken up by management after she approached them about it. After she left, she felt sorry that the Indigenous children had no one left to look out for them anymore as she had.

One woman thought that older Indigenous people were less inclined to challenge or complain about discrimination. “A lot of our older generation people have just learnt to accept (it), because that’s how they were brought up and they had no law to protect them so they just had to go with the flow. A lot of our old people are very shy”. Most focus group participants were aged in their 30s, 40s and 50s, though there was one 73-year-old woman. She thought that there was no discrimination in Eastern Town 3.

### Confrontation

Other women responded more confrontationally, for different reasons, including the seriousness of the effect of the discrimination, anger and principle. “You have to weigh up whether it’s important enough”, and every one had their own criteria.

Some women tried to deal with the discrimination they faced there and then. When one woman was denied rental accommodation, after being told by the real estate agent that her application was successful pending finalisation by the owner, she asked why and whether it because they had told the owner she was Aboriginal. She said that if she did not get an answer, she would take the matter further. She said “They rang me back in half an hour and said I could have the place!”.

The government worker who was put down and insulted by her school teacher said “you know, I used to go home and I’d be sad, and I’d wonder why I was sad, and I’d go and smoke some cones, or I’d drink, ...and it would always come back to that stupid comment that that teacher said — I’m dumb, I can’t do it, I’m just black, I’m nothing”. When she finished her HSC, however, and had some further qualifications, she returned to the school and told him how, despite his negative comments, she had succeeded.

One woman said she always responded to discrimination because she had a high profile in the Indigenous community and felt she had to set an example for younger Indigenous women. She said it was pointless her running workshops and trying to empower Indigenous women and then not acting when faced with discrimination herself.

Some woman used existing support mechanisms to assist them attempt to confront the discrimination. The woman who was questioned every time she cashed a cheque at the credit union was in such a state of anxiety every payday that her employer eventually went there with her and demanded that the staff cease treating her that way. This improved the situation somewhat, although she still senses an underlying racist attitude. She also now takes a friend or colleague for support every time she goes to there.

### **Getting advice**

Some women contacted solicitors to get advice. The woman who was denied protection from domestic violence from the police went and saw a solicitor about bringing an action against the police; however, this did not lead to a formal action or complaint. The woman who’s son was bashed by police had also seen a solicitor, but the advice was that there was insufficient evidence to pursue proceedings. A small number contacted the ADB.

### **Lodging complaints**

A very small number of women responded to discrimination by lodging complaints with the ADB, discussed below. No one in the focus groups had lodged a complaint with HREOC. No one had used the Ombudsman or IRC for complaints in relation to discrimination, though some had used the Ombudsman for complaints against the police.

Some took action but did not follow through. One wrote letter to the ADB over being denied access to a pub, but did not send it in. One wrote letter to Gaming and Racing over being barred unfairly from a pub, but never followed up the response. The woman from Inner Suburb who was refused access to a nightclub went back next day with a non-Indigenous friend, and had no problems getting in. She was very angry and wrote a long letter to the ADB setting out her complaint. She got about ten other Indigenous people who had been similarly refused entry to sign it, however she never sent it in. She was not sure why.

## **5.8 Knowledge of anti-discrimination laws and who to complain to**

A number of the questions were designed to draw out the women’s level of knowledge of their rights under anti-discrimination laws and of relevant complaint bodies, including the ADB, HREOC, Ombudsman and the IRC.

Most women knew that there were laws against discrimination. Many, however, did not know who to complain to or turn to for help. Some had detailed questions about how ‘the system’ works, for example, one woman asked “You know with all these different branches that you’ve got for different things, is there somewhere that you go first, before you go to these people, or do you just go straight to these people? Just say it’s health, is there a special office we go to for health issues?”. Some women said that if they had known who to turn to in certain situations, they may have pursued a discrimination complaint. The woman who resigned from her kindergarten teaching job because of discrimination directed at the Indigenous children there said if “I’d have known there was someone there to back me up and that I could talk to”, she might have taken action.

When asked "Are there organisations you can complain to about discrimination?", very few women mentioned the ADB or HREOC, and many said they would not know where to go.

When asked where they would go if they wanted help with discrimination, women mentioned agencies such as Legal Aid, their local Indigenous legal service, refuges, community housing organisations or other individuals or organisations who they already know and trust.

When asked "Have you heard of the Anti-Discrimination Board or the Human Rights and Equal Opportunity Commission?", most women said they had heard of the ADB and had a general idea that it was a discrimination complaints body, though found it difficult to explain in much detail what it does. Very few had contacted or complained to the ADB. When asked how they knew about the ADB, there were a variety of responses, including through word of mouth, work, meeting or talking to ADB workers on outreach visits and at conferences.

Some of the women had heard of HREOC, others not. Of those who had, nearly all had little idea what it does. Some thought they dealt with issues like refugees and torture, and did not realise that it was a discrimination complaints mechanism. None of the women had contacted or complained to HREOC.

Many had heard of the Ombudsman and knew what the Ombudsman's Office does. Some said they were unsure whether the Ombudsman could assist with discrimination complaints. Some women had heard of the IRC.

## 5.9 Use of discrimination complaint mechanisms

### Contact

Very few women spoken to had ever contacted the ADB, HREOC, Ombudsman or IRC for information or advice.

### Complaints

Of the focus group participants, five had lodged complaints with the ADB and none with HREOC. A few had complained to the Ombudsman (mainly over police related matters, and mainly not framed as discrimination complaints) and one or two to the IRC, however these complaints were not in relation to discrimination.

Of the many women who participated in the focus groups, those who complained to the ADB complained over a range of issues, with mixed outcomes, as briefly summarised here.

#### Woman 1

The woman who had been denied rental accommodation by a real estate agent put a complaint into the ADB about 10 years previously. She was very satisfied with the ADB process. She contacted the ADB and within an hour they had rung the agent and were negotiating an agreement. That same afternoon the agent offered her the unit or \$2,000 in compensation. She felt that the ADB had taken her complaint seriously and acted swiftly to correct the matter, which she appreciated.

#### Woman 2

The woman who saw a doctor that told her that all Indigenous women get herpes also lodged a complaint against him with the ADB. She withdrew the complaint after correspondence from the ADB suggested or determined that no unlawful discrimination could be made out. This woman was the government employee who was harassed at work. She lodged a complaint to the ADB in relation to this harassment, which is discussed in Chapter 6.

#### Woman 3

The woman who said she was discriminated against by a hire car company lodged a complaint with the ADB against the car rental company. Following conciliation of the matter by the ADB, she was offered and accepted two weeks free car hire in settlement of her complaint. This was the same woman who was barred from a pub following an argument over her son eating dinner there. She also lodged a complaint over this incident, which is discussed in Chapter 6.

#### **Woman 4**

The woman who was left locked outside her motel lodged a complaint with the ADB, which is discussed in Chapter 6.

#### **Woman 5**

One woman had also lodged a complaint 22 years previously against a club that had refused her entry on the basis that she was Aboriginal. She could not remember much detail but recalled that she had received \$500 and an apology, and that the process had taken a few months, and had been relatively easy and positive for her.

Three out of the five women (Women 2, 3 and 4) who had complained to the ADB more recently were interviewed separately about their experience of lodging a complaint. Their views and comments are further discussed in Chapter 6, along with the comments of other women who had complained to the ADB or HREOC.

## **5.10 Access issues identified**

### **Lack of information, education and outreach**

Many women said that they felt confused about what organisations to complain to about discrimination. They felt that there was nobody to even point them in the right direction or give them advice about this. They rarely saw the ADB or HREOC advertised, rarely if ever met or saw outreach workers from these agencies and had not noticed any fliers about them.

Many of the women thought that one of the most effective ways of ensuring Indigenous women knew about discrimination complaints mechanisms was for the relevant bodies to undertake sufficient and appropriate outreach. Suggestions included regular visitors to the community, or a local office or staff member located locally, who could provide advice and receive complaints. One woman said "There should be a service like that up here. If there's no office here they should send a worker out here once a week. Everything is in Sydney and it is not funded enough. Three (Indigenous) workers for the state is not enough."

They also thought information and outreach had to be delivered in a Koori friendly way, or it would not be understood or used. Women suggested advertising in the Koori Mail, having Koori faces in the public domain addressing issues of discrimination and promoting complaints mechanisms, and having 'Koori friendly' posters and fliers, in appropriate language and with art work and designs that caught the eye of Indigenous people. Part of delivering information in a Koori friendly way was having Indigenous staff delivering it.

### **The need for face-to-face contact**

The women reported being frustrated with having to deal with bureaucracy in general, but also, for those who had complained to the ADB, of the faceless nature of that experience as well. One woman said "Especially if you complain to them...they'll write you a letter saying do this, this and this ...and you never see them". These sentiments led women in the focus groups to discuss the need for physical contact with the ADB and HREOC, say through outreach or a local office, "where you could go down and talk to the person, rather than write letters or ring up all the time".

One woman said "If they get an office out here, they'll be over-run with work, not to worry about not getting any clients". Women wanted to see services come out to their area and talk to the community about discrimination issues, to listen to the community, and to help them stand up to discrimination.

Of those women who knew about the ADB and the Ombudsman, many said it was because of having met staff at community workshops, seminars and visits. For example women in Western Town 1 had a high level of awareness of the Ombudsman as staff from there had visited a number of times in the last few years.



## **The need for Indigenous staff**

A strong message that emerged was a preference for dealing with Indigenous staff. Women's comments were based less on their actual experience of the ADB or HREOC (as most had not used these bodies) than on general experience.

One woman said, of preferring to deal with Indigenous staff at agencies generally, "Yeh, you can talk, be yourself. If you talk to white people, you try to talk how you think they want you to talk. The majority of black fellas don't know how to talk to a Gubba (non-Indigenous person)." Another woman said "if you talk to an Indigenous person, you can talk the way you want, instead of yes sir, yes ma'am". And another "I think we're more likely to ask questions (of an Indigenous worker). I know a lot of our people won't (ask questions) because they don't want to look stupid ...I think a lot of times our people know not to use jargon that we can't understand."

Women said that this was partly an issue of language. They thought that non-Indigenous workers were more likely to use big words and legal jargon which Indigenous people often did not understand. One woman said that many Indigenous people who do not understand such language will not ask non-Indigenous people to explain.

One woman said that when the Indigenous Women's Program of the Women's Legal Resource Centre came out and met with members of the community in Western Town 1, many Indigenous women spoke to them, and later felt comfortable ringing the centre and even speaking to a non-Indigenous worker. Some women commented that they felt comfortable approaching the NSW Ombudsman because they have Indigenous staff.

## **Literacy and the written nature of the complaints process**

Many women commented on the difficulties of accessing information or processes which relied heavily on reading and writing. As one woman said, "Kooris don't write things down". Many felt intimidated, alienated and confused by written material and correspondence they did not understand.

They said that it was difficult to learn about what agencies and organisations were there to assist them where they experienced discrimination, when a lot of the relevant information was in brochures and forms. One woman commented that there were so many brochures, she did not know where to start. All agreed that speaking to someone about where to go for assistance, or about what an agency could offer, was significantly easier than reading about it.

Many were put off by complaints processes in general, and the ADB and HREOC complaints processes in particular, because they knew they relied heavily on correspondence. Many women said they found it very difficult to write a letter about an incident that happened to them, both because of their literacy skills and because of the difficulty of knowing what to write down, that is, how to express what had happened in an appropriate way. Many said that trying to write down the details of incidents that had disturbed, upset or made them very angry was very difficult. Many did not understand the written correspondence they received back from agencies they had complained to or contacted. Many commented that written information and correspondence had to be much simpler, and without technical jargon, for many Indigenous women to access.

## **Powerlessness and lack of faith in the system**

Some woman in the focus groups were put off from responding to discrimination by lodging a complaint because of their prior experiences of pursuing grievances through complaints to government departments and agencies, specialist tribunals, the ADB, the Ombudsman etc. There was a strong sense of frustration that even upon making complaints, "nothing was done". Some women said that they had sent letters to the Ombudsman which had not been replied to, a few said they had attended a police station to make a complaint (often verbal) which was not followed up. People did not call them back or do what they had undertaken to do. Even where complaints had been taken seriously and investigated, many women had found the process alienating and difficult to comprehend, and the outcomes unsatisfactory.

For example, the woman who complained to the ADB about being barred from a pub as a result of discrimination said that she spoke to someone at the ADB about coming out and discussing the issues with the pub, but he never came out. She felt that she had to continue driving the process, whereas she would have preferred the ADB take a more active role once approached. “What’s the use of complaining when you don’t get nothing done about it?”, said one woman. Negative experiences of complaints being not taken up, not dealt with appropriately, or not resulting in a positive outcome, thus affected women’s willingness to complain again. There was, for many, a lack of faith that complaints would be dealt with properly and in some way help the situation.

## **Delay**

The women who had complained to the ADB generally thought that the process had taken too long. A few women who knew the kinds of lengths of time involved in discrimination complaints said that part of the reason they did not or would not complain was because they knew the process would take a long time. On being told the kind of delays involved in having complaints dealt with by these agencies, other women said that they would be reticent to use a processes which took so much time.

Women said that by the time one or two years had passed, they would have often “got over” the discriminatory conduct complained of and moved on. Also, they had other issues to deal with in life. Having a complaint hanging over their heads for so long caused stress and uncertainty. The delay also meant that the only remedies available were compensation rather than, for example, access to the service denied.

## **Cost**

A few women mentioned the cost of taking any legal action, though there was a low level of awareness of the nature of costs which may arise in such a process. Some commented that if the process involved any costs at all, such as for advice, representation or lodging fees, they would not be in a position to access it.

## **Lack of legal advice and representation**

Women commented that not only did they not know about relevant discrimination complaints mechanisms, but they also were unsure of where to go for advice or who could assist them with such matters. Many saw the Indigenous legal services as mainly doing criminal law and therefore not in a position to assist.

Women reported a chronic lack of free civil legal advice accessible to them, particularly in the Western and Eastern Towns.

## **Lack of support**

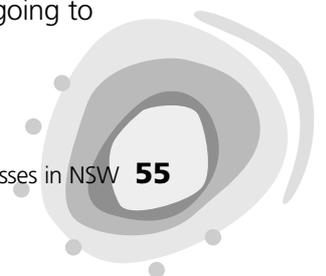
Women generally reported that without appropriate and adequate support, they found it very difficult to address discrimination through processes such as the ADB and HREOC. These processes were frightening and difficult to navigate, and women said they needed help to get through it, both on a practical and an emotional level.

Those women who had contacted or complained to the ADB thought that such support was not provided. Some commented that ADB complaints staff took such a neutral role that there were unable to provide the necessary support.

Others felt threatened and demoralised when the matter did not appear to be taken very seriously, or they were asked to supply further information to verify the discrimination, which led them to feel disbelieved.

## **The nature of the model and cultural inappropriateness**

One woman said “all they want to do is conciliate between the parties. Give us a break. How long have we got to conciliate in this country. You know, we want something to happen. So, who’s going to complain about racism, or any form of discrimination? No one.”



As mentioned above, many suggested that they felt uncomfortable with the role played by agencies such as the ADB and HREOC. Some felt that they should act more like the police, and when discrimination was reported to them, take swift action to stamp it out rather than play a neutral role and simply attempt to conciliate. Some women thought the ADB and HREOC should act as advocates for people who lodged complaints.

Some women also suggested that they were reticent to use the 'white system', because it was alienating, inappropriate and lacked an understanding of Indigenous women's perspectives and ways. One woman said complaining about discrimination to non-Indigenous organisations was like asking a man to help you get through child birth.

### **Difficulties of proof**

Many women said that they often did not confront discrimination they encountered because they had a keen sense that it would be very difficult to prove. Many women said that the discrimination they experienced was subtle and that even if it was not, perpetrators were careful to hide their motivations for denying people equal rights and opportunities.

## **5.11 Conclusions**

Many of the Indigenous women who participated in the focus groups had a high level of understanding of the meaning of discrimination. In all groups, Indigenous women reported that they experienced discrimination and in most cases this was reported to be regular and often severe. Overwhelmingly the discrimination suffered by Indigenous women was on the ground of race. Racial discrimination was experienced in many areas of life, including in the provision of goods and services, obtaining and keeping accommodation, in employment, in the benefits and services provided by clubs, in education and by the police.

Responses to discrimination varied. Some women withdrew from or tried to ignore discrimination while others challenged it and attempted to educate or punish the discriminator. Many felt intense anger and hurt at being denied equal treatment. Some women responded by lodging complaints.

Most of the women had very little knowledge about where to go for help or advice about discrimination, or who to complain to, even though many were aware that there were laws against discrimination. There was some level of awareness of the ADB but little awareness of HREOC. More women nodded their heads when these organisations were mentioned, than raised them in answer to questions about where to go for help with discrimination and where to complain. There was some level of awareness and use of the NSW Ombudsman, but little of the IRCs. Some women had used the ADB but none had used HREOC. The experiences of those that had used the ADB are discussed in Chapter 6.

Discussion by all focus group participants raised many access issues. There were three primary issues, all inter-connected. One was the need for culturally appropriate information and education about the ADB and HREOC and what they can offer Indigenous women who have suffered discrimination. Another was also a strong desire to have face-to-face contact with ADB and HREOC staff, either through a permanent local office or officer, or regular community outreach visits, both for information and education and ideally for complaints processing. Lastly, there was the need for Indigenous complaints handling staff and Indigenous outreach workers to ensure the effective delivery of information and education, and to improve confidence in using discrimination complaints mechanisms for Indigenous women.

Women raised the difficulties of accessing information or processes which were largely written. Some expressed a lack of faith that a complaint would help the situation, either from their experience of dealing with other agencies and/or from their knowledge of ADB and HREOC processes. Some thought that long time frames, certainly beyond a year or so, had or would put them off using anti-discrimination processes. Lastly, women raised fears in relation to the potential cost of making a complaint, about the lack of available and appropriate legal advice and representation and about the need for support when making a complaint of discrimination through a process such as the ADB or HREOC.

# Chapter 6

## Indigenous women's experiences of complaining to the ADB and HREOC

### 6.1 Introduction

This chapter analyses the information from interviews conducted with Indigenous women who had complained to the ADB and to HREOC. The interviews provided qualitative information only. Quantitative information is provided by the analysis of ADB and HREOC statistics in Chapter 4.

### 6.2 Methodology

Nine women were interviewed individually about their experiences of complaints processes. Seven had complained to the ADB and two to HREOC.

Contact was made mainly through letters sent by HREOC and the ADB to Indigenous women who had complained. HREOC sent letters to 22 Indigenous women who had complained between 1 January 1998 and 24 May 2001 (being the total number of Indigenous women who lodged complaints during that period)<sup>12</sup>. The ADB sent letters to 113 Indigenous women who had complained from 1 January 1995 to June 2000 (being a proportion only of Indigenous women who lodged complaints during that period and whose complaints had been finalised)<sup>13</sup>. In three cases, contact was made through the focus groups and in one case through a community legal centre. Women were contacted either by the complaints bodies or by the legal centre and were asked to telephone the research team if they wanted to be interviewed. The relatively small numbers of responses mainly reflect the low numbers of Indigenous women using the complaints procedures, particularly in the case of HREOC, and the time that had passed between when some of the women made complaints and when the letters about the project were sent. They also reflect the generally low response rate to written communications, which was noted in Chapter 2.

The interviews were conducted individually, where possible in person, but in most cases by telephone. The questions used for the ADB and HREOC interviews are attached as Appendix 4.

The interviews provide more detailed qualitative information about the complaints process which supplements the more general information about the experience of discrimination provided by the larger numbers of Indigenous women interviewed in the focus groups. To protect confidentiality, real names are not used. Each woman has been assigned a letter of the alphabet.

12 While 31 complaints were lodged by Indigenous women during this period (see Chapter 4), more than one complaint may have been lodged per person. Also, letters were only sent to women whose complaints were finalised.

13 While more complaints were lodged by Indigenous women during this period (see Chapter 4), again, more than one complaint may have been lodged per person. Also, only complainants within a certain postcode radius of Sydney were included, as the original plan was to conduct a focus group with these women in Sydney. Lastly, complainants whose complaints were outside jurisdiction were not sent letters.



## 6.3 Demographic information

Seven of the nine women interviewed were in full-time employment. Five were from Sydney, and four were from rural towns. All had completed high school. All but two had also completed post-secondary TAFE courses as mature age students. Four had completed university courses. One was receiving the age pension, one the supporting parents benefit and one a disability pension. The disability pensioner also worked part-time. All had children. Three were over 50 years of age, five were aged 30 to 40 and one was under 30. This demographic data shows that the interviewees had higher levels of education and workforce participation than average for the Indigenous population as discussed in Chapter 1.

## 6.4 Grounds and areas of complaint

The grounds of complaint were consistent with the patterns in the ADB and HREOC statistical data discussed in Chapter 3. All but one of the complaints were based on race. Two were based on race and gender, one was based on race and disability and one was based on disability only.

Three complaints were about access to goods and services. Two women were denied access to hotel bar services. B was refused entry on racial grounds and C was banned after experiencing sexual and racial harassment from hotel staff. H, who was visually impaired, was refused service in a shop and asked to leave because the shopkeeper objected aggressively to her guide dog.

Three complaints were related to employment. A was denied alternative duties and forced to retire after an accident at work left her unable to perform her previous duties. F was racially harassed at work by a supervisor. G, a teacher on probation<sup>14</sup>, was dismissed after she disagreed with the principal about the treatment of Indigenous students.

Two complaints were about access to accommodation. E, a rural community worker, came to Sydney for a conference and booked accommodation in a city hotel. She left her bags at the hotel and went out to dinner. She was told by the day staff to ring the night bell for entry when she returned. She did so but was ignored by the night staff until a security guard arrived and made sure that she was a hotel guest. D had arranged to let a flat through an agent. She then met the landlord and was subsequently told by the agent that the landlord had decided not to rent the flat because she and her partner were Indigenous.

One complaint was about racial vilification. J's daughter was called a cannibal at school after media publicity was given to statements made by a member of the One Nation Party associating Aboriginal culture with cannibalism.

These areas of complaint are consistent with the HREOC and ADB statistics on complaints by Indigenous women, in that access to goods and services feature strongly, as does accommodation. The higher prevalence of employment related matters reflects the fact that most of this group were in the paid work force.

## 6.5 Complaints to the ADB

### Knowledge of the ADB and decision to complain

All but one of those who complained to the ADB were aware of it beforehand. Several were aware of it because of their work in Indigenous communities and others were told by friends or work mates.

Most complained to the ADB because they felt angry about being treated unfairly. Comments included:

*B: "I felt I was as good as anyone else and was really shocked and angry".*

*C: "[Hotel staff] treat the men like dogs and the women like sluts".*

*A: "It was important to complain because I know of other cases like mine".*

*G: "Discrimination is wrong and I have always supported equal rights".*

<sup>14</sup> All teachers are on probation, as was G, for the first year of their teaching career. It is easier for a teacher on probation to be dismissed than for a permanent teacher to be dismissed.

## Contact and Process

All contacted the ADB by telephone. Four were aware that the ADB had Indigenous officers and asked to speak to one. Others were not aware of this option, were not informed of it and did not make this request. All reported that they would have preferred to have spoken to an Indigenous officer. Reasons given included:

A: *"Would have better understanding".*

C: *"Easier to relate to".*

E: *"Would have felt more comfortable".*

D: *"Could understand and relate to the situation".*

G: *A non-Indigenous person "does not know how threatening it is to be harassed every day of your life".*

## Lodging a complaint in writing

All were then sent information by the ADB and asked to put their complaint in writing. Two sought legal assistance to do this, and one got legal assistance later in the process. One got help from her work supervisor. Of the four who sought no help, two said they did not have problems because they were used to writing reports at work. The other two did find it difficult. These two had the equivalent of high school education only.

All reported that they received acknowledgement of their complaint quickly, but then faced an interval of some months before being informed whether the complaint would go to conciliation.

The two who had difficulty in putting the complaint in writing both received letters from the ADB asking for more information. Both found this process difficult. Comments made included:

E: *"It was hard to write the second letter. I felt they did not believe me".*

C: *"I got lots of letters. I got frustrated because they only wrote me letters".*

## Conciliation and Tribunal Process

Three of the seven ADB complaints were conciliated. One of these was not settled at conciliation and went to a Tribunal hearing. Two did not proceed with the complaint and two were ongoing at the time of the interviews.

One of those who did not proceed gave up because she was not clear what further information was required and it took too long.

C: *"I had no faith in them because of the waiting time. I had lots of other things to do then."*

In the other case, the respondent left town before the conciliation could be arranged.

B: *"They asked if they should keep looking for him and at that stage I said no because it was too long and drawn out."*

Conciliation led to a settlement in two cases, and to a tribunal hearing and finding in the other.

All commented that the conciliation process was challenging for them and they needed support:



G: *"I was nervous that we all had to be in the same room together."*

A: *"I was glad I had a solicitor because the other side had one."*

D: *"[The respondents] did not appear themselves at the conciliation, only their lawyers appeared...I was annoyed they did not attend because I wanted them to get the message about discrimination."*

But there were also positive comments on the conciliation process:

A: *"The conciliation was very professional and I got a fair deal."*

D: *"The conciliator was very fair and very good at examining all aspects of the case."*

G was not happy with the lead up to the conciliation. She said that several different officers handled her complaint. She was not clear about the process and was not aware that she could claim damages or that it could have gone to a tribunal if conciliation failed.

She worked in a small office in a country town and the complaint was about her supervisor. The ADB called him at work about the complaint. She was not warned that this would happen. They worked next to each other and this made the situation worse for her. She felt very nervous at the conciliation but had some elders from the community to support her.

## **Time Taken**

All of the women except one whose complaint had been lodged shortly before the interview complained about the length of time of the process. The process took two years for those whose complaints were conciliated. As noted above, the time delays involved in clarifying their complaint contributed to the decision by two women to withdraw from the process.

## **Outcomes**

Three complaints had positive outcomes. A received an apology and a lump sum payment as a result of conciliation, and D received an apology and a lump sum from the Tribunal process. G received an apology and the supervisor did change his behaviour. She was happy with this result at the time but afterwards thought she might have applied for damages. She still felt some indirect discrimination and resigned from the job after the complaint was conciliated.

Overall, most felt that making a complaint had helped the situation:

A: *"It was important for other people that I made a successful complaint."*

B: *"The complaint did not help me because [the respondent] left town but I felt I got a positive response from the ADB."*

D: *"It helped to know that people can't discriminate and get away with it."*

E: *"It is not just me, but others. Hotels should follow the rules and not treat people like that."*

G: *"The outcome for me was not all that good but for the office in the long term it was really good."*

## Changes to the ADB Process

Most felt that the ADB process needs some changes. All wanted the choice of dealing with an Indigenous complaints officer to be clearer. All commented that the time taken to resolve complaints was too long. Two said they recognised that this was because of staffing and resources limitations. Other comments were:

*B: "They need more Aboriginal people working at the ADB."*

*C: "They mainly wrote letters and this was hard. I wanted to speak to an Aboriginal person who would have been more aware of the issues person to person."*

*E: "Need more publicity about Indigenous workers at the ADB."*

*D: "I would like them to get the message out to all businesses that provide services to people and make it compulsory that they have training on discrimination law so they will know it is illegal to discriminate."*

## Would they recommend the process to others?

Most commented that they would recommend to others to make a complaint if they suffered discrimination.

*A: "It's important for people to complain to improve things."*

*B: "You need to send a message to those who treat you poorly."*

*C: "I would support others complaining because I didn't follow up on my own complaint."*

*D: "Many Kooris are still scared of complaining and it is important to encourage them."*

However, F commented that the time delays and the process meant that she would look at alternatives to the ADB if this were possible.

D also reported that she had a subsequent experience of discrimination when she booked a motel room in advance but was told when she arrived that there was no booking. She thought of complaining but the motel had not asked for a deposit and so had no independent evidence of the booking. She wrote an initial letter to the ADB but decided not to proceed. She "felt tired of having to justify herself all the time and didn't want to go through the process again".

## 6.6 Complaints to HREOC

### Knowledge of HREOC and decision to complain

H had heard about HREOC from friends who had a similar experience with disability discrimination. She decided to complain because she "was not going to let anyone talk to me like that."

J said that she knew about the ADB and had contacted them. They referred her complaint about racial vilification to HREOC because the statements she objected to were made in Queensland and so could not be dealt with by the NSW ADB. She had heard about HREOC because of the Stolen Generations inquiry, but did not know that it also had a complaints process. She decided to complain because her daughter "came home from school very upset after being called a cannibal."



## Contact and Process

H telephoned HREOC and “they were very helpful” and asked her to put her complaint in writing. They did not offer her an Indigenous officer and she “didn’t worry about that because the complaint was about disability, not about race”. H said that she “did not look like a Koori” and the shopkeeper did not know she was Indigenous when he objected to the guide dog.

J reported that an officer from HREOC contacted her after her complaint was referred by the ADB. She was not offered an Indigenous officer and did not ask for one as she thought HREOC did not have any. She would have preferred an Indigenous officer “as Kooris know where you’re coming from, you have to really experience it to know where it hurts”.

## Lodging a complaint in writing

H reported that HREOC assisted with her visual impairment by sending her material in large print. She also had friends who read for her. H had finished high school but felt she needed some help with the letter. A friend helped her to write the letter of complaint.

J said that although she had a tertiary education she still found it hard to express some things about the complaint. “The hardest thing was detailing the effect of the discrimination and the harm it caused.”

HREOC wrote back to J enclosing an excerpt from a book on which the remarks were based and asking her to comment on it. She decided to seek legal advice and went to a women’s legal centre. A solicitor from the legal centre helped her to write the second letter.

## Conciliation and Tribunal process

H reported that HREOC tried to organise a conciliation but the shopkeeper was extremely hostile and refused. Her complaint was made after the changes to the legislation discussed in Chapter 3 and HREOC told her that she had the option of proceeding to the Federal Court within a limited time period.

In J’s case, HREOC sent the complaint to the respondents, and attempted to conciliate by letter. The respondents replied but were not prepared to settle .

This matter was heard after the case that established that HREOC had no enforcement powers but before the changes to the legislation which saw matters proceed from HREOC conciliation to the Federal Court. The matter was therefore referred to a HREOC hearing but at this time HREOC had no enforcement powers. J reported that the Commissioner decided that the hearing would be conducted through written submission only, as there was a possibility of media publicity, and “he did not want the tribunal turned into a circus”. J said that she was “upset that she could not attend the tribunal and speak”. Her solicitor prepared and lodged written submissions, as did some Indigenous elders. The outcome of the hearing was unclear to her. She understood that some aspects of the statements were thought by the HREOC Commissioner to be discriminatory, but overall no unlawful discrimination was found.

## Time Taken

H said the process took six months. This was a relatively short time because the respondent refused to conciliate and she did not proceed to the Federal Court. She found it stressful but the time went quickly.

J reported that the process took two years, including the HREOC hearing. She felt this was too long.

## Outcomes

In both cases the respondent refused conciliation. Both women decided not to proceed to the Federal Court.

H decided not to proceed to the Federal Court for three reasons. Firstly there was a \$50 application fee and she did not have this money because she was on a disability pension. Secondly, she felt she would need a solicitor and she could not afford one. She tried to contact the Legal Aid Commission of NSW but had some trouble getting through to them. Thirdly, HREOC explained that there was a possibility that costs could be awarded against her and she was worried about this.

She was disappointed with this outcome because she felt the shopkeeper had broken the law and should be fined. "He broke the law and got away with it. If I park in the wrong place I get a ticket."

J reported that she had 28 days after the HREOC hearing to appeal the decision to the Federal Court. Her solicitor obtained a barrister's advice, which stated that she was unlikely to succeed or obtain damages, in part because the respondents were in the process of declaring bankruptcy. By this time the 28 days was almost up and she had no time to seek any other opinion so she decided not to proceed. She was also aware of the risk of costs being awarded against her and did not want to take the risk.

She felt the complaint and the outcome did not help her or her daughter. She also felt that the process was very legalistic, and that without a solicitor she would not have been able to pursue the matter as far as she did.

### **Changes to the HREOC process**

H felt that there was a problem with the process because the respondent did not want to conciliate and "it just stops dead". "There is a dead wall." She said the process needed something more constructive than the court process because "people on low incomes can't afford the application fee and may also have to pay costs".

J reported that she felt that HREOC "has no teeth". In her case, the conciliation process was a waste of time and energy because the other side did not want to conciliate. She felt that complainants should have the choice to skip the conciliation stage. She thought time period to decide whether to appeal a matter to the Federal Court was too short and should be extended.

She also felt that HREOC should be less "neutral", assist complainants more, and tell them more clearly whether discrimination had or had not occurred. She felt that the respondents had believed that "HREOC was no threat to them".

Would they recommend the process to others?

H said that she would only recommend the process to others if conciliation was possible in their case. "If the other side refuses to conciliate then you don't get anywhere."

J said she would not recommend the process to others as it took too long, and "you need to have the money to pursue it in the courts if the other side does not conciliate".

## **6.7 Conclusions**

The women interviewed about their experience of complaining had higher education levels and more experience of dealing with formal procedures than average for the Indigenous population.

However, the issues they raised about access for Indigenous people to the complaints process are consistent with the issues raised in the focus groups by the larger group of women from a wider range of backgrounds.

Most felt they needed legal advice or other assistance to make a complaint. Those who did not have access to such advice or support experienced difficulties with the process.

All said they would prefer to deal with an Indigenous officer about race discrimination matters. Some were not aware that the ADB or HREOC offered this choice and wanted the choice to be clearer.

Two had difficulties putting their complaint in writing and were discouraged when the agency asked them for more information in writing. Several reported that they were not clear about the steps in the process and felt they needed clearer advice from the complaints agency.

The two HREOC complainants reported that they obtained no satisfactory outcome from conciliation and were discouraged from either appealing or proceeding to the Federal Court because of the possibility of costs being awarded against them.

Most commented that the time taken to resolve complaints was too long. Two said they recognised that this was because of staffing and resources limitations which were common to many government agencies.

Recommendations arising from these interviews will be made in Chapter 7.



# Chapter 7

## Conclusions and recommendations

### 7.1 Introduction

This report reveals that many of the Indigenous women interviewed have a sound understanding of the meaning of discrimination, and experience it on a regular basis. Overwhelmingly the discrimination suffered by Indigenous women was on the ground of race, sometimes combined with gender discrimination. Racial discrimination was experienced in many areas of life, including in the provision of goods and services, in pubs and clubs, in obtaining and keeping accommodation, in employment, in education and by the police.

Despite their intense experiences of discrimination, many of the women interviewed were not aware of where or how to complain about discrimination. They reported that they want culturally appropriate information from discrimination complaints bodies to be available in their communities. They want the opportunity for face-to-face contact and to ask questions with staff from the ADB and HREOC. They want the opportunity to deal with Indigenous staff when making a complaint. They want a process that does not rely too heavily on written correspondence, does not take too long or involve the risk of costs which they could not afford. The recommendations in this chapter are based on these findings.

This report could have made many recommendations in relation to preventing discrimination, for example, recommendations to ensure that police always respond appropriately to domestic violence calls. However, these are beyond the scope of the report, which is limited to examining women's access to discrimination complaints mechanisms. Nevertheless, it is recognised that work needs to be done to reduce the incidence of discrimination affecting Indigenous women, as revealed in this report.

### 7.2 Anti-Discrimination Board

#### Outreach

Indigenous women interviewed for this study expressed a strong desire for information about ways to complain about discrimination. They indicated that the most effective way of learning about discrimination and discrimination complaints mechanisms was direct communication through visits to communities by the relevant agency, with the opportunity to ask questions. This was more likely to be effective if conducted by Indigenous staff. Some women consulted for the project said that they knew about the ADB because of previous outreach visits; however, some women had never heard of the ADB.

The ADB recognises the need for outreach to Indigenous communities. Its Indigenous Team consists of three Indigenous officers, two of whom are dedicated to outreach, and make regular visits to Indigenous communities in urban and rural areas to raise awareness about discrimination issues. However, there is still insufficient staff in the unit to meet demand for both outreach and complaints handling (see Recommendation 2).

#### Recommendation:

1. That the ADB expand its program of visits to urban and rural Indigenous communities to explain and promote the ADB. Indigenous staff should be involved in such visits.

## Indigenous staff

Indigenous women interviewed for this study expressed a strong preference for dealing with Indigenous staff for discrimination education programs and when making complaints. Indigenous staff were viewed as easier to approach, understand and relate to, and better able to comprehend their situation and respond appropriately, than non-Indigenous staff.

The ADB recognises that ensuring equal access to their service for Indigenous women and men involves the employment of Indigenous education and complaints handling staff. Its Indigenous Team consists of three Indigenous officers, one of whom is dedicated to complaint handling.

Some ADB complainants reported that they were not aware of having the option of requesting an Indigenous officer to handle their complaint, as when they rang up or wrote in, this was not offered. All Indigenous complainants should be offered the opportunity of choosing an Indigenous complaints handler.

Lastly, it is important that both male and female Indigenous complaint handling staff are employed. For example, women who lodge complaints about sex discrimination or sexual harassment may feel more comfortable with female staff.

### Recommendations:

2. That the ADB expand its Indigenous Team by employing additional (female and male) Indigenous complaints handling and outreach staff.
3. That the ADB publicise the presence of Indigenous complaints handling staff and give complainants a clear choice about dealing with them.

## Delay

Women consulted for the project, as in previous studies, were critical of the one- to two-year time frame for complaints to be resolved. They saw the long drawn-out nature of the complaints process as off-putting, stressful and frustrating. Time delays contributed to the decision by some women to withdraw their complaints from the ADB.

The waiting time for the allocation of non-urgent complaints in May 2001 was 12 months and this has doubled since the previous year when it was six months. Once a matter is allocated, it can take anything up to and over 12 months to then be finalised. In 1999–00 for example, 36% of all complaints were finalised by the ADB within three months, 53% within six months, 74% within 12 months and 26% took more than 12 months.

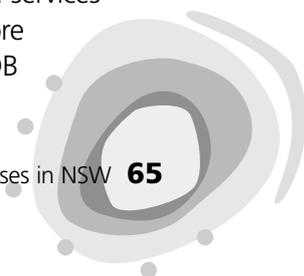
These backlogs and the time taken to deal with complaints should be reduced so that complaints are resolved faster. Additional complaints staff is needed to achieve this. Management considered that the ADB Indigenous Team requires at least two additional complaint handling positions to address existing delays and backlogs and ensure timely and efficient service delivery in the future.

### Recommendation:

4. That the ADB take active steps to reduce backlogs of complaints and the time taken to deal with complaints. Additional complaints handling staff should be employed to achieve this.

## Regional offices/presence

Indigenous women, particularly those in rural and regional communities, felt very distant and therefore alienated from complaints bodies based in Sydney and in the case of the ADB, Newcastle and Wollongong. Many expressed support for the idea of agencies such as the ADB and HREOC having local offices, or a local presence of some sort. They felt that having a local ADB officer, for example, would mean that the community would have a significantly better opportunity to get to know the services of the ADB through that person. Further, they considered that a local ADB officer could more effectively assist the community to address local discrimination issues and promote the ADB as a complaints mechanism.



Staff based in various communities throughout NSW could be housed within other local agencies, in order to save costs. These additional staff could address the need for culturally appropriate outreach (see Recommendation 1) and, if they assisted with complaints handling, could contribute to reducing delays (see Recommendation 4).

**Recommendation:**

5. That the ADB establish offices or staff based in regional centres throughout NSW to provide outreach and complaint handling for Indigenous people.

## **Culturally appropriate information**

Indigenous women indicated a need for culturally appropriate information about discrimination and complaints mechanisms. They wanted 'Koori friendly' brochures containing examples relevant to their lives and language they understood and related to.

The ADB has a range of brochures and fact sheets which provide information about the services of the ADB and how to lodge a complaint. One booklet, *Know Your Rights: Guide for Aboriginal and Torres Strait Islander People*, is specifically targeted at Indigenous people. However this is 33 pages long and is a resource document for Indigenous organisations rather than a popular information brochure.

There was no ADB (or HREOC) material on display at any of the ten Indigenous agency venues utilised for the project focus groups (including refuges, housing organisations, resource centres and Land Councils), though there were brochures from other agencies.

Shorter culturally appropriate promotional and information materials need to be developed by the ADB. These need to be effectively distributed and promoted through Indigenous and non-Indigenous organisations used by Indigenous people.

They also need to be in 'Aboriginal English'. Aboriginal English is the name for a range of types of English spoken by many Aboriginal people. It is a dialect of English like Scottish and Irish and many other 'Englises' and has a different set of sounds, its own rules for making sentences and different ways of being used by its speakers than Standard Australian English (Aboriginal English website, Edith Cowan University). Aboriginal English has recognition at a number of levels of government. There have also been some important developments in the recognition and understanding of Aboriginal English in Departments of Education around the country and in the legal system, following a number of key criminal cases involving Aboriginal English speaking witnesses<sup>15</sup>.

**Recommendation:**

6. That the ADB develop shorter promotional materials which are culturally appropriate for Indigenous communities. They should use Indigenous examples and images and be in Aboriginal English. They should be widely distributed through Indigenous media outlets and Indigenous and non-Indigenous organisations.

## **Written basis of complaints**

Many of the Indigenous women consulted for the project commented on the difficulty of accessing information or processes that rely heavily on reading and writing.

The Anti-Discrimination Act requires complainants to lodge complaints in writing. It is possible to record the details of a complaint on audiocassette however, a letter must still be lodged containing some basic details. The process of investigating and conciliating matters can rely heavily on written correspondence. Complainants receive letters requesting information and other advice and are generally expected to respond in writing. Several of the Indigenous women who had lodged complaints with the ADB found reading, understanding and writing letters a difficult part of the complaints process.

15 In the state of Queensland the Department of Justice and the Attorney-General has developed an innovative project to facilitate communication with speakers of Aboriginal English in the courts, by alerting judges, magistrates and lawyers to the differences between the Aboriginal English and Standard English, so that any misunderstanding is quickly identified and remedied. This project involves a handbook and the training and accreditation of specialist communication facilitators (Language Varieties website, University of New England).

#### Recommendations:

7. That the ADB refer complainants to sources of assistance for making written complaints, and actively offer alternatives such as making an oral statement, having it recorded and then having the complainant check and sign it. This process should also be available if substantial additional information about the complaint is requested by the ADB.
8. That the ADB ensure that each step of the process is explained orally to complainants, in addition to relying on written communications.

### Statistics

The ADB publishes comprehensive statistics on all complaints, including complaints by Indigenous people. The ADB annual reports contain a breakdown of how many Indigenous people lodge complaints, on what ground and in what area. However, complaints by Indigenous men and women are not separated. It is important that information is available about the numbers of Indigenous men and women who use the services of the ADB, so that access by these groups can be evaluated.

#### Recommendation:

9. That the NSW ADB collect and publish statistics on the number and nature of complaints made by Indigenous women and by Indigenous men.

## 7.3 NSW Government

### Resources for ADB staffing

#### Recommendation:

10. That the NSW Government allocate additional resources to employ Indigenous staff to meet demand for outreach and complaints handling and reduce backlogs and time taken to deal with complaints (see Recommendations 1, 2, 4 and 5).

### Resources for advice and representation

Indigenous women commented interviewed for the project were unsure of where to go for advice or of who could assist them with discrimination matters. They reported a chronic lack of accessible free civil legal advice, particularly in the Western and Eastern Towns. Without appropriate and adequate support, they found it very difficult to address discrimination through processes such as the ADB and HREOC as these processes were frightening and difficult to navigate, on a practical and an emotional level.

Indigenous women need improved access to advice about discrimination. This should be a mixture of telephone and local face-to-face advice from culturally appropriate services. In addition, women need access to ongoing support, advice and in some cases, representation, where they choose to lodge discrimination complaints.

#### Recommendation:

11. That the NSW Government allocate increased resources to Indigenous community centres and Indigenous legal centres to ensure that legal and support services are available to Indigenous women seeking to complain about discrimination.



## 7.4 Human Rights and Equal Opportunity Commission

### Outreach

Indigenous women interviewed for this study expressed a strong desire for information about ways to complain about discrimination. Many had not heard of HREOC. They indicated that the most effective way of learning about discrimination and discrimination complaints mechanisms was direct communication through visits to communities, with the opportunity to ask questions. This was more likely to be effective if conducted by Indigenous staff.

The HREOC complaints section does not have a specific Indigenous outreach strategy. Twice a year presentations are made to particular key complaint stake holder groups and these include Indigenous groups. Indigenous groups may also be met when conciliations are held in regional and rural locations. HREOC policy units also have contact with Indigenous communities in the context of other projects such as the World Conference Against Racism however, these do not specifically promote or relate to the HREOC complaint handling function.

An effective and culturally appropriate outreach program for NSW would require the involvement of Indigenous staff, consultation with Indigenous communities and the development of a plan of visits. If successful, it would be likely to result in additional numbers of complaints, which would in turn require additional complaints staff (see Recommendation 12). Since this project has been undertaken, the HREOC Complaint Handling Section has advised that it is currently planning a new community education program in NSW which will focus on visiting community centres and legal services in urban and rural NSW and will involve Complaint Information Officers and Investigation/Conciliation Officers, including Indigenous staff.

#### Recommendation:

12. That HREOC conduct a program of regular visits to urban and rural Indigenous communities in NSW to explain and promote complaints mechanisms. Indigenous staff should be involved in such visits.

### Indigenous staff

Indigenous women interviewed for this study expressed a strong preference for dealing with Indigenous staff for discrimination education programs and when making complaints. The experience of the NSW ADB and the Victorian Equal Opportunity Commission indicates that Indigenous peoples' use of complaints procedures is more likely to increase if Indigenous staff are employed. The need for designated staff has also been documented by previous studies and consultations (see Chapter 2).

Current HREOC policy prefers the recruitment of complaint handling staff through the general recruitment process rather than create specific vacancies that are only open to Indigenous people and have to justify these positions as special measures or have identified positions. To encourage Indigenous people to apply for positions in the Complaint Handling Section, all positions are advertised in Indigenous media and encourage applications from Indigenous people. Therefore the HREOC Complaints Handling Section does not have an Indigenous complaints unit, or identified or designated positions or vacancies. Over the last four years, there have been two time periods totalling at least six months when there have been no Indigenous complaints officers.

To ensure equal access to their service by Indigenous women, it is vital that HREOC employs Indigenous staff to conduct outreach and complaints handling. While it is important to have staff that may be 'identified' as having knowledge and skills which enable them to communicate effectively with Indigenous people, the women consulted for this project indicated a desire for **Indigenous** staff. An effective outreach strategy, including the participation of Indigenous staff, would be likely to increase the numbers of complaints by Indigenous people, thus further increasing the need for Indigenous complaints handling staff.

Lastly, it is important that both male and female Indigenous complaint handling staff are employed. For example, women who lodge complaints about sex discrimination or sexual harassment may feel more comfortable with female staff.

#### **Recommendations:**

13. That HREOC employ (male and female) Indigenous complaints handling and outreach staff.
14. That HREOC publicise the presence of Indigenous complaints handling staff and give complainants a clear choice about dealing with them.

### **Delay**

Women consulted for the project, as in previous studies, were critical of the time taken for complaints to be resolved. They saw the long drawn-out nature of the complaints process as off-putting, stressful and frustrating.

In 1999–00, 27% of all complaints were finalised by HREOC within three months, 53% within six months and 83% within 12 months. The time taken to deal with complaints should be reduced so that complaints are resolved faster.

#### **Recommendation:**

15. That HREOC take active steps to reduce the time taken to deal with complaints. Additional complaints handling staff should be employed to achieve this.

### **Regional offices/presence**

Indigenous women, particularly those in rural and regional communities, felt very distant and therefore alienated from complaints bodies based in Sydney. Many expressed support for the idea of agencies such as the ADB and HREOC having local offices, or a local presence of some sort. They felt that having a HREOC local officer, for example, would mean that the community would have a significantly better opportunity to get to know the services of HREOC through that person. Further, they considered that a local HREOC officer could more effectively assist the community to address local discrimination issues and promote HREOC as a complaints mechanism.

Staff based in various communities could be housed within other local agencies to save costs. These additional staff could address the need for culturally appropriate outreach (see recommendation 1) and, if they assisted with complaints handling, could contribute to reducing delays (see Recommendation 4).

#### **Recommendation:**

16. That HREOC establish offices or staff based in regional centres throughout NSW to provide outreach and complaint handling for Indigenous people. These positions could be jointly funded by the ADB and HREOC, to provide services on behalf of both agencies (see recommendation 5).

### **Culturally appropriate information**

Indigenous women indicated a need for culturally appropriate information about discrimination and complaints mechanisms. They want 'Koori friendly' brochures containing examples relevant to their lives and language they understood and related to.

HREOC has a variety of brochures and information sheets that provide information about their services and how to lodge a complaint, however they are not specifically targeted at Indigenous people. There is a resources folder, *Tracking Your Rights*, for Indigenous organisations but there appears to be a lack of short, culturally appropriate and popularly written brochures. The resource folder includes a culturally appropriate video about discrimination and ways of responding to it.



There was no HREOC (or ADB) material on display at any of the 10 Indigenous agency venues used for the project focus groups (including refuges, housing organisations, resource centres and Land Councils), though there were brochures from other agencies.

Shorter culturally appropriate promotional and information materials need to be developed by HREOC to promote awareness of it as a discrimination complaints mechanism. These materials need to be effectively distributed and promoted through Indigenous and non-Indigenous organisations used by Indigenous people. They also need to be in 'Aboriginal English' (see Recommendation 6).

Since this project has been undertaken HREOC has advised that it recently developed posters, magnets and postcards to advertise the Complaints Infoline. These posters and magnets use an Indigenous based design. Also, HREOC is currently working with Streetwise to develop an advertisement about the complaint handling service for Indigenous newspapers and will look at developing promotional material about the legislation and the complaint handling process that will be appropriate for and targeted at Indigenous communities.

#### **Recommendation:**

17. That HREOC develop shorter promotional material which is culturally appropriate for Indigenous communities. Such material should use Indigenous examples and images. It should be in Aboriginal English and be widely distributed through Indigenous media outlets and Indigenous and non-Indigenous organisations.

### **Written basis of complaints**

Many of the Indigenous women consulted made comments about the difficulties of accessing information or processes that rely heavily on reading and writing.

HREOC requires complainants to lodge complaints in writing. However, if a person requires assistance to formulate a complaint or to reduce it to writing, staff are available to assist. In fact, HREOC has an obligation to take reasonable steps to provide appropriate assistance to a person who requires assistance to formulate a complaint or reduce it to writing (s46P(4) HREOC Act). The process of investigating and conciliating matters generally relies heavily on written correspondence. Complainants receive letters requesting information, ideas for remedies and other advice and are expected to respond in writing.

#### **Recommendations:**

18. That HREOC refer complainants to sources of assistance with making written complaints, and actively offer alternatives such as making an oral statement, having it recorded and then having the complainant check and sign it. This process should also be available if substantial additional information about the complaint is requested by HREOC.
19. That HREOC ensure that each step of the process is explained orally to complainants, in addition to relying on written communications.

### **Statistics**

HREOC publishes statistics on complaints by ground and area of complaint on a national basis. However, it does not publish statistics on a state-by-state basis, nor on Indigenous complainants, except under the Racial Discrimination Act. It is important that information is available about which states complaints come from, about the numbers of Indigenous men and women who use the services of HREOC, and about what the nature of these complaints are. Such quantitative information is needed to monitor Indigenous people's experience of discrimination and to evaluate their access to HREOC.

HREOC has advised that from the 2000–01 annual report onwards HREOC will be reporting on complaints received by sex for each Act and complaints received by ethnicity of complainant for each Act.

**Recommendation:**

20. That HREOC collect and publish statistics on the number and nature of complaints made in each state, and on the number and nature of complaints made by Indigenous men and women.

## 7.5 Commonwealth Government

### Resources for staffing

**Recommendation:**

21. That the Commonwealth Government provide additional resources to employ additional Indigenous staff to meet demand for outreach and complaints handling and reduce time taken to deal with complaints (see recommendations 12,13, 15 and 16).

### Resources for advice and representation

Indigenous women interviewed were unsure of where to go for advice or of who could assist them with discrimination matters. They reported a chronic lack of accessible free civil legal advice, particularly in the Western and Eastern Towns. Without appropriate and adequate support, they found it very difficult to address discrimination through processes such as the ADB and HREOC as these processes were frightening and difficult to navigate, on a practical and an emotional level.

Indigenous women need improved access to advice about discrimination. This should be a mixture of telephone and local face-to-face advice from culturally appropriate services. In addition, women need access to ongoing support, advice and in some cases, representation, where they choose to lodge discrimination complaints.

**Recommendation:**

22. That the Commonwealth Government allocate increased resources to Indigenous community centres and Indigenous legal centres to ensure that legal and support services are available to Indigenous women seeking to complain about discrimination.

## 7.6 NSW and Commonwealth Ombudsman's Offices

### Statistics

No statistics on the gender or ethnicity of complainants are recorded in the NSW or Commonwealth Ombudsman's annual reports. In May 2001 the Commonwealth Ombudsman's office indicated that it was developing a new database which might address this issue (correspondence from Ombudsman's Office). Since the Ombudsman's Offices may be the only appropriate mechanism for some complaints about government agencies, it is important that there are appropriate services for Indigenous communities and that information is available about the numbers of Indigenous men and women who use the services of both offices.

**Recommendation:**

23. That the Offices of the NSW and Commonwealth Ombudsman collect and publish statistics on the number and nature of complaints made by Indigenous men and women.



## Indigenous staff and outreach

Indigenous women interviewed for this study expressed a strong preference for dealing with Indigenous staff for discrimination education programs and when making complaints. They also identified a strong need for outreach through visits to communities.

Both the NSW and Commonwealth Ombudsman employ Indigenous officers to conduct Indigenous outreach programs and as complaint handlers, although in the case of the Commonwealth it is not clear whether this will be funded in future. The Commonwealth Ombudsman has two Indigenous officers to provide outreach and complaint handling throughout the whole of Australia, while the NSW Ombudsman has four designated positions.

### Recommendation:

24. That the Commonwealth Ombudsman's Office be funded to employ Indigenous complaints and outreach officers on an ongoing basis.

## 7.7 NSW and Australian Industrial Relations Commissions

### Statistics

Neither the NSW nor the federal IRC publishes statistics of the gender or ethnicity of individual applicants. Only arbitrated cases are available on the public record in both jurisdictions, and these represent only a small percentage of total cases. Thus there is no statistical information available about the complaints made to either commission by Indigenous women. Since the commissions may be the most appropriate complaints mechanism for some complaints about discrimination in employment, especially unfair dismissal, it is important that information is available about the numbers of Indigenous men and women who make applications to both commissions.

### Recommendation:

25. That the NSW and Commonwealth Industrial Relations Commissions collect and publish statistics on the number and nature of applications made by Indigenous men and women.

## Indigenous staff and outreach

Both industrial jurisdictions are based in part on the concept of collective bargaining, which means that individuals are often represented by unions or employer associations. The commissions themselves do not have outreach programs.

The NSW Department of Industrial Relations has a public enquiry service for both employees and employers about award entitlements. It also inspects workplaces for award compliance. In March 1999 the department established an Indigenous workplace services unit. This unit provides information to Indigenous people about awards and conducts workshops on employment issues for Indigenous organisations if requested to do so.

The Commonwealth Department of Employment, Workplace Relations and Small Business has an award information and inspection service, but does not advertise specific services in this area for Indigenous people. The Office of the Employee Advocate provides information about individual workplace agreements but does not have any specific services for Indigenous people.

### Recommendation:

26. That the Commonwealth Department of Employment, Workplace Relations and Small Business establish an Indigenous unit to provide information to Indigenous people.

## 7.8 Administrative Decisions Tribunal

### Indigenous tribunal members

Some of the women consulted for the project said they found aspects of “white man’s” bureaucracy and law alienating, inappropriate and lacking an understanding of Indigenous women’s perspectives and experiences. They were sometimes reticent to complain to a non-Indigenous organisation about issues of race. As mentioned, many said they felt more comfortable and understood by Indigenous officers.

Indigenous people are under-represented as members of tribunals due to historic and continuing discrimination and disadvantage. Tribunal members bring a variety of perspectives and expertise to the task of hearing and deciding discrimination matters. In order to ensure a tribunal that has the relevant skills and expertise to hear Indigenous women on issues of discrimination, and that the tribunal reflect the composition of the community, there is a need for active steps to increase the number of Indigenous tribunal members.

#### Recommendation:

27. That the ADT take active steps to increase the number of Indigenous tribunal members hearing discrimination matters.

## 7.9 Federal Court and Federal Magistrates Service

### Lodgement fees

In order to pursue a discrimination matter in the Federal Court and FMS, a \$50 lodgement fee is required, though this can be waived. To ensure that this jurisdiction is accessible to people who may be economically disadvantaged, the fee waiver policy should be widely advertised, including by staff servicing phone inquiries and on the Federal Court/FMS web site.

#### Recommendation:

28. That the Federal Court/FMS promote its policy on waiver of fees for people on low incomes lodging discrimination claims.

### Costs

Some of the women interviewed for the project commented that if the process involved any costs at all, such as for advice, representation or lodging fees, they would not be in a position to access it. Both of the HREOC complainants mentioned the possibility of having to pay the costs of the other party as a factor in their decision not to proceed to the federal court, either for decision or for appeal.

The risk of an adverse costs order, no matter how small that risk may be, means that many disadvantaged people, including Indigenous women, will not proceed to the hearing stage of a complaint. A ‘no costs’ jurisdiction for discrimination matters (where each party pays their own legal costs regardless of which party succeeds) would be consistent with the objective of providing an accessible avenue of redress. While complainants would still have to cover the cost of their own legal representation (unless they were granted Legal Aid or could secure pro bono services), they would at least not have the additional costs risk to deter them from enforcing their rights.

Providing a ‘no cost’ jurisdiction in the FMS would provide complainants with a choice of jurisdictions, one a cost jurisdiction (the Federal Court) and the other a no cost jurisdiction (the FMS).



**Recommendation:**

29. That the Federal Government legislate to make the FMS a 'no-cost' jurisdiction for discrimination matters.

**Indigenous judges and magistrates**

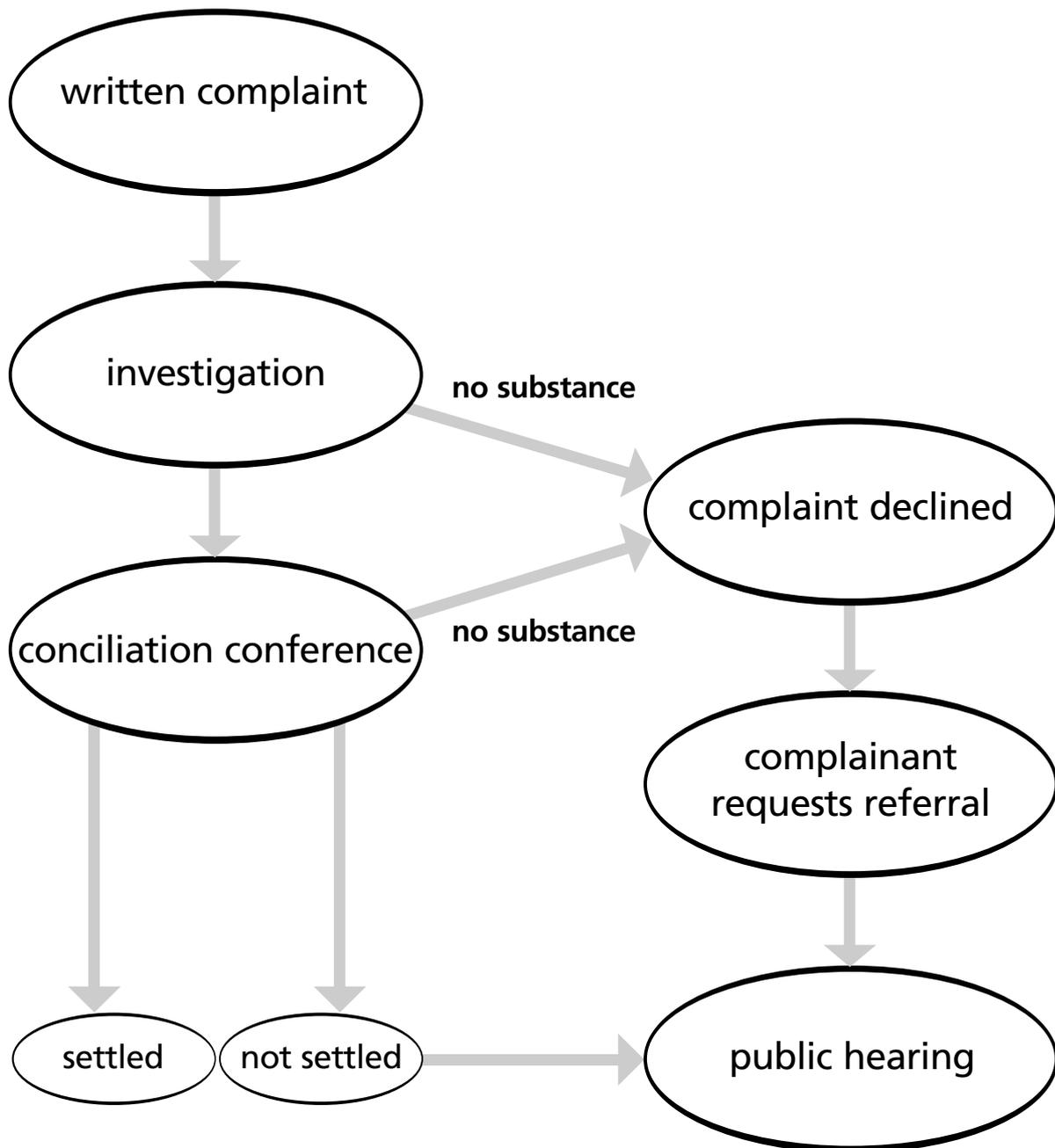
Indigenous people are under-represented on the bench due to historic and continuing discrimination and disadvantage. Judges and magistrates bring a variety of perspectives and expertise to the task of hearing and deciding discrimination matters. To ensure a bench that has the relevant skills and expertise to hear Indigenous women on issues of discrimination, and that the courts reflect the composition of the community, there is a need for Indigenous judges and magistrates to be represented on the bench in the Federal Court and FMS.

**Recommendation:**

30. That the Federal Court and FMS take active steps to increase the number of Indigenous judges and magistrates sitting on the bench hearing discrimination matters.

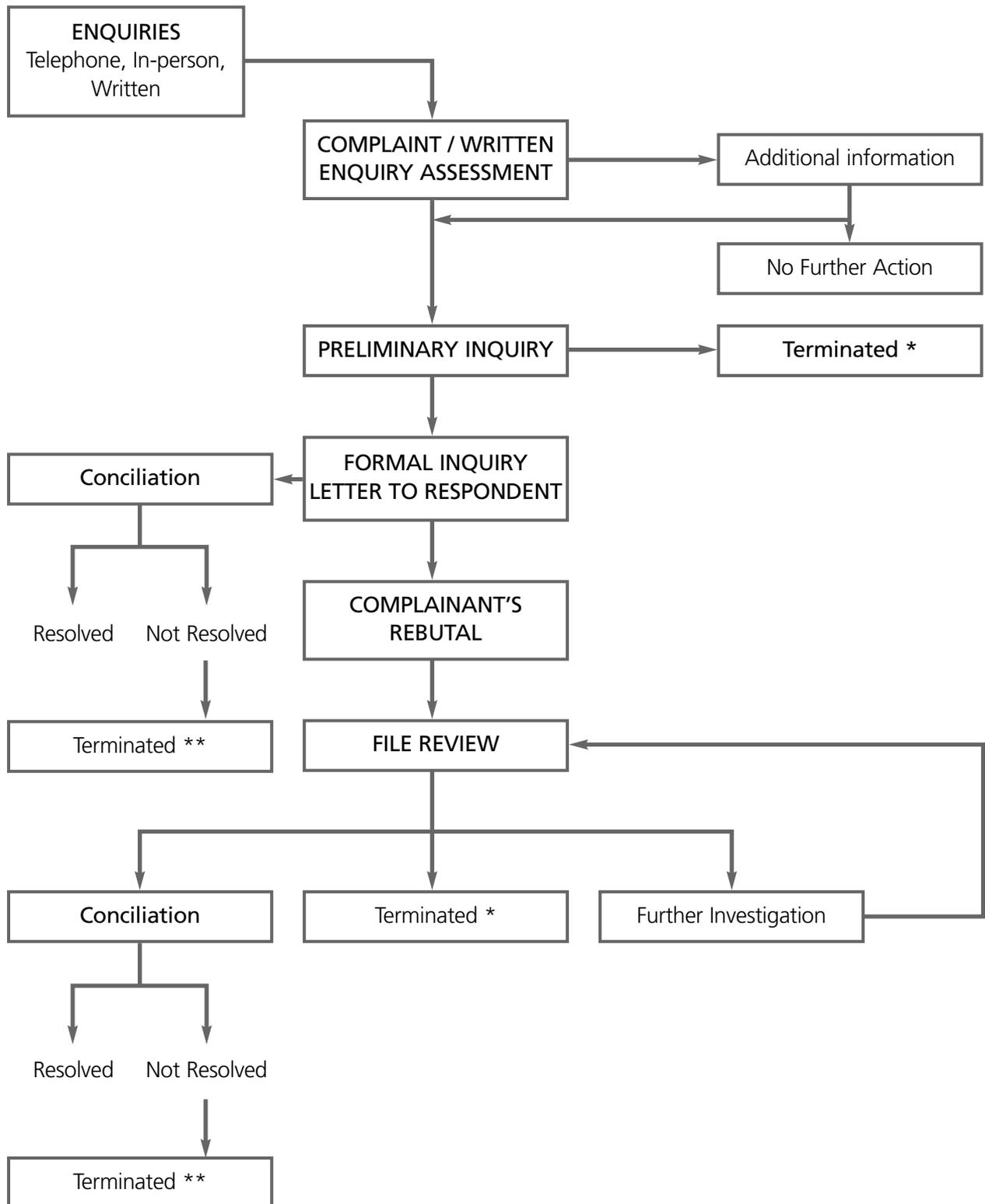
# Appendix I

## ADB complaint handling process



# Appendix 2

## HREOC complaint handling process



## Notes relating to the HREOC complaint handling process diagram

- \* Where a complaint alleging unlawful discrimination is terminated, the complainant may take the matter to the Federal Court or Federal Magistrates Service for the court to hear the original allegation (s). Complaints under the *Human Rights and Equal Opportunity Commission Act 1986* alleging a breach of human rights or discrimination in employment are declined rather than terminated and there is no right of access to the Federal Court or Federal Magistrates Service in relation to these matters.
- \*\* Where a complaint under the *Human Rights and Equal Opportunity Commission Act 1986* alleging a breach of human rights or discrimination in employment cannot be resolved by conciliation and the President is satisfied that there has been a breach of human rights or an act of discrimination, the President's findings are reported to the Attorney-General for tabling the parliament.



# Appendix 3

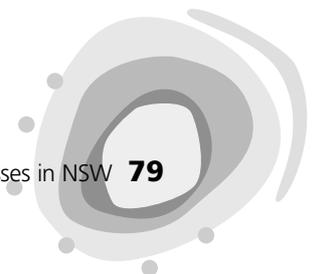
## Focus group questions

- (1) What do you think discrimination is?
- (2) Have you experienced discrimination? Give examples.
- (3) What did you do, how did you respond?
- (4) Are there laws against discrimination?
- (5) Are there organisations that you can complain to? Which ones?
- (6) Where would you go if you wanted help with discrimination?
- (7) Have you complained about discrimination?
- (8) If you complained:
  - a) Which organisation or person did you complain to?
  - b) How did you find them?
  - c) What happened?
  - d) How did you find the process?
  - e) How did you find the outcome?
  - f) Were there any problems?
  - g) What would have made it easier?
- (9) If you did not complain:
  - a) Why not?
  - b) What stopped you?
  - c) Were there any problems?
  - d) What would have made it easier to complain?
- (10) Have you heard about the Anti-Discrimination Board?
- (11) Have you heard about the Human Rights and Equal Opportunity Commission?
- (12) What do they do?
- (13) Have you ever contacted the Anti-Discrimination Board or Human Rights and Equal Opportunity Commission? Why? Why not?
- (14) Have you ever complained to the Anti-Discrimination Board or Human Rights and Equal Opportunity Commission? Repeat questions (9) and (10).
- (15) Have you heard about the Ombudsman?
- (16) Have you heard about the Industrial Relations Commission?
- (17) What do they do? Can they help with discrimination?
- (18) Have you ever contacted them? Why? Why not?
- (19) Have you ever complained to the Ombudsman/Industrial Relations Commission? Repeat questions (9) and (10).

# Appendix 4

## Interview Questions for women who had complained to the ADB or HREOC

- (1) What was your complaint to the ADB/HREOC about?
- (2) What made you decide to complain?
- (3) How did you know about the ADB/HREOC?
- (4) Did you know there were other places you could complain to? If yes, why did you choose the ADB/HREOC? Have you heard of HREOC/ADB?
- (5) What was your first contact with the ADB (eg. phone call, letter)? How was it?
- (4) Did you speak to an indigenous officer? Was this offered? Would you have wanted to speak to an Indigenous office? Would it have made a difference?
- (7) What happened following first contact? Did the ADB/HREOC send you a letter/form/information? Did you understand it? Did it help?
- (8) Did you put your complaint in writing? Did someone help you? Were there any problems?
- (9) What happened next? Did you get a letter from the ADB confirming that they had received your complaint? What else did it say? What was the next step?
- (10) Was there a conciliation?
- (11) If there was a conciliation:
  - a) What happened/how did it go?
  - b) Did someone help you through the conciliation? Who? Were they helpful? If you didn't have anyone, would having someone have helped?
  - c) Were you happy with the process?
  - d) Was the conciliator fair to both sides?
  - d) Was the conciliator the same person all the way through?
  - e) What was the result and were you happy with it?
  - f) Did the other side do what was promised?
- (12) If there was no conciliation, why not?
- (13) How long did the whole ADB/HREOC process take? Were you happy with this? Did it cause any problems?
- (14) Overall, did making the complaint help the situation?
- (15) If you could change the ADB/HREOC process, how would you do it?
- (15) Would you recommend complaining to the ADB to anyone else?
- (16) Is there anything else you would like to tell us about the complaint or complaints process



# Appendix 5

## Contact Information

### **Public Interest Advocacy Centre**

Level 1, 46-48 York Street, Sydney NSW 2000

Phone: (02) 9299 7833

Fax: (02) 9299 7855

Website: [www.piac.asn.au](http://www.piac.asn.au)

### **Wirringa Baiya Aboriginal Women's Legal Centre**

Cnr Livingstone/Marrickville Roads, Marrickville NSW 2204

PO Box 785, Marrickville 1475

Phone: (02) 9569 3847

Toll free: 1800 686 587

Fax: (02) 9569 4210

### **New South Wales Anti-Discrimination Board**

Level 17, 201 Elizabeth Street, Sydney NSW 2000

PO Box A2122, Sydney South NSW 1235

Phone: (02) 9268 5555

Toll free: 1800 670 812 (within NSW)

TTY: (02) 9268 5522

Fax: (02) 9268 5500

Website: [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb)

### **Human Rights & Equal Opportunity Commission**

Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney NSW 2000

GPO Box 5218, Sydney NSW 1042

Phone: (02) 9284 9600

Complaints Infoline: 1300 656 419

General enquiries/publications: 1300 369 711

TTY: 1800 620 241

Fax: (02) 9284 9611

Website: [www.hreoc.gov.au](http://www.hreoc.gov.au)

## **NSW Ombudsman**

Level 24, 580 George Street, Sydney NSW 2000

Phone: 02 9286 1000

Toll free: 1800 451 524

TTY: 02 9264 8050

Fax: 02 9283 2911

Website: [www.nswombudsman.nsw.gov.au](http://www.nswombudsman.nsw.gov.au)

## **Commonwealth Ombudsman**

(National Office) Level 6, 1 Farrell Place, Canberra City 2600

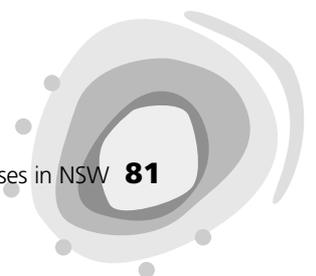
GPO Box 442, Canberra 2601

Phone: (02) 6276 0111

Cost of a local call, Australia-wide: 1300 362 072

Fax: (02) 6249 7829

Website: [www.comb.gov.au](http://www.comb.gov.au)



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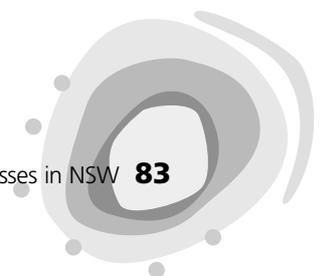
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Language Varieties website, University of New England:

[www.une.edu.au/langnet/aboriginal.htm](http://www.une.edu.au/langnet/aboriginal.htm)