

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN HUMAN RIGHTS COMMISSION

Question No. 4

Senator Brandis asked the following question at the hearing on 18 October 2011:

Senator BRANDIS: ...I want to ask you a couple of questions arising from the interest in section 18C of the Racial Discrimination Act, which has been provoked by the decision in the Andrew Bolt case. How many complaints under section 18C of the Racial Discrimination Act is the commission currently seized of?

Ms Branson: I would have to take that on notice. I cannot say.

Senator BRANDIS: Please do. Are you able to tell us roughly? Are there any? Are there several? Are there many?

Ms Branson: I would be surprised to find that there were many but I am not certain.

Senator BRANDIS: Let me set out a series of questions which I would like you to take on notice. I would like to know: how many complaints under section 18C of the Racial Discrimination Act the commission is currently seized of; how many complaints under section 18C have been made to the commission in each year since section 18C came into operation in 1996; and in brief how were those complaints disposed of? I assume you have a process whereby complaints assessed as unmeritorious or slender complaints are not taken any further or where more serious complaints are investigated which, after investigation, suggest to the decision maker that they ought to be pursued and are the subject of some process of conciliation or ultimately action by the commission. Can you tell us of the disposal of, and what happened to, each of the complaints in each year under section 18C?

Ms Branson: Just to clarify, our paths are conciliatory only.

Senator BRANDIS: There is no other action you can take other than to conciliate, is there?

Ms Branson: No.

The answer to the honourable senator's question is as follows:

As of 18 October 2011 the Commission had 27 open complaints which raise racial hatred as the ground, or a ground of complaint.

Please see attached a table detailing complaints received under section 18C of the *Racial Discrimination Act, 1975 (Cth) (RDA)* for each year since commencement of the provision on 13 October 1995. It is noted that during this 16 year period there have been changes to the Commission's data recording and reporting practices. However, we have attempted to provide comparative figures across the period.

The attached table also includes information on outcomes of complaints received under section 18C of the RDA each year since the commencement of the provision on 13 October 1995. During this 16 year period there have been legislative changes which are reflected in the different outcome categories across the period.

Reporting year	95-96	96-97	97-98	98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11
Complaints received	63	186	94	82	75	118	50	34	45	57	79	51	72	50	166	121
Outcome of complaints received																
Conciliated	22%	20%	28%	16%	25%	13%	10%	14%	29%	31%	14%	18%	35%	20%	34%	33%
Withdrawn*	23%	45%	34%	21%	20%	10%	17%	17%	11%	28%	15%	18%	7%	22%	31%	21%
Terminated/declined (trivial, vexatious, misconceived or lacking in substance)	11%	14%	16%	31%	22%	31%	25%	30%	34%	31%	41%	2%	22%	31%	3%	8%
Terminated/declined** (other reason)	36%	1%	10%	7%	5%	12%	21%	14%	6%	3%	3%	2%	-	-	-	2%
Terminated (no reasonable prospect of settlement)***	-	-	-	7%	22%	30%	19%	22%	20%	-	24%	58%	33%	27%	25%	34%
Referred to hearing****	6%	13%	10%	14%	3%	-	-	-	-	-	-	-	-	-	-	-
Admin closure*****	2%	7%	2%	4%	3%	4%	8%	3%	-	7%	3%	2%	3%	-	7%	2%

* Includes complaints declined or terminated where the President is satisfied that the complainant does not wish to pursue the complaint.

** Includes complaints terminated on the ground that the President is satisfied that: the alleged discrimination is not unlawful discrimination; the complaint was lodged more than 12 months after the alleged act; another more appropriate remedy is available; or the complaint has already been adequately dealt with.

*** This termination ground was only available after the legislative changes arising from the *Human Rights Legislation Amendment Act (No.1) 1999* (Cth) came into effect on 13 April 2000.

**** This outcome was only available prior to the above mentioned legislative changes.

***** This includes complaints which were finalised because the complaint had already been lodged under State or Territory anti-discrimination law.