

The Auditor-General
Auditor-General Report No.24 2024–25
Performance Audit

Management of Complaints by the Australian Human Rights Commission

Australian Human Rights Commission

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ISSN 1036–7632 (Print)

ISSN 2203–0352 (Online)

ISBN 978-1-923405-05-9 (Print)

ISBN 978-1-923405-06-6 (Online)

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Canberra ACT
17 February 2025

Dear President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Australian Human Rights Commission. The report is titled *Management of Complaints by the Australian Human Rights Commission*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Dr Caralee McLiesh PSM
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out their duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Audit snapshot

Auditor-General Report No.24 2024–25

Management of Complaints by the Australian Human Rights Commission



Why did we do this audit?

- ▶ The effectiveness of the Australian Human Rights Commission's (AHRC) complaint handling is important to the ability of Australians to resolve complaints of breaches of human rights and unlawful discrimination without applying to Court. AHRC states its Investigation and Conciliation service is independent, free of charge and informal.
- ▶ This audit provides assurance to Parliament of the efficiency and effectiveness of AHRC's complaint handling.



What did we find?

- ▶ The AHRC's complaint handling is partly efficient and partly effective.
- ▶ The AHRC has designed its complaint handling arrangements to support effective management of complaints, except for the contractual arrangements for its complaints system and formalising a quality assurance framework.
- ▶ The timeliness of complaints handling has been declining. Resource efficiency improved over the four years up to and including 2021–22, a trend that did not continue in 2022–23 and 2023–24.
- ▶ Complaints handling is not demonstrably fully effective. The Commission has not met its key performance indicator for conciliating complaints in each of the three most recent years and a greater proportion of complaints are being terminated or discontinued.



Key facts

- ▶ Significant amendments were made to AHRC's legislative complaint handling framework through the *Human Rights Legislation Amendment Act 2017* in April 2017.
- ▶ Between July 2017 to June 2024, AHRC received 18,939 complaints and finalised 17,391 complaints.
- ▶ Complaints finalised increased from 2,028 in 2017–18 to 2,745 in 2023–24.
- ▶ The number of complaints finalised in more than 12 months has increased from 183 in 2018–19 to 939 in 2023–24.



What did we recommend?

- ▶ There were five recommendations to AHRC. These focussed on improving complaint handling arrangements, data integrity, the measurement of timeliness, its allocation of resources to its Investigation and Conciliation service, and its methodology for reporting satisfaction survey results.
- ▶ AHRC agreed or agreed in principle with all five recommendations.

2,745

complaints finalised in
2023–24.

72%

of those complaints finalised
within 12 months (target is 85%).

33%

of those complaints finalised were
conciliated (target is 40%).

Summary and recommendations

Background

1. The Australian Human Rights Commission (AHRC or the Commission) was established in December 1986 by the *Australian Human Rights Commission Act 1986* (AHRC Act). The AHRC is a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013*.
2. The Commission's key goal related to complaint handling set out in its Corporate Plan is 'improving enjoyment of human rights by all, supporting access to justice and remedies for people and communities whose rights are breached.'¹
3. AHRC's Investigation and Conciliation service (ICS) is responsible for delivery of complaint investigation and conciliation. ICS also operates two information services (the National Information Service and Respect@Work National Information Service) to provide information about AHRC's complaint handling function and respond to enquiries from the general public.

Rationale for undertaking the audit

4. AHRC is Australia's national human rights institution. The handling of complaints is central to its purpose, which is to ensure that Australians have access to effective, independent complaints handling and public inquiry processes on human rights and discrimination matters, and benefit from human rights education, advocacy, monitoring and compliance activities. The AHRC has reported that, in 2023–24, it received 2,708 complaints. This performance audit was conducted to provide independent assurance to the Parliament that AHRC's handling of complaints is efficient and effective .

Audit objective and criteria

5. The objective of this audit was to assess the efficiency and effectiveness of AHRC's handling of complaints.
6. To form a conclusion against the audit objective, the following high-level criteria were adopted:
 - Are AHRC's complaint handling arrangements designed in a way to support the effective management of complaints?
 - Is AHRC's handling of complaints efficient?
 - Is AHRC's handling of complaints effective?

Conclusion

7. The AHRC's handling of complaints is partly efficient and partly effective.
8. The AHRC has designed its complaint handling arrangements to support effective management of complaints with two exceptions. The two key shortcomings relate to it not having

1 Australian Human Rights Commission, *AHRC Corporate Plan 2023–24*, AHRC, August 2023, available from <https://humanrights.gov.au/our-work/commission-general/publications/corporate-plan-2023-2024> [accessed 14 November 2024].

conducted a recent procurement for, or having a contract in place for, an information technology system to assist with the management of complaints, and not having developed a formal approach to obtaining assurance over the handling of individual complaints.

9. The timeliness of complaints handling has been declining, with the Commission not meeting its performance indicator (consistent with its enabling legislation) to finalise 85 per cent of complaints within 12 months in 2023–24. A significant backlog has developed and, although the backlog has stabilised, it remains high. Resource efficiency improved over the four years up to and including 2021–22, a trend that did not continue in 2022–23 and 2023–24.

10. A lower proportion of complaints are being conciliated by the Commission, with the Commission not meeting its related performance indicator for the last three years. A greater proportion of complaints are being terminated or discontinued. Data on complainant and respondent satisfaction with the AHRC's complaint handling is not reliable.

Supporting findings

Complaint handling arrangements

11. Complaints mechanisms and processes are clear and accessible. (See paragraphs 2.2 to 2.13)

12. Suitable systems and processes are, in most respects, in place for complaints handling. From a random sample of 137 complaints examined by the ANAO, no systemic deviations from legislation or existing procedural guidance were identified. The main shortcomings relate to the AHRC not having appropriate contractual arrangements in place for its electronic complaints management system and the absence of a formalised quality assurance process. Since 2021, multiple reviews initiated at the request of the Australian Government to achieve savings have recommended changes to the complaints management system to improve operational efficiency. The recommended changes have not been made. (See paragraphs 2.14 to 2.52)

Complaint handling efficiency

13. AHRC has implemented systems and processes to capture input and output data which can be used to calculate basic measures of efficiency. There are issues with the reliability of complaints data that adversely affects the Commission's management of complaints handling and its performance reporting. (See paragraphs 3.2 to 3.15)

14. Complaints handling by AHRC is not timely.

- A significant backlog in complaints developed between the first quarter of 2019–20 and quarter 3 2021–22. With fewer complaints received in 2023–24 and some additional resources, the backlog has stabilised. It remains around double what it was prior to 2019–20.
- The proportion of complaints being finalised within 12 months (one of AHRC's performance measures, consistent with the Commission's enabling legislation) has been declining, with AHRC not achieving its target for 2023–24. Further, this performance measure is not focused on measuring performance from the perspective of parties to the complaint.

- Complaints identified as a priority by the AHRC are typically finalised more quickly than those not prioritised. Notwithstanding this, the duration of both standard and priority complaints has increased.
- Complaint handling delays are primarily a result of delays in an accepted complaint being allocated to a case officer (rather than delays in the first stage, between complaint receipt and acceptance, or in the final stage, progressing the complaint to finalisation). The increasing time taken to allocate matters to case officers has coincided with a decrease in the number of complaints conciliated and increase in the number of discontinued complaints. (See paragraphs 3.16 to 3.41)

15. AHRC has not established a target and does not measure the resource efficiency of its Investigation and Conciliation service. The efficiency of the Investigation and Conciliation service, measured both in terms of the direct cost per finalised complaint and ratio of complaints finalised per staff member, improved over the four years up to and including 2021–22. That trend did not continue in 2022–23 and 2023–24 as a result of fewer complaints being finalised and, for 2023–24, some additional resources being provided to stabilise the backlog in complaints.

16. AHRC has not prioritised resourcing ICS in line with demand for its complaints handling services. AHRC has not developed an activity-based costing model to demonstrate the effect of the demand driven complaints workload or inform its internal allocation of resources despite an earlier recommendation from consultants in August 2021. (See paragraphs 3.42 to 3.60)

Complaint handling effectiveness

17. It has become less likely for complaints to be conciliated and more likely for complaints to be discontinued, terminated or declined by the AHRC.

- An increasing number of complaints have been assessed as suitable for conciliation and an increasing number of conciliations have been held over the last seven financial years (reflecting the higher complaint numbers overall). The proportion of complaints recorded as resolved through conciliation has decreased from 46 per cent of complaints in 2017–18 to 33 per cent in 2023–24. The Commission did not meet its target of conciliating 40 per cent of complaints in 2021–22, 2022–23 or 2023–24, notwithstanding the additional resources provided through the October 2022 Budget.
- The proportion of complaints terminated, declined or discontinued has grown, increasing from 40 per cent of complaints finalised in 2017–18 to 58 per cent of complaints finalised in 2023–24. (See paragraphs 4.4 to 4.34)

18. The AHRC is not obtaining reliable data on the extent to which complainants and respondents are satisfied with its complaint handling process.

- Parties' measured level of satisfaction with Commission's complaint handling processes has been decreasing over time. Overall satisfaction decreased from 91 per cent in 2017–18 to 85 per cent in 2023–24.
- Respondents and their representatives report higher levels of overall satisfaction than complainants do with AHRC complaint handling processes. Respondents also report higher levels of agreement that Commission processes are timely and fair.

- The results of the surveys reported by the Commission are not demonstrably reliable and unbiased. Of note is that 61 per cent of participants were not sent the satisfaction survey over the seven years examined. Satisfaction surveys were most often sent to participants with conciliated (53 per cent of complainants and 51 per cent of respondents) and terminated or declined outcomes (53 per cent of complainants and 52 per cent of respondents). Complainants who withdraw their complaints or complainants whose complaints are discontinued by the AHRC were less likely to be surveyed. (See paragraphs 4.35 to 4.51)

Recommendations

Recommendation no. 1 The Australian Human Rights Commission strengthen its handling of complaints by:
Paragraph 2.50

- testing the market for an electronic complaints management system;
- establishing fit-for-purpose contractual arrangements for an electronic complaints management system; and
- establishing a formal process for quality assurance over the handling of individual complaints.

Australian Human Rights Commission response: *Agreed.*

Recommendation no. 2 The Australian Human Rights Commission improve the reliability and verifiability of its reported performance information by:
Paragraph 3.10

- documenting its methodology and data sources it uses to produce performance information;
- updating its guidance and practices to address data integrity, with a particular focus on updating guidance on deferrals and secondary matters; and
- establish processes to ensure quality assurance on reported performance information is undertaken and documented.

Australian Human Rights Commission response: *Agreed.*

Recommendation no. 3 The Australian Human Rights Commission improve its performance measures to include an explicit focus on the time it takes from the lodgement of the complaint until its finalisation.
Paragraph 3.26

Australian Human Rights Commission response: *Agreed.*

Recommendation no. 4 The Australian Human Rights Commission improve its management of complaint handling efficiency by developing an internal budget strategy that supports the delivery of its targets outlined in its Portfolio Budget Statement and Corporate Plan.
Paragraph 3.59

Australian Human Rights Commission response: *Agreed in principle.*

Recommendation no. 5 The Australian Human Rights Commission improve its approach to measuring complainant and respondent satisfaction with its complaint handling effectiveness by developing a methodology that obtains sufficient levels of reliable, representative feedback.

Paragraph 4.41

Australian Human Rights Commission response: *Agreed.*

Summary of entity response

19. The proposed audit report was provided to AHRC. The AHRC's summary response is reproduced below. The full response from the AHRC is at Appendix 1. Improvements observed by the ANAO during the course of this audit are listed at Appendix 2.

Providing people and organisations across Australia with a free, accessible and effective dispute resolution process for discrimination and human rights complaints is one of the Australian Human Rights Commission's key statutory functions. It is also a core component of the Commission's vision of an Australian society in which people's human rights are respected, promoted and protected.

The Commission welcomes the ANAO's report and agrees or agrees in principle with its five recommendations to improve our complaint handling function.

The Commission acknowledges that currently our complaint handling function is not timely. The COVID-19 pandemic generated an unprecedented rise in complaints. Complaint numbers have remained around 30% higher than pre-pandemic levels. This continues to adversely impact timeframes. Reducing these timeframes by ensuring the Commission's complaint function is appropriately resourced is a key priority.

Implementing the recommendations will also strengthen the Commission's collection and analysis of complaint performance information and public reporting.

The Commission acknowledges the professionalism, integrity and empathy of our staff who deliver our information and complaint handling services. They have supported thousands of Australians over the 7-year audit period to access justice on discrimination and the human rights issues affecting them.

Key messages from this audit for all Australian Government entities

20. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

Policy/program design

- Accountable authorities should align the allocation of resources with the priorities and targets set for the organisation in corporate planning documentation.

Procurement

- When key management systems are sourced under contract, the contract should be current. Periodic market testing is important for entities to meet their obligations under the Commonwealth Procurement Rules, including demonstrating value for money and the principle of open and effective competition.

Performance and impact measurement

- When assessing client satisfaction, it is important that the methodology employed provides results that are representative and reliable.

Audit findings

1. Background

Introduction

1.1 The Australian Human Rights Commission (AHRC or the Commission) was established in December 1986 by the *Australian Human Rights Commission Act 1986* (AHRC Act).² The AHRC is a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013*.³

1.2 The Commission's key goal related to complaint handling as set out in its 2023–24 Corporate Plan is 'improving enjoyment of human rights by all, supporting access to justice and remedies for people and communities whose rights are breached.'⁴

1.3 AHRC's Investigation and Conciliation service (ICS) is responsible for delivery of complaint investigation and conciliation.⁵ ICS also operates two information services (the National Information Service and Respect@Work National Information Service⁶) to provide information about AHRC's complaint handling function and respond to enquiries from the general public.

Complaint handling legislative framework

1.4 Under the AHRC Act, the core functions of AHRC include to inquire into and conciliate complaints of breaches of human rights, complaints of International Labour Organisation (ILO) discrimination in employment (also referred to as ILO complaints) and complaints of unlawful discrimination.⁷ Complaints of breaches of human rights are only relevant to acts or practices by or on behalf of the Commonwealth or an authority of the Commonwealth.

1.5 The key stages of the complaint handling process are set out at Appendix 3. There are differences in the legislative complaint handling framework for human rights and ILO discrimination in employment complaints compared to complaints of unlawful discrimination. For example, for a matter alleging unlawful discrimination to be accepted as a complaint by AHRC it must be 'reasonably arguable' that the alleged acts, omissions or practices are unlawful discrimination and the complainant must set out, as fully as practicable, the details of the alleged acts, omissions or

2 Between December 1986 and August 2009, the AHRC was known as the 'Human Rights and Equal Opportunity Commission'.

3 *Australian Human Rights Commission Act 1986*, subsection 7(2).

4 Australian Human Rights Commission, *AHRC Corporate Plan 2023–24*, AHRC, Sydney, August 2023, available from <https://humanrights.gov.au/our-work/commission-general/publications/corporate-plan-2023-2024> [accessed 14 November 2024].

5 AHRC states that conciliation is 'an informal, flexible approach to resolving complaints'. Matters can be settled by an exchange of letters, a telephone negotiation between AHRC and the people involved, a telephone conciliation conference or a face to face conference: AHRC, *Conciliation – how it works*, Sydney, n.d., available from <https://humanrights.gov.au/complaints/complaint-guides/conciliation-how-it-works> [accessed 25 August 2024].

6 The Respect@Work Information Service is a 'national, trauma-informed service' that provides information to individuals, employers and organisations on rights and responsibilities in relation to sexual harassment and sex-based discrimination in the workplace. This information service was launched in response to recommendation 50 of the Respect@Work report: AHRC, *The Commission's Information Services*, AHRC, Sydney, n.d., available from <https://humanrights.gov.au/our-work/complaint-information-service/make-enquiry> [accessed 29 August 2024].

7 *Australian Human Rights Commission Act 1986*, paragraphs 11(1)(f), 11(1)(aa) and 31(b).

practices.⁸ There is no similar threshold requirement for complaints of breaches of human rights and ILO discrimination in employment matters to be ‘reasonably arguable’ in order to be accepted by AHRC as a complaint.⁹

1.6 Outcomes of unsuccessful conciliation processes also differ. If an unlawful discrimination complaint is ‘terminated’ by the President, a complainant may then apply to the Federal Circuit and Family Court of Australia or Federal Court of Australia. Applications to the court must be made within 60 days of termination. If the court is satisfied that there has been unlawful discrimination, the court may make any orders as it thinks fit including an order requiring the respondent to pay an applicant damages by way of compensation for any loss or damage suffered because of the conduct of the respondent.¹⁰

1.7 There is no similar avenue in the courts for complaints of breaches of human rights and ILO discrimination in employment complaints if the President decides not to inquire, or not to continue to inquire, into a complaint. If the President is of the opinion that a breach of human rights or ILO discrimination in employment has occurred, the President may report the matter to the Attorney-General.¹¹

1.8 Substantive amendments were made to the legislative complaint handling framework for unlawful discrimination complaints through the *Human Rights Legislation Amendment Act 2017*, commencing in April 2017. Amendments to the AHRC Act were proposed following recommendations of an inquiry by the Parliamentary Joint Committee on Human Rights.¹² Changes to the AHRC Act as a result of the amending act included introduction of a threshold for acceptance of unlawful discrimination complaints (paragraph 1.5), requirements for AHRC to formally notify all respondents of complaints, powers for the President to terminate unmeritorious complaints without inquiry and introduction of a requirement for the AHRC to deal with complaints expeditiously and use its best endeavours to finish dealing with complaints within 12 months.

Demand for complaint handling services

1.9 Figure 1.1 below indicates that there has been an increase in complaints received by AHRC between July 2017 to June 2024 (an average increase of 4 per cent per year). There has been considerable year to year fluctuation in the number of complaints received. For example, this period includes two years of growth in demand for services in 2020–21 to 3153 complaints (a 35 per cent increase compared to the previous year) and 2021–22 to 3808 complaints (a 21 per cent increase compared to the previous year) and a decrease in 2022–23 to 2639 complaints (a 31 per cent decrease compared to the previous year).

8 *ibid.*, subsections 46P(1), 46P(1A) and 46P(1B).

9 Complaints must be in writing alleging that the act or practice is inconsistent with or contrary to any human right or, alleging that the act or practice constitutes discrimination: *ibid.*, paragraphs 20(1)(b) and 32(1)(b).

10 *ibid.*, subsections 46PO(1), 46PO(2) and 46PO(4).

11 *ibid.*, sections 20A and 32A. These reports are also made available on the AHRC’s website: AHRC, *Human Rights Reports*, AHRC, Sydney, 2022, available from <https://humanrights.gov.au/our-work/legal/projects/human-rights-reports> [accessed 3 October 2024].

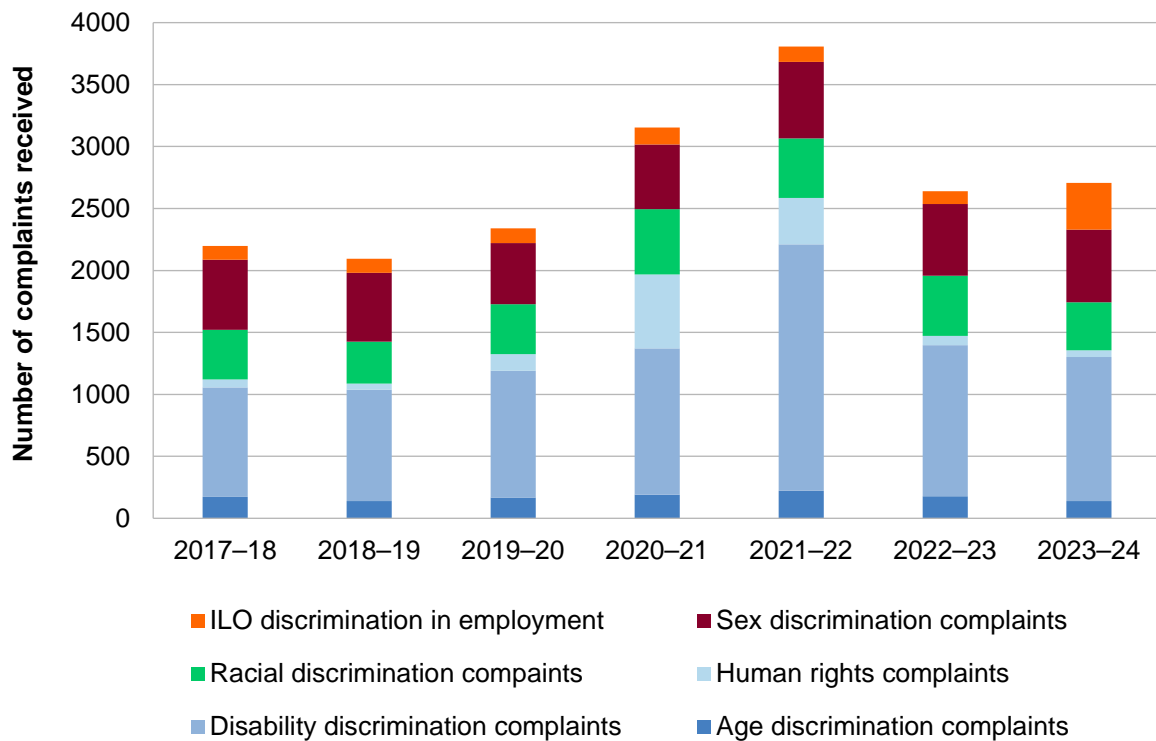
12 Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) and related procedures under the Australian Human Rights Commission Act 1986 (Cth)* (2017).

1.10 The highest number of complaints received for each financial year examined were made under the *Disability Discrimination Act 1992*, representing between 37 per cent and 52 per cent of complaints received. This is followed by complaints received under the *Sex Discrimination Act 1984* (representing between 16 to 27 per cent of complaints) and *Racial Discrimination Act 1975* (representing between 13 to 18 per cent of complaints received).

1.11 The number of complaints of breaches of human rights fluctuated over the time period examined from a low of 49 complaints in 2018–19 (two per cent of complaints received) to a high of 596 complaints in 2020–21 (19 per cent of complaints received). AHRC has attributed the high number of disability discrimination and human rights complaints received in 2020–21 as relating to ‘international travel restrictions and COVID-19 related measures such as mandatory mask wearing and vaccinations ...’¹³

1.12 ILO discrimination in employment complaints remained steady over the time period examined, with the exception of 2023–24. Between July 2017 to June 2023, ILO discrimination in employment complaints represented between three to five per cent of complaints received. In 2023–24, AHRC received 378 ILO discrimination in employment complaints, representing a total of 14 per cent complaints received in the financial year.

Figure 1.1: AHRC complaints received by Act, July 2017 to June 2024



Note: The number of complaints received generated by ANAO analysis is not consistent with AHRC public reporting. Further information regarding AHRC data reliability is discussed at paragraph 3.4 to 3.12.

Source: ANAO analysis of AHRC complaints data.

13 AHRC, *2020–21 Australian Human Rights Commission Annual Report*, AHRC, Sydney, February 2022, p. 83, available from <https://humanrights.gov.au/our-work/commission-general/publications/annual-report-2020-2021> [accessed 14 November 2024].

Resourcing

1.13 Table 1.1 sets out the AHRC's resourcing, staffing levels and expenses from July 2017 to June 2024. In 2023–24, AHRC received \$31.3 million in direct appropriation funding and \$10.3 million from revenue from contracts with customers. AHRC's average staffing level (headcount) as at 30 June 2024 was 219. The total expenses were \$41.6 million.

Table 1.1: Inputs — Funding and staffing, 2017–18 to 2023–24

Year	Appropriations ^a (\$)	Revenue from contracts with customers ^b (\$)	Total revenue ^c (\$)	Average staffing level ^d	Total expenses ^e (\$)
2017–18	14,391	6,922	22,605	149	24,945
2018–19	16,709	8,683	26,776	143	27,994
2019–20	16,538	5,408	23,184	145	28,959
2020–21	16,515	7,126	24,628	184	31,692
2021–22	21,646	7,054	28,751	143	29,761
2022–23	26,549	10,969	38,059	197	32,439
2023–24	31,315	10,345	43,042	219	41,647

Note a: Departmental appropriations for the year recognised as revenue from Government when the AHRC gains control of the appropriation, as per the Statement of Comprehensive Income included in the financial statements in the AHRC annual report.

Note b: Revenue from contracts with customers, as per the Statement of Comprehensive Income included in the financial statements in the AHRC annual report. For example, AHRC accepted external sponsorship money for its Wiyi Yani U Thangani Stage 3 from Rio Tinto (\$1.3m), Paul Ramsay Foundation (\$546,000), Westpac (\$50,000), Telstra (\$25,000), PWC Indigenous Consulting (\$25,000) and Fred Hollows Foundation (\$12,000).

Note c: Total revenue as per the Statement of Comprehensive Income included in the financial statements in the AHRC annual report. The main sources of income not included in appropriation funding and revenue from contracts with customers comprises interest on deposits.

Note d: Average staffing level as at 30 June as per AHRC annual reports.

Note e: Total expenses, as per AHRC Statement of Comprehensive Income.

Source: ANAO analysis of AHRC information.

1.14 Table 1.1 also indicates that AHRC had operating losses for five of the seven financial years examined. In the audit of AHRC's 2020–21 Financial Statements, the Auditor-General's opinion set out an emphasis of matter. The matter constituted a significant ('A') audit finding in the closing letter, which was raised through the 2020–21 financial statements audit process. The finding related to weaknesses observed in the design and effectiveness of key financial management and budgetary controls.¹⁴ The finding was resolved in 2021–22.¹⁵

14 Auditor-General Report No.14 2021–22, *Audits of the Financial Statements of Australian Government Entities for the Period ended 30 June 2021*, ANAO, Canberra, 2021, para. 4.2.53, available from <https://www.anao.gov.au/work/financial-statement-audit/audits-the-financial-statements-australian-government-entities-the-period-ended-30-june-2021>.

15 Auditor-General Report No.8 2022–23, *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2022*, ANAO, Canberra, 2022, para. 4.2.54, available from <https://www.anao.gov.au/work/financial-statement-audit/audits-the-financial-statements-australian-government-entities-the-period-ended-30-june-2022>.

Rationale for undertaking the audit

1.15 AHRC is Australia’s national human rights institution. The handling of complaints is central to its purpose, which is to ensure that Australians have access to effective, independent complaints handling and public inquiry processes on human rights and discrimination matters, and benefit from human rights education, advocacy, monitoring and compliance activities. The AHRC has reported that, in 2023–24, it received 2,708 complaints. This performance audit was conducted to provide independent assurance to the Parliament that AHRC’s handling of complaints is efficient and effective.

Audit approach

Audit objective, criteria and scope

1.16 The objective of this audit was to assess the efficiency and effectiveness of AHRC’s handling of complaints.

1.17 To form a conclusion against the audit objective, the following high-level criteria were adopted:

- Are AHRC’s complaint handling arrangements designed in a way to support the effective management of complaints?
- Is AHRC’s handling of complaints efficient?
- Is AHRC’s handling of complaints effective?

1.18 The audit scope included examination of complaints handling between July 2017 and June 2024 following the enactment of the *Human Rights Legislation Amendment Act 2017*.

Audit methodology

1.19 This audit referenced ANAO’s methodology for auditing efficiency, ANAO’s Methodology Guidance: Audits of Efficiency, which is based on a general model for assessing public sector performance. Efficiency is defined as ‘the performance principle relating to the minimisation of inputs employed to deliver the intended outputs in terms of quality, quantity and timing.’¹⁶

1.20 Specific audit procedures undertaken included:

- assessing AHRC’s complaints management approach against the Commonwealth Ombudsman’s *Better Practice Complaint Handling Guide*¹⁷;
- examining AHRC and Attorney-General’s Departments records;
- meetings with AHRC staff;

16 This definition is provided in the *Standard on Assurance Engagements ASAE 3500 Performance Engagements* issued by the Auditing and Assurance Standards Board, applied by the ANAO in its performance audit work.

17 In assessing AHRC’s complaint handling system design, the ANAO referenced the better practice guidance published in February 2023: Office of the Commonwealth Ombudsman (Commonwealth Ombudsman), *Better Practice Complaint Handling Guide*, Commonwealth Ombudsman, February 2023, available from <https://www.ombudsman.gov.au/publications-resources-and-faqs?form=simple&profile=default&query=%21showall&collection=comomb-publications&f.Tab%7CFUN7lh9eghnqfzocchoegs0qpg=Better+practice+guides> [accessed 16 November 2024].

- examining the management of a sample of complaints¹⁸;
- analysis of AHRC complaints, financial and staffing data; and
- reviewing contributions made through the audit contribution facility on the ANAO website.

1.21 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$586,694.

1.22 The team members for this audit were Jocelyn Watts, Joshua Carruthers, Amita Robinson, Katarina Ivanovic-Likic, Dale Todd, Nathan Daley and Brian Boyd.

¹⁸ Complaints were randomly selected from a population of 12,838 complaints finalised between 1 July 2019 to 30 March 2024. One hundred and thirty seven complaints were examined in detail.

2. Complaint handling arrangements

Areas examined

The ANAO examined whether the Australian Human Rights Commission's (AHRC or the Commission) complaint handling arrangements are designed to support the effective management of complaints.

Conclusion

The AHRC has designed its complaint handling arrangements to support effective management of complaints with two exceptions. The two key shortcomings relate to it not having conducted a recent procurement for, or having a contract in place for, an information technology system to assist with the management of complaints, and not having developed a formal approach to obtaining assurance over the handling of individual complaints.

Areas for improvement

The ANAO made one recommendation aimed at strengthening the AHRC's complaint handling arrangements and one suggestion for improvement to its satisfaction survey aimed at gathering additional feedback from users on the design of its complaint handling system.

2.1 According to the Office of the Commonwealth Ombudsman's (Commonwealth Ombudsman) *Better Practice Complaint Handling Guide*, a complaint handling system should 'be user-centred, simple to access and easy to use'. The Guide advises organisations to publish 'clear information about how to submit complaints and your complaints process in multiple formats ...'¹⁹

Are complaint mechanisms and processes made clear and accessible?

Complaints mechanisms and processes are clear and accessible.

Methods of making complaints

2.2 The *Australian Human Rights Commission Act 1986* (AHRC Act) states that all complaints lodged must be in writing,²⁰ though the format of the written complaint is not prescribed. Complaints to the AHRC can be made through multiple channels including online via a webform; email or written letter; a downloadable form, which then can be submitted electronically (email or fax) or by post; and a hardcopy form can be requested by contacting the Commission's National Information Service (NIS).

2.3 The AHRC has a social media presence with accounts on Facebook, YouTube, Instagram and X (formerly Twitter), which are used to communicate its current work and campaigns, upcoming events, Commissioner appointments and international events related to human rights. These channels are not promoted as avenues for directly lodging complaints due to privacy considerations,

¹⁹ Commonwealth Ombudsman, *Better Practice Complaint Handling Guide*, pp. 11–13.

²⁰ *Australian Human Rights Commission Act 1986*, paragraphs 20(1)(b), 32(1)(b) and subsection 46P(1).

such as users divulging personal details on a public forum.²¹ There are contact details directing users back to the AHRC website, or email communication. AHRC advised ANAO in August 2024 that people who contact the Commission via the Facebook Messenger app receive an autoreply that directs the user to the AHRC's enquiry services.

2.4 The Commission has a 'no wrong door policy'²² for complaints. One of the roles of the Commission is to provide users with information they can use to make informed decisions about the complaint-handling body that can best assist them. The Commission's information services may refer individuals to other agencies before they submit a complaint. There are provisions in the AHRC Act that enable the transfer of complaints to other agencies such as the Office of the Information Commissioner, Fair Work Commission and Remuneration Tribunal.²³ The AHRC advised the ANAO in January 2025 that in 'general we transfer matters very rarely in absence of an express request to do so by the complainant.'

Clear and sufficient information

2.5 Consistent with best practice guidance from the Commonwealth Ombudsman, the AHRC complaints page is directly accessible from the homepage via a visible 'complaints' box at the top of the page within the menu ribbon. This is fixed on the website, meaning that the complaints link is always available, regardless of how many subsequent pages the user may visit on the Commission's website.²⁴

2.6 The complaints page has prominent links (identified by text and universal icons)²⁵ to information about each unlawful discrimination complaint area administered by the Commission. Each individual page provides information about the area of discrimination AHRC deals with, its application (including exceptions) and provides options for the complainant if they experience discrimination. While information relating to complaints of breaches of human rights and International Labour Organisation (ILO) discrimination in employment complaints is also available on AHRC's website, it is less immediately accessible, being more than two clicks away from the homepage. It is not intuitive to find as it is not directly returned in a keyword search. The AHRC advised the ANAO in November 2024 that 'the Commission has noted this observation and will improve ease of access to these information sheets.'

2.7 The AHRC's website provides information on what complainants should include in their complaint. The structure of the complaint forms ensures that complainants will include all necessary

21 This would not be consistent with the confidentiality of the conciliation process. There are several provisions in the AHRC Act that emphasise the confidentiality of information disclosed while a matter is before the Commission. See for example subsection 46PK(2) and section 46PKA of *Australian Human Rights Commission Act 1986*.

22 'No wrong door' is a concept that acknowledges it can be hard for people to know where they should direct their complaint. Agencies should work collaboratively to help people find the right complaint pathway and avoid people getting stuck, frustrated or lost on a referral roundabout: Commonwealth Ombudsman, *Better Practice Complaint Handling Guide*, p. 40.

23 For example: *Australian Human Rights Commission Act 1986*, subsections 11(3), 20(4A), sections 46PW, 46PX and 46PY.

24 Commonwealth Ombudsman, *Better Practice Complaint Handling Guide*, p. 13.

25 This use of visuals is recommended practice and increases accessibility for those users who have a visual impairment, disability, or language/literacy difficulties. Refer to: Auditor-General Report No.5 2020–21, *Responding to complaints from people with impaired capacity – Part 1: The Public Trustee of Queensland*, Queensland Audit Office, Brisbane, 2020, pp. 11–12.

information to support their claims. Additional contact is made by the NIS with complainants during the triage phase if further information is required to support an assessment of a complaint.

2.8 The Commission primarily relies on the website as the main way of providing information about the complaints process.

- Online fact sheets provide details about the investigation and conciliation process for unlawful discrimination complaints and for human rights and ILO discrimination in employment complaints. The online fact sheets have been translated into sixty-three languages. There is also an Auslan presentation for complainants who may have hearing impairment/incapacity.
- A video entitled 'Pathways to Resolution' provides an overview of the complaint process, the role of the conciliator, preparation advice for all parties to conciliation, and a case study example of a conciliation conference.
- A conciliation register is available to parties setting out case studies of alleged discrimination and remedies agreed through the AHRC's conciliation processes.

2.9 Information on the website also includes information for the next steps in the complaint process should the parties not be satisfied with the outcome of the complaint resolution. This information is available on the complaints section of the AHRC website. Parties can also provide feedback, raise issues or concerns about their experiences with the Commission and lodge a complaint in relation to service they receive through the AHRC Charter of Service. The AHRC advised the ANAO in July 2024 that 'since July 2017 the Commission has received a small number of formal complaints under the Charter of Service'.

Simple and easy to use

2.10 The AHRC website has a portal on the website inviting feedback in relation to accessibility of the website. Users are invited to submit feedback to the Commission if they experience problems with using the site or wish to provide comments regarding the accessibility of the site.²⁶ The Commission (through its satisfaction survey)²⁷ collects data on whether Commission staff explained things in a way that were easy to understand and whether letters or other written information from the Commission were easy to understand.

- Ninety-two per cent of survey participants between July 2017 and June 2024 agreed with the statement 'Commission's explanation was easy to understand'; and
- Ninety-one per cent of survey participants between July 2017 and June 2024 agreed with the statement 'Commission's letters were easy to understand.'

26 AHRC, *Accessibility*, AHRC, Sydney, n.d., available at <https://humanrights.gov.au/our-work/commission-general/accessibility> [accessed 9 October 2024].

27 The AHRC's collection of data through its satisfaction survey is further discussed at paragraphs 4.35 to 4.51 and Appendix 6.

Opportunity for improvement

2.11 AHRC may benefit from collecting additional feedback from users of its complaint process in the satisfaction survey about whether online materials are clear and sufficient and user feedback on areas for improvement for its online information.

Accessibility of complaint processes

2.12 Accessibility requires reducing barriers to access. Barriers may include time and effort involved, complainant ‘fatigue’, known barriers such as those relating to disability, cultural and financial hardship, and emerging barriers such as COVID-19 related accessibility issues.²⁸

2.13 The AHRC Act contains some practical limitations to the accessibility of AHRC’s complaint processes.

- The requirement for a complaint to be in writing may be one such barrier. This is addressed in the AHRC Act,²⁹ whereby the Commission has an obligation to provide reasonable assistance for persons who require assistance to formulate their complaint or reduce it to writing. Assistance to write down the complaint is available by contacting the NIS.
- The AHRC Act limits the extent to which anonymous complaints may be accepted as the Commission is required to ensure that ‘interested persons are sufficiently informed of the results of the Commission’s examination or inquiry’.³⁰ Other practical limitations with anonymous complaints include obtaining sufficient information to effectively action the complaint and/or difficulties in providing a remedy or resolution for the complainant.

Are suitable systems and processes for handling complaints in place?

Suitable systems and processes are, in most respects, in place for complaints handling. From a random sample of 137 complaints examined by the ANAO, no systemic deviations from legislation or existing procedural guidance were identified. The main shortcomings relate to the AHRC not having appropriate contractual arrangements in place for its electronic complaints management system and the absence of a formalised quality assurance process. Since 2021, multiple reviews initiated at the request of the Australian Government to achieve savings have recommended changes to the complaints management system to improve operational efficiency. The recommended changes have not been made.

2.14 The Ombudsman’s *Better Practice Complaint Handling Guide* sets out that effectively designed complaints systems will ‘handle complaints in a way that is proportionate and appropriate to the nature of the complaints...’ A complaint system includes policies, procedures, officers and resources an agency deploys to manage complaints.³¹

28 Commonwealth Ombudsman, *Better Practice Complaint Handling Guide*, pp. 12–13.

29 See *Australian Human Rights Commission Act 1986*, subsection 20(5), section 33 and subsection 46P(4).

30 *ibid.*, subsection 14(6).

31 Commonwealth Ombudsman, *Better Practice Complaints Handling Guide*, pp. 37–38.

Delegations

2.15 Under the AHRC Act, complaint handling functions of the AHRC are performed by the President.³² The President:

- cannot delegate powers related to handling of unlawful discrimination complaints to another member of the Commission; and
- cannot delegate their complaint handling functions relating to breaches of human rights or equal opportunity to any other member of the Commission, except the Human Rights Commissioner.³³

2.16 To enable officers of the Investigation and Conciliation service (ICS) to lawfully undertake the complaint handling functions, the President is required to delegate powers and functions under the AHRC Act. Between 1 July 2017 to 30 June 2024, there were four instruments of delegation in place made by the President to members of ICS.

Policies, procedures and guidance

2.17 A complaint procedure manual is available to case officers in its records management system. AHRC advised the ANAO in September 2024 that the manual ‘was not in active use’ and ‘did not get amended to reflect the 2017 AHRC amendments ...’. This advice is consistent with the finding of a 2018 internal audit of complaints management which set out that an ongoing challenge was ensuring that the knowledge base in the manual was accessed, utilised and kept current. It recommended that ICS consider using a ‘wiki-based’ approach and distribute responsibility for the manual content to senior ICS staff. This recommendation was agreed to and not implemented.

2.18 AHRC advised its audit committee in March 2020 that the ‘wiki based approach not adopted’ and instead the procedure manual will ‘be placed on resolve in discrete chapters to all for easier access and much more simple updating.’ From February 2020, AHRC implemented practice guidelines³⁴ to assist the case officers to meet legislative complaint handling obligations. These include Conciliation Agreement Guidelines (finalised in February 2020 and updated in July 2023), Conciliation Practice Guidelines (finalised in November 2020), Statutory Investigation Practice Guidelines (finalised in July 2022) and Assessment Guidelines (finalised in June 2023). AHRC advised the ANAO in January 2025 that ‘there is one remaining ‘chapter’ – complaint finalisation – which is outstanding’.

2.19 Other user guidance is available to case officers. For example, a Resolve User Guide provides step by step instructions on how enquiries and complaints should be recorded in the complaints management system. The *Appropriate File Management and Complaint Process Timeframes* guidance sets clear performance indicators for case officers in terms of workload and timeliness standards for each key phase of the complaint handling process. For example, fulltime investigator/conciliator staff are expected to finalise between 110 to 130 complaints per reporting

32 *Australian Human Rights Commission Act 1986*, subsection 8(6).

33 *ibid.*, subsections 19(2A) and 19(2B).

34 The practice guidelines set out that:

The complaints that the Commission receive vary markedly in terms of subject matter, seriousness, complexity and the needs and interests of those involved ... the procedures outlined in these documents, where not legislatively mandated, are intended to provide guidance for staff rather than strict rules of practice.

year. There is an opportunity for improvement to existing guidance documentation to improve consistency of operational practices, data quality and the reliability of reporting (refer to discussion in paragraph 3.4 to 3.9 below).

Early resolution of complaints

2.20 A complaint handling system should support early resolution of complaints as it provides for more efficient complaint handling. Effectively designed triage systems should empower frontline staff to action and finalise complaints and triage complaints so that ‘simple’ complaints can be resolved quickly, freeing up resources for thorough investigation of more complex complaints.³⁵

Priority

2.21 Initial assessment of matters by AHRC includes triage. All complaints are assigned a priority level. Since June 2023, assessments of priority have been based on factors set out in AHRC’s assessment guidelines.³⁶ For example, a complaint may be assessed as a ‘priority’:

- where the outcome being sought is time sensitive;
- if the matter involves children;
- if there may be an impact on party’s rights;
- where the matter involves current politicians, raises issues in the public domain and/or is the subject of media attention³⁷;
- if the complaint concerns a current employment situation and it may be appropriate for a respondent to be notified about the complaint sooner;
- if the matter involves recent events which would benefit from early intervention;
- if it appears the matter may resolve quickly with minimal intervention; and
- matters where legal representatives are involved and have had prior engagement.

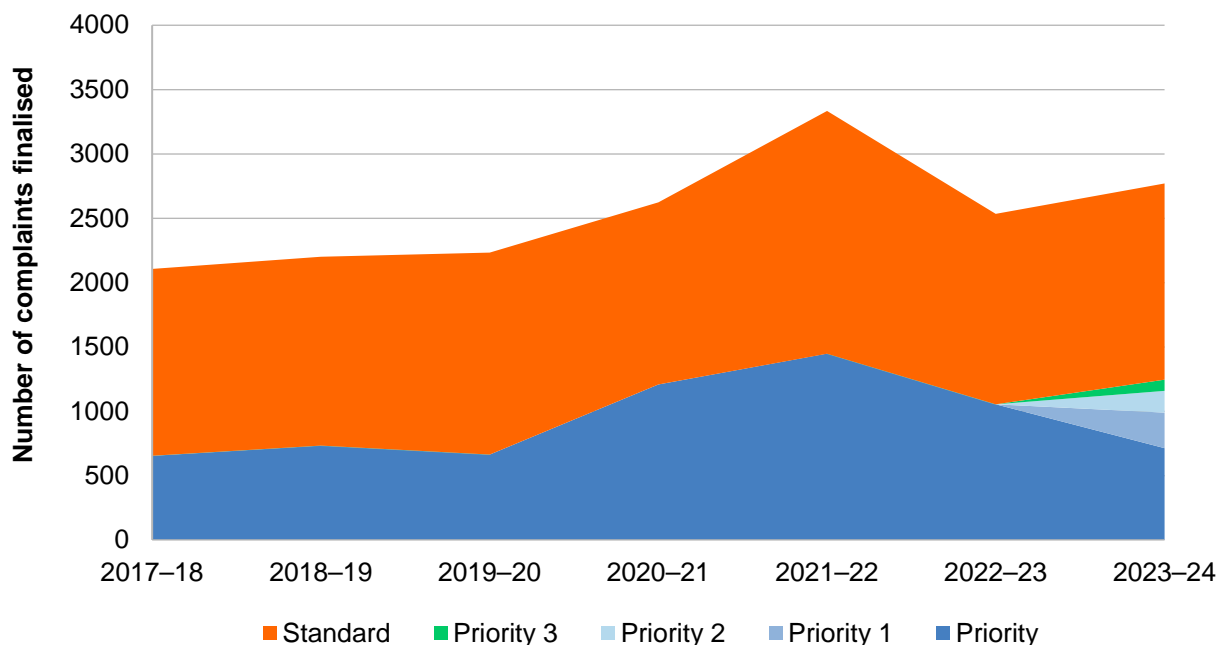
2.22 Figure 2.1 sets out the complaints finalised between July 2017 to June 2024 by priority rating. The proportion of complaints finalised as ‘priority’ has increased over the seven years analysed from 31 per cent in 2017–18 (654 complaints) to a high of 46 per cent of complaints finalised in 2020–21 (1207 complaints) and 45 per cent in 2023–24 (1246 complaints).

35 Commonwealth Ombudsman, *Better Practice Complaints Handling Guide*, p. 13.

36 These factors were formalised through adoption of assessment guidelines in June 2023. Prior to this time, ANAO observed in its detailed testing consideration of similar factors by AHRC in its assessment sheets.

37 In the ANAO’s analysis of randomly selected complaints there were complaints submitted by a current politician on behalf of a group of constituents which were assessed as priority. Another complaint examined became the subject of media attention during the complaints process. The matter was not formally assessed as a priority but allocated to a case officer the same day as the media article was brought to the attention of the Commission. Internal correspondence indicates that ‘it has been assessed as standard but given the publicity it would be good to expedite notification’.

Figure 2.1: Complaints finalised by priority rating, July 2017 to June 2024



Source: ANAO analysis of AHRC complaints data.

2.23 In July 2023, AHRC introduced three new priority levels: Priority 1 (needs actioning as soon as possible in a day or two, up to seven days); Priority 2 (action in one to four weeks, such as ongoing education or employment relationship) and Priority 3 (action in a few weeks or months such as ongoing accessibility issues, recent events, sexual harassment in employment matters where complainant is temporarily off work on workers compensation). AHRC advised the ANAO in September 2024 that:

The change in “priority” classifications (to the numerical system) was introduced at a time when the section had a significant backlog of complaints which was leading to extended allocation delays for matters that were assessed as standard ... The designations of Priority 1, 2, 3 provide team leaders with more information to guide allocation of matters – by a triage methodology.

2.24 Figure 2.1 illustrates that the uptake of these new priority classification levels was mixed, with most assessing officers selecting ‘Priority’ rather than newer classifications (in 2023–24, 714 complaints were assessed as ‘priority’ whereas 274 complaints were assessed as priority 1, 171 as priority 2 and 87 as priority 3). In November 2024, the Commission advised the ANAO that, to address the inconsistent approach to priority assessment observed by the ANAO, it has removed the general ‘Priority’ classification from its complaint handling database and all staff undertaking assessments are now required to choose one of the three available priority classifications.

Administrative closure

2.25 Simple or routine complaints are more suitable for early resolution or referral. This can include complaints outside the jurisdiction of the agency that can be resolved by a suitable referral or complaints that can be resolved by providing a better explanation or information.³⁸

³⁸ Commonwealth Ombudsman, *Better Practice Complaints Handling Guide*, p. 15.

2.26 Table 2.1 indicates that the number of complaints with the outcome type ‘administrative closure’ (i.e. complaints outside the jurisdiction of AHRC) has decreased over the seven years examined, directly related to the repeal of the provisions of the *Sex Discrimination Act 1984* (SDA) in 2021 which noted that the SDA did not apply in relation to employment in an instrumentality of a state, that is a body or authority established by the law of a state. The duration of complaints with the outcome type ‘administrative closure’ from receipt to finalisation have increased from a median of 19 days and average of 34 days in 2017–18 to a median of 57 days and an average of 87.7 days in 2023–24.

Table 2.1: Number of administrative closures and average and median duration, July 2017 to June 2024

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Number of administrative closures	79.0	69.0	69.0	69.0	72.0	26.0	26.0
Median number of days from receipt to closure	19.0	19.0	27.0	15.0	17.0	36.0	57.0
Average number of days from receipt to closure	34.1	44.1	44.5	59.6	57.1	68.0	87.7

Source: ANAO analysis of AHRC complaints data.

2.27 ANAO examined the 26 administrative closures in 2023–24 to examine what factors were driving increased complaint handling timeframes. The main reason for extended complaint handling timeframes for 2023–24 administrative closures related to six complaints where complainants did not identify upfront that they had submitted complaints to other complaint handling bodies. There were also six other administrative closures where complainants identified they had submitted complaints to other bodies but complaints were not resolved in a time-efficient manner (between 84 to 268 days). In relation to the six cases, the AHRC advised the ANAO in November 2024 that:

Whilst the Commission acknowledges that in some cases there was a delay in finalising the matter due to officer error; [sic] in other cases, the delay related to the officer needing to obtain more information about the complaint lodged under state or territory law. It is important to note that the Commission cannot close a complaint merely upon being advised that the complainant has lodged a complaint with a state or territory anti-discrimination body. More often than not, the Commission needs to obtain further information from the parties to clarify the subject matter of the complaint lodged with the state or territory anti-discrimination body and the date and time of lodgement. The jurisdictional bar may not apply if a complainant had lodged their complaint with a state or territory anti-discrimination body after they lodged their complaint with the Commission.

2.28 Conciliated complaints may be resolved on notification of the respondent party or resolved between parties following provision of information and may benefit from early resolution. Over the

seven years examined, there were 319 instances of conciliated complaints with the outcome reason 'resolved upon notification' of respondents and 351 instances of conciliated complaints with the outcome reason 'complainant satisfied with response/information provided'.³⁹ The ANAO examined three complaints in detail with the outcome reason 'resolved on notification' and priority rating of 'standard'. These were disability discrimination complaints received in 2020 and 2021 related to mask wearing mandates. Once allocated, each complaint was resolved within two weeks. The time between receipt and allocation for these complaints was between two and three months.

Complaints management system

2.29 AHRC's current electronic complaints management system is Resolve Enterprise Case Management (Resolve).

2.30 The software was procured through an open tender which selected Beethoven Computer Services Pty Ltd in 2011.⁴⁰ The approved value of the contract was \$497,279.95.

2.31 A contract was in place from 30 June 2011 to 30 June 2014. The scope of work of the contract included delivery and customisation of Resolve software for AHRC's complaints management, annual licences and ongoing support services (including the provision of technical documentation and all new releases, enhancements and other changes). The contract was not extended beyond the initial contract period and another contract related to ongoing support services has not been put in place between the supplier and AHRC. This means that it has been more than ten years since the AHRC has had a contract in place covering all conditions, rights and responsibilities related to ongoing support of its system related to ongoing support of its system.

2.32 AHRC did not agree with the ANAO's finding that there was not a contract in place. It pointed to the Commission signing, in September 2020, 'a letter of continuation/extension of the licensing and support contract'. In respect to that document:

- It was a letter of offer sent by the contractor to the Commission six months earlier (dated 27 March 2020). The letter offered confirmation if accepted 'that ongoing payment of your annual fees for the next and subsequent 12 month periods can constitute ongoing renewal of the licensed period and associated support provided by Resolve Software'. The letter of offer noted that the contract for Resolve had expired on 30 June 2014.
- In considering the letter of offer, the Commission sought from the contractor a copy of the contract that had expired on 30 June 2014.
- The letter of offer did not incorporate the range of contractual rights and obligations that had been included in the contract that was in place between 2011 and 2014.⁴¹ The only issue in this respect raised by the Commission's in-house legal area was in relation to termination rights. Specifically, the letter of offer involved a 90 day notice period which

39 There were an additional 195 occasions where complaints were recorded as 'complainant satisfied with response/information provided' as systemic outcomes (refer to paragraph 4.32).

40 Three tender responses were received and evaluated.

41 The Department of Finance's (Finance) *Australian Government Contract Management Guide* defines a contract as 'a legally enforceable agreement between two or more parties that details each party's rights and obligations in performance of that contract.' See Department of Finance, *Australian Government Contract Management Guide*, Finance, Canberra, 2023, p. 2, available from <https://www.finance.gov.au/government/procurement/contract-management-guide> [accessed 18 November 2024].

was identified as less favourable to the Commission. The Commission's June 2020 legal advice was that this was 'not a deal-breaker and I understand that it's pretty unlikely we'd terminate anyway'.

2.33 The Commission did not document any consideration of its obligations under the Commonwealth Procurement Rules (CPRs) before signing the letter of offer.

2.34 Between 2020 and 2024, the expenditure for Resolve has primarily been applied to renewal of the annual licencing fees at a cost of \$246,828.78. Some minor system updates were also contracted in in January 2023 to the value of approximately \$21,000. This included a planned upgrade of Resolve to the latest version.⁴²

Resolve replacement or enhancements

2.35 In February 2021⁴³ the report of a functional and efficiency review of AHRC conducted by Guy Reynolds SC and Nous was provided to the Attorney-General. In relation to Resolve, it found that while the software was a 'critical dependency' for AHRC, there was no budget set for a replacement or upgrade of its system. The report recommended AHRC should commence work around identifying an appropriate replacement for Resolve and the costs involved in that work.

2.36 This recommendation was considered by the Attorney-General's department and assessed as a potential area for improvement, one which would require an investment upfront to produce possible savings over the longer term. AHRC noted that with additional resources, Resolve could be significantly enhanced to increase its capability rather than requiring replacement which would potentially better align with its existing financial constraints.

2.37 In October 2022 the Attorney-General was asked by government to develop a business case to modernise AHRC's systems, including a more effective complaints management system.⁴⁴ In July 2023, to support the development of a business case to the Australian Government for upgraded systems, the AHRC engaged Deloitte to prepare an *IT Systems Review and Recommendation Report* that focused on issues around AHRC's service delivery, platforms and technology, and data and integration including the complaints system.

2.38 The AHRC's conduct of this procurement process⁴⁵ did not comply with the CPRs in a number of respects:

42 AHRC advised the ANAO in September 2024 that Resolve was upgraded in February 2018, February 2022 and September 2022 indicating that no software updates took place in the four-year period between February 2018 and February 2022. Such enhancements were agreed upon as part of the contract between AHRC and Resolve between 2011 and 2014 (see paragraph 2.31).

43 Ministers had agreed in March 2017 that, following the passage of the *Human Rights Legislation Amendment Act 2017*, a review of the functions and capacity of AHRC should occur to inform future reform and savings for consideration in the 2017–18 Mid-Year Economic and Fiscal Outlook (MYEFO). The review was postponed on multiple occasions until the 2021–22 Budget.

44 AHRC received \$31.8 million from 2022–23 (and \$7.4 million per year ongoing) to provide additional resourcing to undertake its functions as Australia's national human rights institution. Financial reviews of AHRC and decisions of the Australian Government regarding AHRC's core funding are further discussed at paragraph 3.42 to 3.45.

45 AHRC's Procurement Policy and Procedure was last updated in 2016. As of October 2024, the Procurement Policy and Procedure was 'under review' following a recommendation from an internal audit in August 2024 that the Commission update its Procurement Policy to clearly 'spell out the minimum compliance requirements expected of staff having regard to guidance issued by the Department of Finance'.

- The AusTender records indicate that the request for tender was open for twelve days between 28 April to 9 May 2023, which is less than the twenty five days required by the Commonwealth Procurement Rules.⁴⁶ The AHRC did not seek to rely on an exception for the shortened time period in its internal approval template for approaching the market.
- The AHRC received 34 responses, nine of which were ‘shortlisted’. The approval minute for the procurement did not record the basis for shortlisting nine of the 34 tenders received.

2.39 The shortlisted responses were evaluated against evaluation criteria, scored and ranked. Deloitte was the highest scored tenderer and recommended by the evaluation panel as representing the best value for money. This recommendation was approved by the CEO on 27 July 2023 and the contract with Deloitte was signed on the same day. The total agreed cost of services (including GST) was \$164,945⁴⁷ which was later varied on 18 September 2023 to \$197,945.⁴⁸

2.40 The Deloitte report was finalised in September 2023. In relation to Resolve, it noted that AHRC’s operational efficiency in complaints management is impacted by manual workarounds and reliance on outdated processes. This causes challenges in maintaining data quality with the Commission having to rely on manual processes to gather data and information across different AHRC sources for reporting purposes.⁴⁹ The report also noted that there is no link between Resolve and AHRC’s record management system resulting in a manual file sharing. The report recommended either an option of enhancements to Resolve to address the challenges or a re-platform to another tool. The indicative four year investment covering software delivery and licence costs was assessed to be: enhancements to existing software (\$198,000 to \$238,000) or re-platformed (\$800,000 to \$2 million).

2.41 Three options were developed to update and enhance AHRC’s systems ranging in cost from \$13.2 million over four years and \$19.1 million over four years. Briefing developed for the Attorney-General noted that the Department of Finance had requested a substantive rewrite of AHRC’s digital transformation advice to enable agreement of costs. AHRC’s request for funding did not proceed through the 2024–25 budget process.

Staff training and supervision

2.42 There is sufficient staff training and supervision in place to enable staff to have the skills and support to deliver effective complaints handling. For example:

- Case officers receive structured training for investigation (two days) and conciliation (three days). Case officers must be approved by a senior officer prior to facilitating conciliation conferences without supervision, following a period of observation and supervision.

46 Department of Finance (Finance), *Commonwealth Procurement Rules*, paragraphs 10.22 and 10.23.

47 The AusTender Request for Tender record indicated that the estimated value of the procurement was between \$1.00 to \$150,000.00.

48 This variation to the contract was not reported on AusTender. See Finance, *Commonwealth Procurement Rules*, paragraph 7.19.

49 Data quality issues with data from the complaints management system are further discussed below in paragraphs 3.2 to 3.11.

- Case officers are supervised by team leaders, including regular review of complaint files.
- Complaint handling powers and functions are delegated on a risk basis. For example, the power to accept complaints of unlawful discrimination has been delegated to the two most senior position holders in ICS.

Quality assurance

2.43 An internal audit of AHRC's complaint handling in 2018 observed that quality assurance checks were completed on an ad hoc basis. The internal audit undertook sample testing which observed no major deviations from legislation or procedure, but two instances of the initial assessment sheet not being initialled by the delegate and one instance of an incorrect letter template being used. It was recommended that the quality assurance check process could be formalised to ensure coverage across complaint types, legislation and staff through a sample-based approach. This recommendation was agreed to by AHRC but not implemented.

2.44 The ANAO observed the results of complaint reviews conducted between January 2018 to December 2023. In total, over these five years, 160 files (including enquiries and complaints) were reviewed by AHRC (on average, 32 matters per year).⁵⁰ Since 2021, the methodology for the quality assurance reviews has been documented. The reviewer checks whether an assessment sheet was on file, whether notification occurred in accordance with assessment, whether matters were closed appropriately and whether all parties were notified of the closure.

2.45 The AHRC complaint reviews did not detect any significant deviations from legislation or internal complaint handling procedures. The reviews identified minor procedural errors including four instances where complaint handling forms were not initialised by the relevant delegate, one instance where a complainant was not advised of an allegation of discrimination not being accepted and one complaint file with no formal notification of the complainant.⁵¹

2.46 ANAO examined 137 randomly selected complaints⁵² in detail to identify whether complaints were being handed in accordance with AHRC's legislation and procedural guidance. ANAO analysis identified no systemic deviations from legislation or existing procedural guidance for complaint handling procedures. The following issues were identified in AHRC's management of complaints.

- AHRC procedures dictate that a delegate of the President must assess and accept each complaint. Of the complaints examined, there were no assessment sheets for five of 137 complaints examined in detail.⁵³
- The AHRC Act requires the President to notify a complaint to the respondent⁵⁴ as soon as the President has decided to inquire into the complaint for unlawful discrimination

50 Twice yearly complaint audits were held between January 2019 to December 2020, with annual reviews occurring in 2018, 2021, 2022 and 2023.

51 Notification of the complainant is a procedural step rather than a legislative requirement.

52 Complaints were randomly selected from a population of 12,838 complaints finalised between 1 July 2019 to 30 March 2024.

53 Records of delegate approval for two complaints were recorded within Resolve (no assessment sheet) and for one complaint on a different complaint file.

54 A respondent in relation to a complaint means the person or persons against whom the complaint is made: *Australian Human Rights Commission Act 1986*, section 3.

complaints.⁵⁵ AHRC's practice of notifying respondents following allocation to a case officer resulted in respondents not being formally notified of complaints in circumstances where complaints were withdrawn, discontinued, terminated without inquiry or resolved outside AHRC processes (42 of 137 complaints examined). There were three complaints examined where not all respondents were notified or a notification record was not kept within the primary complaint file.

- The AHRC Act requires the President to notify a person subject to adverse allegations of a complaint unless notification would be likely to prejudice the safety of the person or it is not practicable to do so. There were 17 complaints where adverse allegations were assessed. Ten adverse allegations were not notified as a result of AHRC's practice of notifying adverse allegations following allocation (these complaints were discontinued or withdrawn). Other issues were identified with the notification of adverse allegations in seven complaints. For example, there were two complaints examined where adverse allegations were not notified and three cases where an employer was asked to notify persons subject to adverse allegations, outcomes were not reported or not reported in writing.
- All complaints examined had closure letters addressed to complainants and respondents (where notified). There were issues identified with the verifiability of AHRC's reported outcome types for conciliated complaints (see paragraph 4.11 for more information).

Feedback systemic issues

2.47 The *Better Practice Complaint Handling Guide* recommends that agencies have regular internal and public reporting on complaints management, use meaningful complaints data to improve continuously, review complaint quality assurance and review frameworks every two years. The Better Practice Guide states that:

at a minimum, the executive should receive reports about claim volumes and trends including data about complaint issues, causes and outcomes, systemic issues and relevant complaint data (for example, geographic, demographic and cohort information).⁵⁶

2.48 The AHRC's ICS provides reports to the quarterly meetings of the Commission⁵⁷ on the volume and types of complaints, complainant locations, complaint outcomes and complaint management timeliness. Reporting does not include information on system issues arising out of complaints or complaint management quality to the Commission. For each of the seven years examined, AHRC published a complaint statistics document accompanying its annual report which sets out detailed information on its complaint handling timeliness, outcomes, party satisfaction and demographics. ANAO also reviewed evidence of AHRC using its complaint information to drive

55 An exception to the requirement to notify respondents is if the President is satisfied that notification would be likely to prejudice the safety of a person: *Australian Human Rights Commission Act 1986*, paragraphs 46PF(7)(a) and 46PF(8)(a).

56 Commonwealth Ombudsman, *Better Practice Complaint Handling Guide*, p. 34.

57 The Commission is comprised of the President, the Human Rights Commissioner, Race Discrimination Commissioner; Aboriginal and Torres Strait Islander Social Justice Commissioner, Sex Discrimination Commissioner, Age Discrimination Commissioner, Disability Discrimination Commissioner and National Children's Commissioner: *Australian Human Rights Commission Act 1986*, subsection 8(1).

improvement in its processes. For example, results of satisfaction surveys are collated and discussed as part of annual planning days.

2.49 As discussed in paragraph 2.43, AHRC does not have a formal process in place for quality assurance. Current processes are designed to assess the quality of individual complaint handling. AHRC could further improve the design of its complaint handling system by formalising how it reviews complaints handling data to support identification of areas for continuous improvement and share information/intelligence with its regulatory functions.

Recommendation no. 1

2.50 The Australian Human Rights Commission strengthen its handling of complaints by:

- (a) testing the market for an electronic complaints management system;
- (b) establishing fit-for-purpose contractual arrangements for an electronic complaints management system; and
- (c) establishing a formal process for quality assurance over the handling of individual complaints.

Australian Human Rights Commission response: *Agreed.*

2.51 *The Commission will test the market for an electronic complaints management system (CMS) within the next 12 months and establish a fit for purpose contractual arrangement for a CMS within the same timeframe.*

2.52 *The Commission will expand the existing audit process of individual complaint files to include a review of an increased number of randomly selected complaint files, by designated staff, on a quarterly basis. Existing quality assurance assessment criteria will be updated to include complaint deferrals and secondary matter creation.*

3. Complaint handling efficiency

Areas examined

The ANAO examined whether the Australian Human Rights Commission (AHRC or the Commission) is efficient in its handling of complaints.

Conclusion

The timeliness of complaints handling has been declining, with the Commission not meeting its performance indicator (consistent with its enabling legislation) to finalise 85 per cent of complaints within 12 months in 2023–24. A significant backlog has developed and, although the backlog has stabilised, it remains high. Resource efficiency improved over the four years up to and including 2021–22, a trend that did not continue in 2022–23 and 2023–24.

Areas for improvement

The ANAO made three recommendations and one suggestion for improvement aimed at improving complaints handling efficiency.

3.1 The accountable authority of a Commonwealth entity has a duty under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to govern the entity in a way that promotes the efficient use and management of the public resources for which they are responsible, and to measure and assess the performance of the entity in achieving its purposes.⁵⁸ The *Australian Human Rights Commission Act 1986* (AHRC Act) also sets out that it is the duty of the Commission to ensure its functions are performed efficiently and with the greatest benefit to the people of Australia.⁵⁹

Does AHRC collect relevant and reliable information on its complaint handling efficiency?

AHRC has implemented systems and processes to capture input and output data which can be used to calculate basic measures of efficiency. There are issues with the reliability of complaints data that adversely affects the Commission's management of complaints handling and its performance reporting.

Collection of input and output data

3.2 AHRC collects data on the number of officers handling complaints as well as its expenditure on the Investigation and Conciliation Service (ICS). Data is available from the Commission Administration, Employee Service and Resource (CAESAR) system, which is the Commission's Enterprise Resource Planning tool. Financial data was not readily available prior to July 2018 and staffing data was not readily available prior to April 2019.

3.3 AHRC also collects data on the number of complaints finalised and the timeframe taken for complaints finalisation. Data is available from Resolve which has functionality for registering

⁵⁸ *Public Governance, Performance and Accountability Act 2013*, sections 8 ('proper'), 15 and 38.

⁵⁹ *Australian Human Rights Commission Act 1986*, paragraph 10A(1)(b).

complaint information, recording how the complaint was resolved and actions, decisions and interactions.⁶⁰

Reliability of data

Complaints finalised

3.4 AHRC reports the number of complaints finalised in terms of the number of unique matter numbers finalised in a particular financial year. A single complaint lodged with AHRC may result in multiple unique matter numbers being recorded in Resolve (these are referred to as ‘primary’ and ‘secondary’ matters).

3.5 The AHRC advised the ANAO in August 2024 that its ‘complaints system set-up’ means that a single complaint must be split over multiple matter numbers for it to accurately report the number of complaints received per Act and outcome types⁶¹: ‘Resolve system set up allows: only one Act per complaint; only one Outcome Type per respondent; only counts ‘distinct’ outcome types across respondents.’ The number of secondary matters⁶² finalised by AHRC has grown since July 2017, with the highest number of secondary matters finalised in 2023–24 (434 complaints). While this practice enables AHRC to report the number of complaints received per Act and outcome type, the practice risks overstating the complaint volumes received and finalised by AHRC. Due to this practice, the ANAO could not reconcile the volume of complaints finalised and received between July 2017 to June 2024 from data extracted from Resolve in July 2024 to the AHRC’s public reporting.

3.6 There is limited guidance available to case officers on how and when to split complaints across multiple matter numbers. ANAO analysis of individual complaints observed secondary complaint files being opened late in the complaints handling process, affecting the quality of its underlying data. For example, ANAO analysis of AHRC complaints data indicates that there was a single complaint submitted on behalf of 107 people, subject to a single inquiry process and successfully conciliated. Following finalisation of the complaint, 106 secondary complaints were registered in Resolve (recording an extra 106 successful conciliated matters for that financial year). ANAO analysis indicates that there were data errors on the secondary complaint files not consistent with underlying complaint documentation including incorrect assessment time stamps and incorrect allocation time stamps. The complaints also inaccurately recorded the active duration of the complaint as 0 days for all of the 106 secondary complaints (compared to the active duration of 116 days for the primary complaint file).

3.7 AHRC advised the ANAO in November 2024 that:

The Commission does not agree its method of counting “risks overstating the number of complaints received and finalised”. The Commission agrees that further information is useful to report against and one of the “actions arising” from this Audit, will be the addition of reference to “primary” and “secondary” matters – noting that sometimes this will be a fairly arbitrary assessment if there are equal allegations under two Acts.

60 The complaints management system (Resolve) is further discussed at paragraphs 2.29 to 2.41.

61 The ‘Act’ refers to the legislation the complaint arises from (see paragraphs 1.9 to 1.12) and the ‘outcome type’ refers to how a complaint was finalised (discussed in paragraphs 4.8 to 4.10).

62 A single complaint may allege discrimination under multiple Acts. The Commission may open multiple unique identifiers (secondary matters) to track the number of complaints per Act.

Other data quality and integrity matters

3.8 ANAO analysis of AHRC complaints data identified data quality issues with at least 4.7 per cent of complaint records, affecting the reliability and verifiability of the sources used by AHRC for reporting its progress against its performance measure. For example, ANAO analysis of AHRC complaints data identified:

- 128 complaints where the ‘active duration’ of the complaint was less than 0 days. Negative ‘active durations’ ranged from -1 day to -2153 days;
- 381 deferrals⁶³ that started on or after the finalised date of a complaint;
- 314 deferrals that ended after the complaint was finalised; and
- 272 complaints where the ‘allocate case officer’ date was after the finalised date.

3.9 Performance measurement methodologies should be designed in a way to produce accurate data, be applied consistently and be able to be substantiated. Entities should maintain records that properly document the data sources and methodologies used to measure performance.⁶⁴ While the AHRC maintains records of the reports it uses each financial year to generate reported results, the methodology it uses to generate results is not documented in its Corporate Plan or Annual Report.

Recommendation no. 2

3.10 The Australian Human Rights Commission improve the reliability and verifiability of its reported performance information by:

- (a) documenting its methodology and data sources it uses to produce performance information;
- (b) updating its guidance and practices to address data integrity, with a particular focus on updating guidance on deferrals and secondary matters; and
- (c) establish processes to ensure quality assurance on reported performance information is undertaken and documented.

Australian Human Rights Commission response: *Agreed.*

3.11 *The Commission has existing documents which outline the overarching methodology used to assess our performance and data collection methods and sources against each performance indicator in planning documents and reporting templates. The Commission agrees to strengthen these documents in line with the ANAO recommendations through providing greater transparency and detail of methods and processes used to calculate results.*

3.12 *The Commission agrees to update guidance on deferrals and secondary matters and strengthen quality assurance by ensuring adequate control processes are clearly documented and tested.*

63 A deferral may be applied to a complaint record by a case officer if it is not being actively progressed by an officer taking some action. Deferrals of complaint files is further discussed at paragraphs 3.39 to 3.41.

64 Finance, *Developing performance measures (resource management guide 131): Reliable & verifiable* [Internet], Finance, Canberra, 2024, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/developing-performance-measures-rmg-131/reliable-verifiable> [accessed 24 August 2024].

Expenditure information

3.13 Reviews of AHRC’s financial management in 2021 raised issues with the reliability of data produced from financial reporting tools.⁶⁵ For example, a functional and efficiency review of AHRC completed by Guy Reynolds SC and Nous in February 2021 identified issues with the previous financial system MYOB,⁶⁶ which did not allow AHRC to allocate budget and expenses to cost centres, or other ways of capturing more granular data (the context of this review is further discussed in paragraph 3.42).

3.14 The Financial Review of AHRC in August 2021 completed by Callida Consulting also found that the implementation of CAESAR (replacement of MYOB) was ‘a difficult process for the Commission ... the system is not intuitive for non-accountants and lacks web-enabled dashboards and management reports.’ The system did not easily provide budget to actual reports for cost centre managers and project managers and a lack of cash reporting masked significant underlying cash movements, making it difficult for AHRC to make sense of its true cash inflows and cash outlays. Improvements were made to available reporting following the review. For example, AHRC implemented recommendations to provide a weekly cash management report from the Chief Financial Officer to the Chief Executive Officer to monitor weekly cash movements and include cash balances and cash flow reporting as part of the Commission’s monthly finance report.

3.15 The Callida Consulting review also recommended that AHRC continue to invest in the ERP, exploring new modules including contracting, procurement, and internal budget management. AHRC advised the ANAO in January 2025 that ‘internal budget data has been incorporated into the ERP since December 2021; an internally developed procurement has been in place since July 2024 and investment in additional ERP modules is on hold due to a lack of available resources.’ .’

Has complaints handling been timely?

Complaints handling by AHRC is not timely.

- A significant backlog in complaints developed between the first quarter of 2019–20 and quarter 3 2021–22. With fewer complaints received in 2023–24 and some additional resources, the backlog has stabilised. It remains around double what it was prior to 2019–20.
- The proportion of complaints being finalised within 12 months (one of AHRC’s performance measures, consistent with the Commission’s enabling legislation) has been declining, with AHRC not achieving its target in 2023–24. Further, this performance measure is not focused on measuring performance from the perspective of parties to the complaint.
- Complaints identified as a priority by the AHRC are typically finalised more quickly than those not prioritised. Notwithstanding this, the duration of both standard and priority complaints has increased.
- Complaint handling delays are primarily a result of delays in an accepted complaint being allocated to a case officer (rather than delays in the first stage, between complaint receipt and acceptance, or in the final stage, progressing the complaint to finalisation). The increasing time taken to allocate matters to case officers has coincided with a decrease in

65 Financial reviews of AHRC are further discussed in paragraphs 3.42 to 3.45.

66 The Commission replaced MYOB with CAESAR in the 2018–19 financial year.

the number of complaints conciliated and increase in the number of discontinued complaints.

3.16 The AHRC Act states that the President⁶⁷ must use their best endeavours to finish dealing with complaints within 12 months.⁶⁸ These provisions were incorporated through the *Human Rights Legislation Amendment Act 2017* with the stated purpose to ‘provide a clear legislative imperative to continue to ensure that complaints are finalised quickly, and to avoid protracted processes for complainants and respondents’.

Complaints received to finalised

3.17 As a measure of timeliness, the ANAO compared the rate at which complaints were received with the rate at which complaints were finalised. Figure 3.1 demonstrates that the rate of complaints being finalised did not keep pace with the number of complaints received over the time period examined.

3.18 Between July 2017 to September 2019, AHRC finalised 5010 complaints (an average of 557 complaints per quarter) and received 4861 complaints (an average of 540 complaints received per quarter). The number of complaints on hand reduced from 1178 in quarter 1 2018–19 to 898 complaints in quarter 1 2019–20.

3.19 Over the ten quarters between October 2019 to March 2022, AHRC received 8014 complaints (an average of 801 complaints per quarter). As discussed in paragraph 1.1, the AHRC attributed increased demand for its complaint handling to high numbers of complaints about international travel restrictions and masks and vaccination mandates related to the COVID-19 pandemic. AHRC finalised 6713 complaints or an average of 671 complaints per quarter, 20 per cent higher output compared to the previous nine financial quarters with similar resources.⁶⁹ Reflecting that resourcing was at a similar level, its complaint finalisation did not keep pace with the number of complaints received, resulting in the number of complaints on hand growing to 2199 complaints by quarter 3 2021–22.

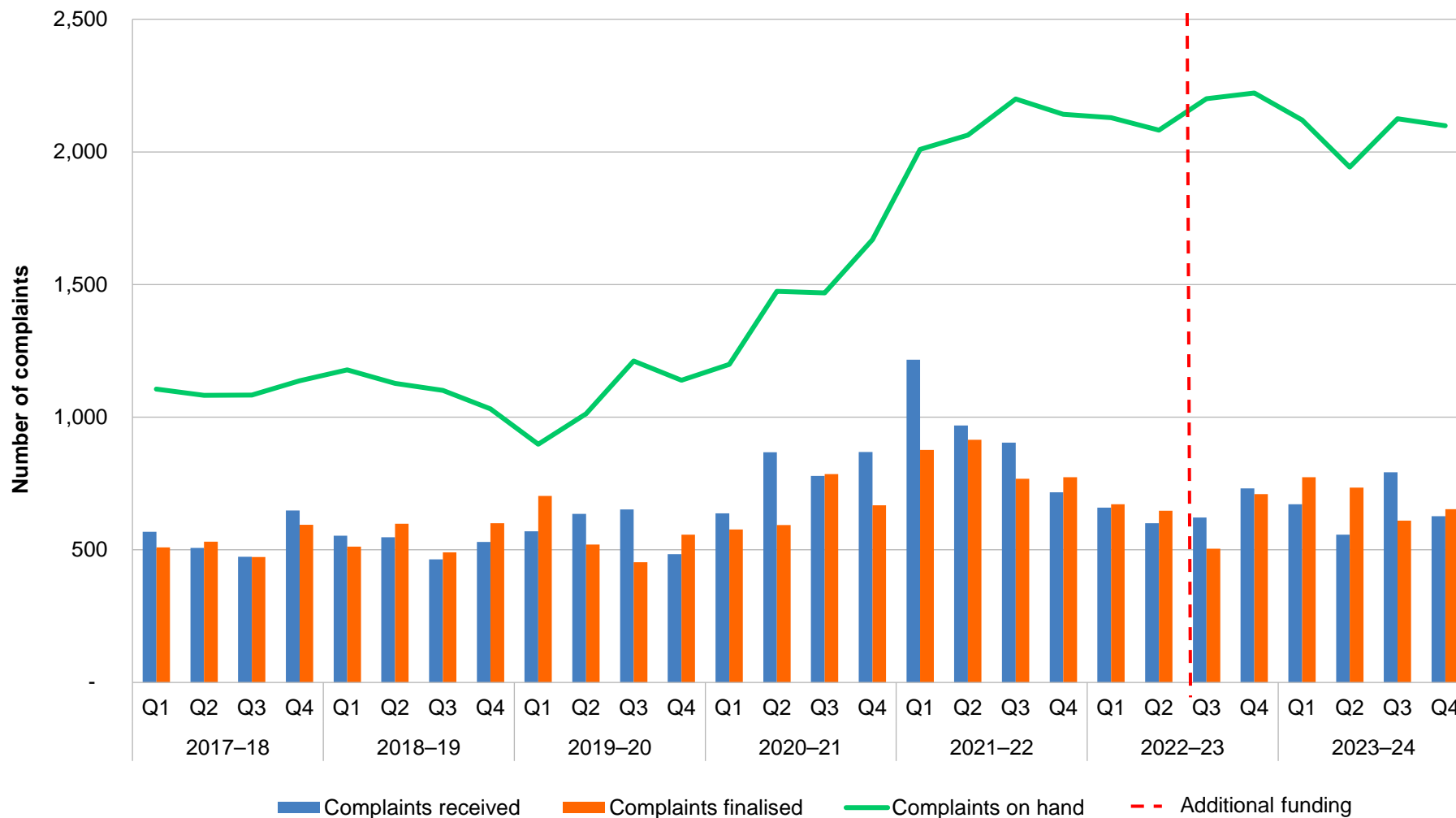
3.20 Over the nine quarters between April 2022 and June 2024, AHRC received 5978 complaints (an average of 664 complaints per quarter) and finalised 6078 complaints (an average of 675 complaints per quarters). While AHRC finalised 100 more complaints than it received over the ten quarters, the number of complaints on hand remained at over 2,000 reflecting the backlog that had built up. Between September 2022 to June 2024, the number of complaints on hand reduced from a high of 2,222 in June 2023 to 2099 complaints on hand in June 2024.

67 The complaint handling functions of the Commission under paragraphs 11(1)(aa), 11(1)(ab), 11(1)(f) and 31(b) are performed by the President. The AHRC Act sets out that a reference to the Commission (or to a member of the Commission) in relation to the performance of any of those functions shall be read as a reference to the President: *Australian Human Rights Commission Act 1986*, subsection 8(6).

68 *ibid.*, paragraphs 20(10)(b), 32(5)(b) and 46PF(10)(b). These sections do not create a duty for the Commission/President that is enforceable in court: *ibid.*, subsections 20(11), 32(6) and 46PF(11).

69 Refer to Figure 3.6 and Table 3.6 illustrate the resourcing of the Investigation and Conciliation service (ICS) and the number of complaints finalised per full-time equivalent staff between July 2018 to June 2024.

Figure 3.1: Complaints received, finalised and backlog, July 2017 to June 2024



Note: The number of complaints on hand represents the number of open complaints at the end of each quarter. ANAO calculated the number of complaints on hand by using complaints finalised and received data between July 2017 and June 2024. Due to these constraints, it is likely that this analysis understates the backlog of complaints on hand for AHRC.

Source: ANAO analysis of AHRC complaints records.

3.21 In November 2024, the Commission advised the ANAO that:

The ANAO’s own analysis⁷⁰ of complaint timeframes demonstrates that the time between allocation of a complaint to a case officer and finalisation of the complaint has decreased from an average of 131.3 days in 2017-18 to 96 days in 2023-24. This is due to proactive measures taken by the ICS to improve timeliness in a resource constrained environment. These measures included: establishing a backlog project that involved scheduling daily conferences for dedicated conciliation officers, introducing a “notification and set down” model, and limiting the time parties can engage in post conference negotiations.

3.22 As part of its reporting to Parliament in its annual performance statements, AHRC reports on the percentage of complaints finalised within 12 months. This key performance indicator is longstanding: AHRC first introduced the 12 month benchmark in its 1999–2000 annual report and has reported against this measure in its annual report each year since (see Appendix 4 for more information). The target to process 85 per cent of applications within 12 months was first introduced in 2016–17, increasing the target previously adopted suggesting the Commission was seeking to improve its performance over time.⁷¹

3.23 The ANAO examined AHRC’s performance against its target timeframe of 12 months. AHRC achieved its target for six out of the last seven financial years as illustrated by Table 3.1, although the timeliness of its finalisation of complaints has deteriorated in the last two financial years. AHRC’s lowest reported performance was in 2023–24, with 72 per cent of complaints finalised within 12 months.⁷² Prior to 2022–23, the proportion of complaints finalised in 12 months had not been below 90 per cent since 2003–04.

Table 3.1: Complaints finalised between July 2017 to June 2024 and reported performance

Financial year	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Number of complaints finalised ^a	2,028	2,131	2,164	2,554	3,262	2,507	2,745
Target for performance measure (%)	≥85	≥85	≥85	≥85	≥85	≥85	≥85
AHRC’s reported result ^b (%)	97	98	98.5	98	98	85	72
ANAO recalculated result based on AHRC data ^c (%)	97	97	99	98	98	86	72
Difference ^c (%)	0	(-1)	0.5	0	0	1	0

Note a: All complaints finalised in a financial year are reported against this target, including standard and priority complaints. Administrative closures (discussed in paragraph 2.27) are not reported against this target.

70 See further at paragraph 3.32.

71 A target of 75 per cent of complaints finalised within 12 months was first introduced by AHRC in its 1999–2000 annual report. The target was increased to 80 per cent of complaints finalised in 2002–2003.

72 Appendix 4 sets out AHRC’s performance against its 12 month benchmark from July 1999 to June 2024.

Note b: The calculation of the number of days taken to finalise a complaint is based on the 'active' matter duration and does not include 'times when a complaint is deferred by request (or as a result of an action) of a party.' Refer to paragraph 3.37 to 3.39 for discussion on AHRC's use of deferrals.

Note c: To test the verifiability of reported performance results, the ANAO obtained the data AHRC used to calculate its complaints finalisation performance between July 2017 to June 2024 and reperformed calculations based on the data provided and documented business rules. No manual interventions were applied by ANAO to AHRC complaints data.

Source: ANAO analysis of AHRC complaints data and AHRC annual reports.

3.24 The appropriateness of this measure of timeliness is undermined by how AHRC calculates and reports its performance. It is not transparent in the Corporate Plans or Annual Reports that AHRC's calculation of the proportion of complaints finalised within 12 months is not based on the perspective of the parties to the complaint. AHRC reports on its achievement against its timeliness target based on 'active duration' and excludes the time an application is placed on 'deferral'.⁷³

3.25 ANAO recalculated AHRC's performance against its target based on active duration of each complaint and the duration of each complaint from receipt to finalisation. While the overall trend regarding AHRC's performance remains consistent, ANAO analysis of AHRC performance based on receipt to finalised duration indicates that performance deteriorated to a greater extent than publicly reported. For example, 66 per cent of complaints finalised in 2023–24 were finalised within 12 months based on the number of days from receipt to finalisation, a difference of six percentage points to AHRC's publicly reported result.

Table 3.2: Complaints finalised between July 2017 to June 2024 and reported performance

Financial year	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Target for performance measure ^a (%)	≥85	≥85	≥85	≥85	≥85	≥85	≥85
ANAO recalculated result based on active duration (%)	97	97	99	98	98	86	72
ANAO recalculated result based on receipt to finalised duration (%)	90	91	88	92	92	77	66
Difference (%)	(7)	(6)	(11)	(6)	(6)	(9)	(6)

Note a: All complaints finalised in a financial year are reported against this target, including standard and priority complaints. Administrative closures (discussed in paragraph 2.27) are not reported against this target.

Source: ANAO analysis of AHRC complaints data and AHRC annual reports.

73 A similar finding in relation to the efficiency of passports processing was made by the ANAO in relation to the Department of Foreign Affairs and Trade in Auditor-General Report No.13 2023–24, *Efficiency of the Australian Passport Office*, ANAO, Canberra, 2024, Recommendation 1 and first key message for all Australian Government entities ('For service delivery functions, measurement of efficiency should include a focus on the customer experience. That is, span the period from the request for the service through to the receipt of the intended output by the customer.'), available from <https://www.anao.gov.au/work/performance-audit/efficiency-of-the-passport-office>.

Recommendation no. 3

3.26 The Australian Human Rights Commission improve its performance measures to include an explicit focus on the time it takes from the lodgement of the complaint until its finalisation.

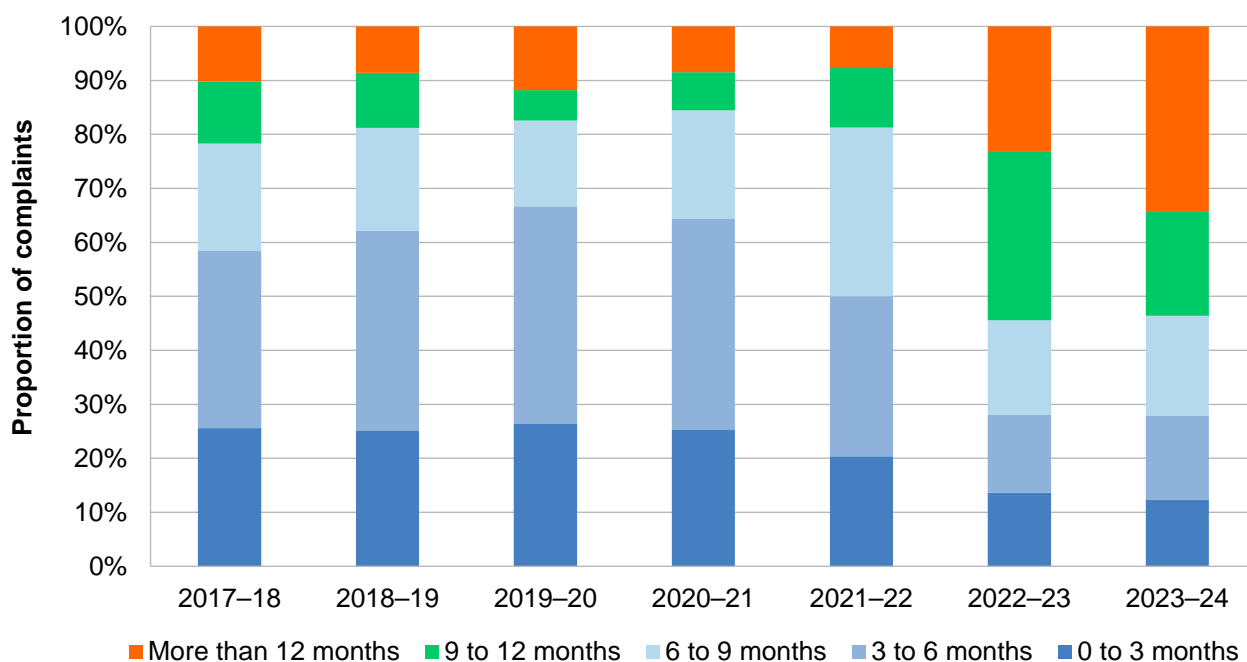
Australian Human Rights Commission response: *Agreed.*

3.27 *The Commission agrees to include an additional timeliness measure to report on timeframes from complaint lodgement to complaint closure in its quarterly and annual complaint data reporting. The Commission will commence reporting on this timeframe as soon as the CMS is updated to enable us to do so (the Commission is currently working with our CMS provider to enable this reporting function).*

3.28 *The Commission will include a note advising that the additional timeliness measure will necessarily include times, of sometimes significant duration, when the Commission is unable to action a complaint file for reasons outside of its control.*

3.29 The ANAO also examined the proportion and number of complaints finalised in time brackets (zero to three months; three to six months; six to nine months; nine to 12 months and more than 12 months) between July 2017 to June 2024. Figure 3.2 and Table 3.3 set out that the proportion of complaints finalised in more than 12 months has increased from a low of eight per cent of finalised complaints in 2021–22 (251 complaints) to 34 per cent of complaints finalised in 2023–24 (939 complaints).

Figure 3.2: Proportion of complaints finalised within different time periods, July 2017 to June 2024



Note: The calculation of the number of days taken to finalise a complaint is based on the number of days from receipt to finalisation of the complaints.

Source: ANAO analysis of AHRC complaints data.

Table 3.3: Number of complaints finalised in different time periods, July 2017 to June 2024

Time periods	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
0 to 3 months ^a	519	537	571	648	664	342	340
3 to 6 months ^a	667	788	872	997	968	360	425
6 to 9 months ^a	402	406	344	513	1,018	441	509
9 to 12 months ^a	233	217	122	180	361	781	532
More than 12 months ^a	207	183	255	216	251	583	939
Total	2,028	2,131	2,164	2,554	3,262	2,507	2,745

Note a: The calculation of the number of days taken to finalise a complaint is based on the number of days from receipt to finalisation of the complaints.

Source: ANAO analysis of AHRC complaints data.

Priority complaints

3.30 As discussed in paragraph 2.22, an increasing proportion of complaints finalised have been assessed by the AHRC as ‘priority’ over the seven years examined. Figure 3.3 compares the duration⁷⁴ of standard complaints and priority complaints between July 2017 to June 2024. It shows that priority complaints are typically finalised more quickly than standard complaints. Notwithstanding this, the duration of both standard and priority complaints has increased at an average rate of 9 per cent per year.

⁷⁴ Duration in terms of the number of days between the receipt and finalisation of complaint, including deferrals.

Figure 3.3: Distribution of duration of complaints by priority level, July 2017 to June 2024



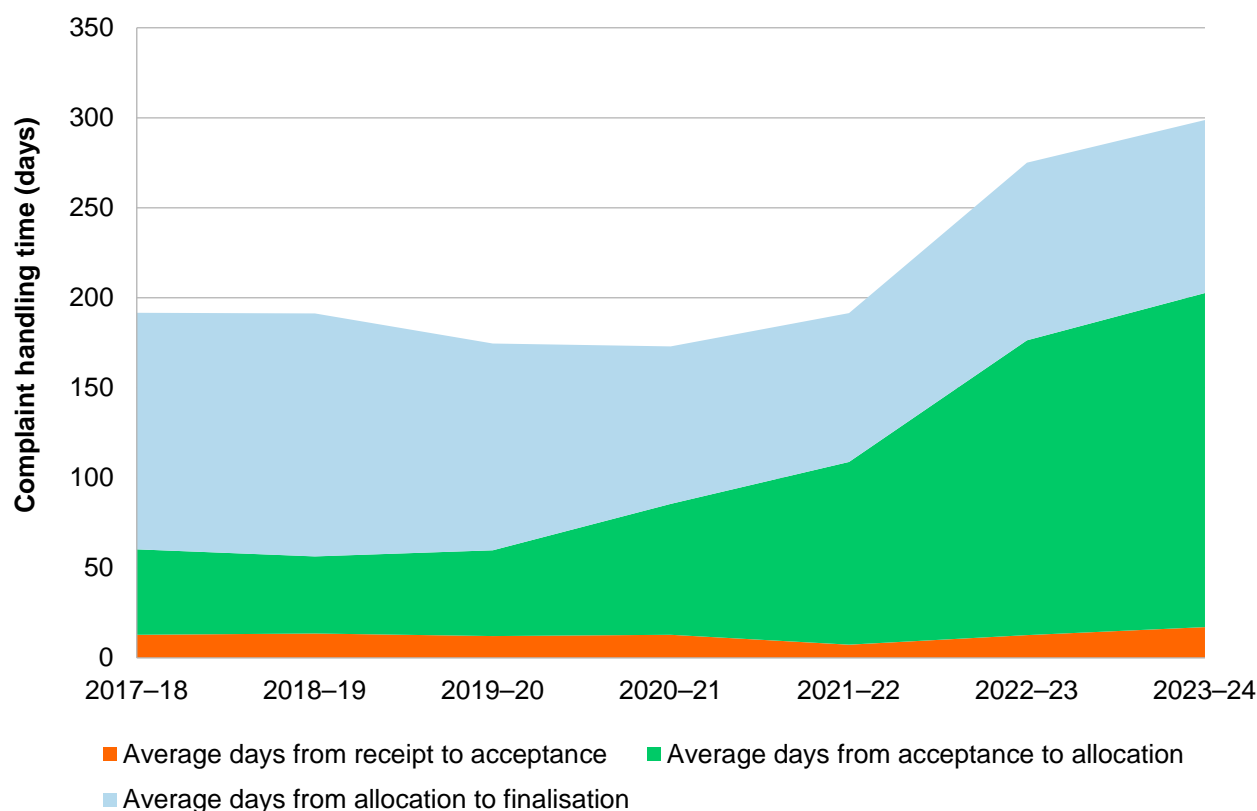
Note: For analysis purposes, this figure illustrates complaints where the number of days between receipt of the complaint and finalisation was less than 1,000 days. There were 107 finalised complaints excluded from this analysis (0.6 per cent of complaints finalised between July 2017 to June 2024) where the number of days between receipt and finalisation was greater than 1,000 days.

Source: ANAO analysis of AHRC data.

Complaint stage durations

3.31 To identify the drivers of extended complaint handling timeframes, the ANAO examined the average duration of key stages of the complaints handling process.⁷⁵ The stages analysed were receipt of the complaint by AHRC, acceptance of the complaint by AHRC following assessment and triage, allocation of the complaint to a case officer for further action and finalisation of the complaint.

Figure 3.4: Average duration of complaints by complaint stage, July 2017 to June 2024



Note: The above analysis excludes complaints with identified errors discussed in paragraph 3.8 (274 complaints).
Source: ANAO analysis of AHRC complaints data.

3.32 Figure 3.4 shows that delays are primarily a result of extended timeframes between a complaint being accepted then allocated to a case officer. The average number of days:

- between receipt of a complaint to initial triage and acceptance by AHRC has increased from an average of 12.8 days in 2017-18 to an average of 17.1 days in 2023-24;
- from acceptance to allocation to a case officer increased from an average of 47.6 days in 2017-18 to an average of 185.5 days in 2023-24; and
- from allocation to finalisation of complaints, the average duration has decreased from 131.3 days in 2017-18 to 96.1 days in 2023-24. As discussed in paragraph 4.4 to 4.33, the increasing time taken to allocate matters to case officers has coincided with a decrease in

⁷⁵ Appendix 3 sets out the key stages of the complaint handling process from receipt to finalisation of a complaint.

the number of complaints conciliated and increase in the number of terminated and discontinued complaints.

3.33 ANAO analysis of AHRC individual complaint files observed that advice to complainants upon acceptance of a complaint did not provide complainants with a reasonable expectation regarding the length of time between acceptance to allocation. For example, the acknowledgement email of one complaint in January 2022 advised ‘there may be a delay in actioning the complaint(s) of more than 4 months’. The complaint was allocated to a case officer for further action in October 2022, ten months after the acceptance of the complaint. Allocation of the matter followed two requests for update from the complainant’s legal representative. There was also no difference in complaint acknowledgement emails based on whether the matter was assessed as a ‘standard’ or a ‘priority’.

3.34 The AHRC website was updated in October 2021 to advise complainants of delays. The delay in allocation of matters to complaint officers led AHRC to change its acknowledgement email to complainants following initial triage and acceptance of complaints. For example, in January 2023 acknowledgement letters stated that ‘due to a large increase in complaints received and resource constraints, there may be a delay in actioning complaints of more than 6 months’.

Written notification

3.35 During the time between complaint allocation to finalisation, one of the key actions for case officers (prior to conducting conciliation) is notification to respondents. The AHRC Act requires the President to notify a complaint to the respondent⁷⁶ as soon as the President has decided to inquire into the complaint for unlawful discrimination complaints.⁷⁷ The increasing amount of time between acceptance of a complaint to allocation to a case officer means that there is an increasing amount of time between initial acceptance and notification to a respondent. The average time between lodgement of a complaint with the Commission and notification of the first respondents in the complaints examined in detail by the ANAO was 103 days.⁷⁸ There were two complaints examined in detail where notification of the first respondent occurred more than a year following complaint lodgement.

3.36 The ANAO’s analysis of individual complaint files also indicates that another reason for delay in the complaint handling process is difficulty establishing contact and notifying respondent parties or delays experienced in obtaining responses to notifications. The AHRC’s Statutory Investigation Guidelines set out that requests for written responses from respondents should be provided within 14 or 21 days of the notification letter. In situations where a respondent requests a significant extension of time to reply, this should be escalated internally. ANAO analysis of individual complaint files examined in detail observed protracted delays obtaining written responses to notification beyond 14 to 21 days without clearly documented escalation. For example:

76 A respondent in relation to a complaint means the person or persons against whom the complaint is made: *Australian Human Rights Commission Act 1986*, section 3.

77 An exception to the requirement to notify respondents is if the President is satisfied that notification would be likely to prejudice the safety of a person: *Australian Human Rights Commission Act 1986*, paragraphs 46PF(7)(a) and 46PF(8)(a).

78 This does not include complaints where parties were not notified because complaints were resolved, withdrawn, discontinued or otherwise closed prior to notification. AHRC’s timestamp data did not include a work step for notification of respondent parties. As a result, this metric could not be calculated for all complaints between July 2017 to June 2024.

- A complaint of age discrimination was made in September 2020 and accepted by AHRC the following day as a priority. The respondent was notified one month later in October 2020 and requested to respond by November 2020. The respondent provided a written response to the complaint in February 2021 (three months following the initial proposed deadline and a second request for information in December 2020 from the AHRC to the respondent with more specific questions). The complaint file contained records of unsuccessful contact attempts between the AHRC and the respondent over the three month period.
- A complaint of disability discrimination was made in March 2022 and accepted by AHRC the following day as a standard complaint. The respondent was notified one month later in April 2022 and requested to respond by May 2022. No response was received from the respondent until September 2022 (four months following the initial proposed deadline). During the period of delay, the respondent was granted extensions to its response deadlines on at least three occasions.

3.37 The AHRC Act provides the President powers to serve a written notice on a person, requiring the person to give the President a signed document containing relevant information required by notice or produce to the President such relevant documents as specified in the notice at a 'reasonable date' and at a 'reasonable time'. It is an offence to refuse or fail to give information or to produce a document.⁷⁹ AHRC Investigation and Conciliation guidelines set out that a matter should only be referred to the President to consider issuing a notice where the material being sought is central to the President's decision making and reasonable efforts to obtain the material without compulsion have failed. Reasonableness is assessed on a case by case basis. The ANAO's analysis of individual complaint files did not include an example where information gathering powers were used by the Commission.

Opportunity for improvement

3.38 The Commission update its practice guidance to set out circumstances or define criteria where it may appropriate to use its powers to obtain information or documents.

Deferral of complaints

3.39 AHRC guidance indicates that deferrals may be applied to a complaint by a case officer if it is not being actively progressed by an officer taking some action. For example, internal guidance indicates it may be appropriate to defer a complaint if there are other proceedings (such as court proceedings) or criminal investigations, where parties are engaged in direct negotiations or a party has not provided information sought by AHRC within a specified timeframe and/or has been requested/granted an extension of time. The reason a complaint is deferred is not recorded in Resolve, although case officers are required to record whether the deferral was at the complainant's or respondent's request or the Commission's request.

3.40 To analyse the effect of deferrals on AHRC's timeliness in finalising complaints, the ANAO examined the proportion of complaints being deferred and median and average deferral duration

⁷⁹ *Australian Human Rights Commission Act 1986*, subsections 21(1), 23(1), sections 33, 46PI and subsection 46PM(1). These powers have been delegated to the two most senior position-holders within the Investigation and Conciliation Service.

between July 2017 to June 2024 (Table 3.4). A reducing proportion of complaints have been placed on deferral. Between July 2017 and June 2024, between 38 to 45 per cent of complaints finalised had one recorded deferral. The median and average deferral days per complaint finalised has also decreased over the time period examined from a median of 53 days and an average of 121.4 days in 2017–18 to a median of 32 days and average of 77.2 days in 2023–24.

Table 3.4: Deferrals applied to complaints between July 2017 to June 2024

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Total complaints	2,028	2,131	2,163	2,553	3,262	2,507	2,745
Percentage of complaints with deferrals (%)	42	44	44	43	38	45	40
Median deferral days	53.0	64.0	62.0	51.0	51.0	35.0	32.0
Average deferral days	121.4	133.4	149.8	108.0	101.2	86.6	77.2

Source: ANAO analysis of AHRC complaints data.

3.41 In addition to data quality issues related to deferrals discussed in paragraph 3.8, ANAO analysis of individual AHRC complaint files indicates that deferrals may not be a reliable indicator of inactivity. For example:

- A complaint record of a terminated matter was ‘active’ for -162 days and deferred for 577 days (162 days more than the total number of days from receipt to finalisation of the complaint). This was the result of overlapping deferrals on the complaint record, all of which were calculated as contributing to the complaint record’s ‘inactive days’.
- A complaint record of a declined matter was recorded as active for 32 days and deferred for a total of 234 days. ANAO analysis indicates that during the period of recorded inactivity, actions took place to progress the complaint including correspondence with the complainant.

Have complaints been handled by AHRC in a resource efficient manner?

AHRC has not established a target and does not measure the resource efficiency of its Investigation and Conciliation Service. The efficiency of the Investigation and Conciliation Service, measured both in terms of the direct cost per finalised complaint and ratio of complaints finalised per staff member, improved over the four years up to and including 2021–22. That trend did not continue in 2022–23 and 2023–24 as a result of fewer complaints being finalised and, for 2023–24, some additional resources being provided to stabilise the backlog in complaints.

AHRC has not prioritised resourcing ICS in line with demand for its complaints handling services. AHRC has not developed an activity-based costing model to demonstrate the effect

of the demand driven complaints workload or inform its internal allocation of resources despite an earlier recommendation from consultants in August 2021.

AHRC funding

3.42 Funding for the AHRC has been the subject of a number of reviews. The February 2021 functional and efficiency review discussed in paragraph 2.35 was agreed by ministers in April 2017 to identify savings over the forward estimates for AHRC following the amendments to the AHRC Act.⁸⁰ The review identified 12 recommendations to improve efficiency related to simplifying AHRC's annual planning process, establishing mitigations for key person risks, exploring options to rationalise (i.e. reduce) the number of Commissioners and improvement of systems. The review also highlighted concerns about:

- lack of end-of-life planning for the Commission's complaint management system (refer to discussion in paragraph 2.35);
- lack of accuracy and reliability of data outputs from the financial system (refer to paragraph 3.13);
- the financial position of AHRC including an underlying structural deficit position in the Commission's finances since 2017–18, which coincided with the year in which full-time equivalents (FTE) grew by 19.5 per cent from 2016–17; and
- for 2019–20, variances between established budgets and actual spend, with significant variances (over 100 per cent) for international engagement and partnerships (393 per cent variance) and the AHRC Corporate Services (a 351 per cent difference).

3.43 The President wrote to the Attorney-General in July 2021 to advise of the financial situation and to request an equity injection. A financial review completed by Callida Consulting and delivered to AHRC in August 2021 identified low cash balances would result in AHRC being unable to meet its financial obligations past December 2021.⁸¹ In the 2021–22 Additional Estimates, AHRC was provided with an equity injection of \$16.0 million. The Attorney-General also wrote to the Prime Minister in March 2022 to request an opportunity in the budget process to consider long-term funding options for AHRC in the 2022–23 MYEFO.

3.44 McGrath Nicol was engaged by AHRC to assist in development of a sustainable funding model. The report identified that AHRC should 'break-even' in 2023–24 if it reduced its core workforce to 76 full-time equivalent staff. McGrath Nicol modelled two alternative staffing levels of 100 full time equivalent staff and 144 full time equivalent staff to inform advice on options to government.

3.45 In the October 2022 budget, AHRC received:

- \$31.8 million over four years from 2022–23 (and \$7.4 million ongoing) to provide additional resourcing;
- \$7.5 million over four years in funding to deliver the National Anti-Racism Strategy; and

80 The *Human Rights Legislation Amendment Act 2017* is discussed at paragraph 1.8.

81 As discussed in paragraph 1.14, during the 2020–21 financial statements audit process, the ANAO raised a significant ('A') finding related to weaknesses observed in the design and effectiveness of key financial management and budgetary controls. This finding was resolved in the 2021–22 financial statements audit process with receipt of the equity injection and strengthened financial management.

- \$8.9 million over four years to support implementation of the Respect@Work Report recommendations which includes the positive duty education and enforcement function and information service for workplace sexual harassment information.

3.46 As part of the \$31.8 million of additional resourcing provided to AHRC in October 2022, Ministers provided approval for additional short-term funding of \$3.5 million to clear the complaints backlog within two years. ANAO analysis of AHRC complaints data indicates that, while this funding was received in January 2023, AHRC has not met two of three targets related to complaint handling in 2023–24 (refer to Table 3.1 and paragraph 4.2 to 4.33). Over the six quarters since the additional funding was received the backlog of complaints has stabilised rather than reduced (see Figure 3.1).

Complaints handling expenses

3.47 Complaint handling expenses are categorised by the Commission in its reporting to the Budget Subcommittee⁸² into the sections set out in Figure 3.5. While the Callida Consulting review delivered in August 2021 recommended that AHRC ‘develop an activity-based funding model for the Commission’s statutory functions to assist with demonstrating the impact of this demand driven workload’, the Commission has not implemented this recommendation. The Commission advised the ANAO in January 2025 that:

This 2021 recommendation was intended to support the Commission’s new policy proposal which was considered by Government in the October 2022 Budget. The Commission considers this recommendation is no longer relevant or necessary in determining the appropriate staffing levels in the ICS team. The complaints backlog can be further reduced by staffing the ICS team to the budgeted level. This has been difficult to achieve in practice due to staff turnover in the team and the time it takes to train new recruits.

3.48 As illustrated by Figure 3.5, each year, between 14 and 16 per cent of AHRC expenditure relates to ICS.⁸³ In 2023–24, expenditure by the Commission on ‘policy’⁸⁴ and ‘external projects’⁸⁵ was double that on ICS. The AHRC also spent more on operating the commission (for example the lease for its office premises and ICT costs) and ‘Executive’ (costs directly related to Commissioners, President and the Chief Executive Officer) than it did on ICS in 2023–24.⁸⁶ The largest areas of expenditure for ICS are staff salaries including management staff, National Information Service staff,

82 According to the Commission’s governance framework (May 2022), the Budget Subcommittee has responsibility of providing oversight of the Commission’s financial and budget position and reporting on timely and meaningful financial reporting, assessment of budget position and emerging risks and budget and business plan development. The establishment of this Committee was in response to a recommendation of the Callida review.

83 This calculation of the proportion of expenditure excludes expenses of external projects. Refer to Figure 3.5 for a definition of ‘external projects’.

84 Expenses of the policy teams (those teams that directly support the Commissioners) have grown from \$2.3 million in 2018–19 to \$9.7 million in 2023–24. Additional expenditure, in part, relates to delivery of the National Anti-Racism strategy and Respect@Work implementation (including implementation of the positive duty function).

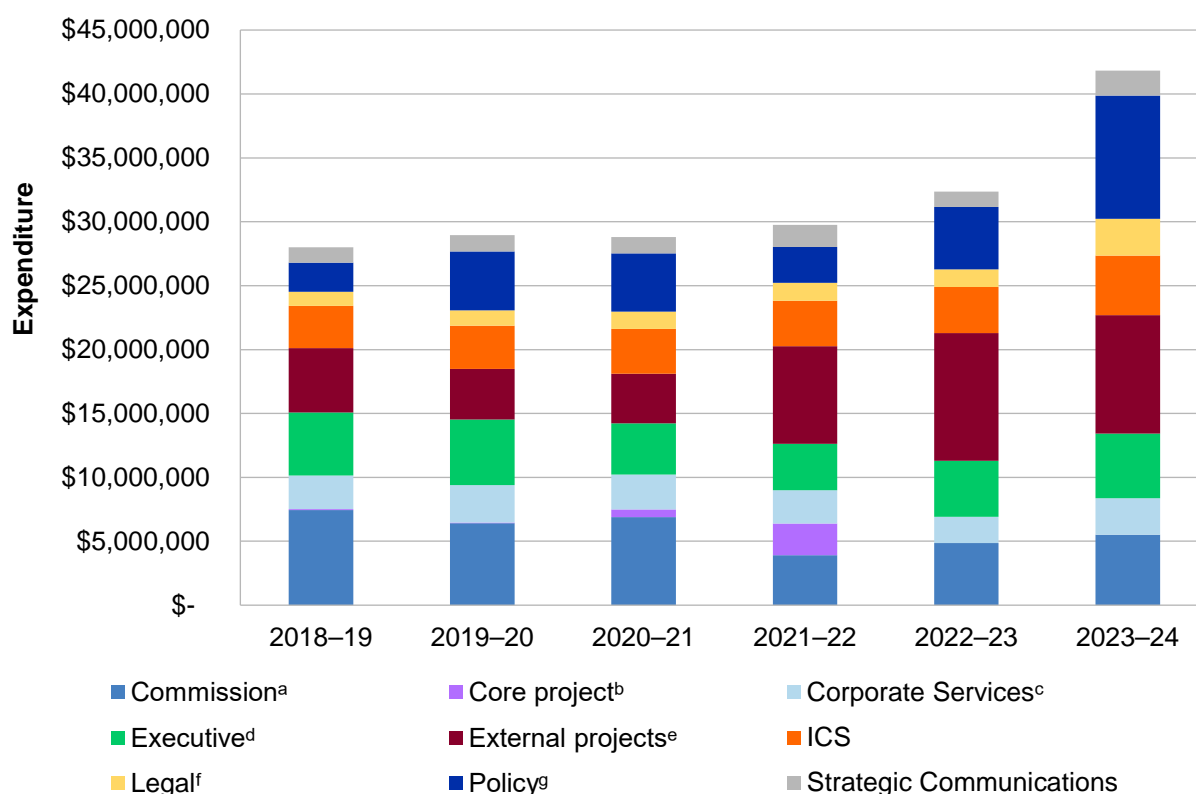
85 AHRC external projects has been a growing area of expenditure increasing from \$5 million in 2018–19 to \$9.3 million in 2023–24.

86 In 2023 the Commissioners each identified their priorities as part of its strategic planning process. No Commissioner identified complaints management as a priority.

Respect at Work Information Service staff and Investigation and Conciliation case officers. Another large area of expenditure for ICS relates to ongoing licence costs for Resolve.

3.49 As illustrated by Figure 3.1, there has been significant growth in complaints received, most particularly in 2020–21 and 2021–22. The number of complaints received was, on average 2,673 in 2022–23 and 2023–24, 21 per cent higher than the average of 2,107 between July 2017 and June 2020. In comparison, there was little growth in the resources allocated to the Investigation and Conciliation Service both in terms of budgeted and actual expenses. Expenses increased by between one and three per cent each year until 2023–24. There was a 28 per cent increase in ICS expenses in 2023–24, which related to extra staffing costs to address the backlog of complaints following additional resourcing provided in the October 2022–23 budget (refer to paragraph 3.45).

Figure 3.5: AHRC expenses, July 2018 to June 2024



Note: This figure excludes expenses of \$12,600 over three financial years that were attributed to two sections.

Note a: 'Commission' expenses relate to Commission-wide costs such as the lease on its office, ICT expenses and expenses related to CAESER.

Note b: The 'Core Project' category largely relates to costs incurred in relation to preparation of the Respect@Work report.

Note c: Corporate services includes costs for corporate enabling personnel such as Finance, People and Culture and ICT teams.

Note d: Executive costs relate to costs for the Commissioners, President and Chief Executive Officer including salaries, travel, printing and official hospitality.

Note e: External projects are externally funded projects that are funded by agreement or Memorandum of Understanding between the AHRC and external partners.

Note f: Legal team expenses include personnel to provide internal legal advice, act on behalf of the Commission in litigation and prepare reports to the Attorney-General. In 2023–24, costs captured under this category include Respect at Work Implementation costs and costs for two full time equivalent staff to support human rights reports.

Note g: Policy expenses include personnel to support Commissioners and the international engagement and partnerships team. In 2022–23 and 2023–24, costs captured under this category include Respect at Work implementation costs and National Anti-Racism Strategy costs.

Source: ANAO analysis of AHRC financial data.

Cost efficiency

3.50 AHRC has not established a target and does not measure the cost efficiency of its ICS. To examine the cost efficiency of ICS, the ANAO calculated AHRC’s direct expenditure per complaint finalised. This analysis does not take into account overheads (such as the cost of its premises in Sydney, information technology or human resources) as AHRC financial data was not structured in a way to achieve this.

3.51 Table 3.5 indicates that between July 2018 to June 2022 there was a decrease in the direct cost per complaint finalised from \$1,555 to 1,098, attributable to the increase in complaints finalised for a similar level of resources.⁸⁷ The cost per complaint finalised increased in 2022–23 and 2023–24, reflecting the lower number of complaints finalised and, for 2023–24, higher expenses for ICS. The cost per complaint finalised remained lower than 2018–19 and 2019–20.

Table 3.5: Cost per complaint finalised to ICS

Financial year	ICS expenses (\$ m)	Number of complaints finalised ^a	Cost per complaint finalised (\$)
2018–19	3.3	2,131	1,555
2019–20	3.4	2,164	1,563
2020–21	3.5	2,554	1,369
2021–22	3.6	3,262	1,098
2022–23	3.6	2,507	1,439
2023–24 ^b	4.3	2,745	1,549

Note a: The number of complaints finalised includes primary and secondary matters opened by the Commission (refer to discussion in paragraph 3.4 to 3.9).

Note b: The Respect@Work information service costs (which contributed to ICS expenses in 2023–24) were excluded from this analysis in order to compare similar inputs. This is different to analysis in Figure 3.5.

Source: ANAO analysis of AHRC records.

AHRC staffing

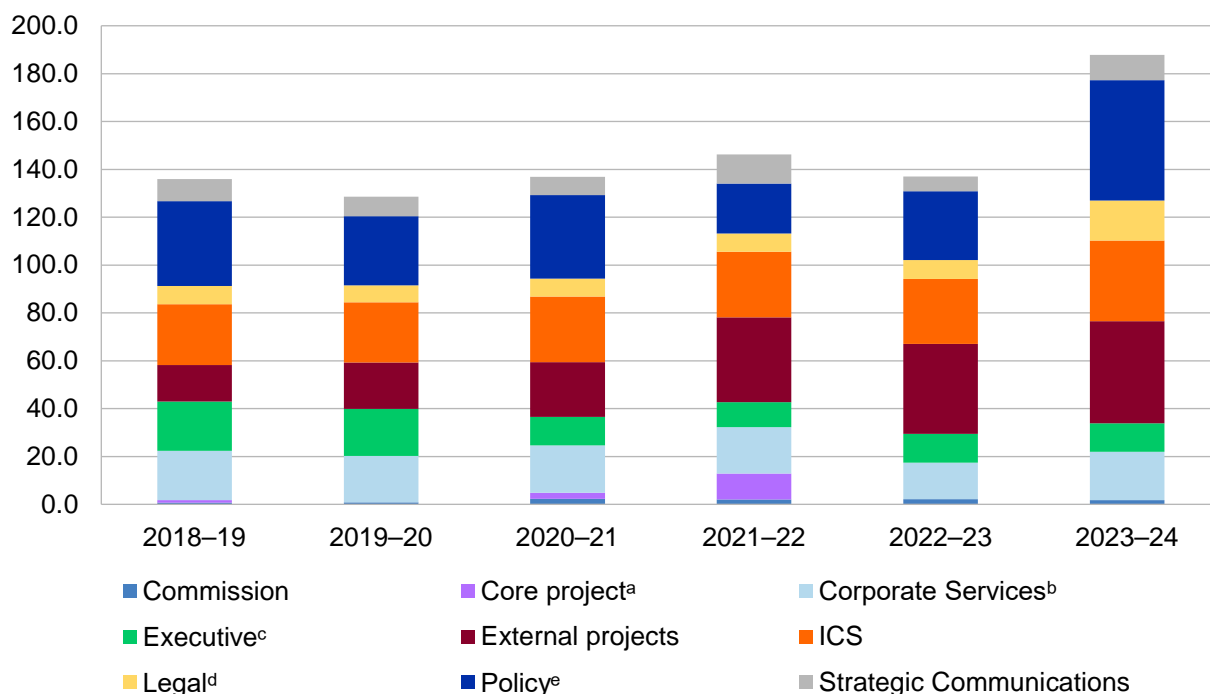
3.52 Figure 3.6 presents the AHRC’s full-time equivalent staffing levels between July 2018 to June 2024. The number of staff in ICS was stable between July 2018 to June 2022 (an average of 25.4 full-time equivalent staff in 2018–19 to 27.2 in 2022–23). ICS staffing increased in 2023–24 (an average of 33.7 full-time equivalent staff) as a result of additional funding received for the backlog and implementation of the Respect at Work information service (refer to paragraph 3.43).

3.53 The number of staff in ‘Policy’ increased from 28.7 full-time equivalent staff in 2022–23 to 50.4 full-time equivalent staff in 2023–24. In part, this increase reflects 18.5 full-time equivalent

⁸⁷ The effectiveness of AHRC’s conciliation of matters has been decreasing over time, both in terms of the proportion of matters conciliated and the number of matters successfully conciliated. Refer to paragraphs 4.4 to 4.11 for further discussion.

staff dedicated to implementing the National Anti-Racism Strategy and implementation of the Respect@Work report. There was growth in the Legal team in 2022–23 from 7.9 full time equivalent staff to 16.7 full time equivalent staff in 2023–24, reflecting the backlog funding and as part of Respect@Work implementation. Growth in corporate services from 15.4 full-time equivalent staff in 2022–23 to 20.1 full-time equivalent staff in 2023–24 was driven by additional resources in the people team, finance team and information and communication technology teams.

Figure 3.6: AHRC full-time equivalent staff snapshot, July 2018 to June 2024



Note: Resourcing data was available for the final quarter of 2018–19. This figure represents the average number of ICS staff of the final quarter of 2018–19.

Staffing data (in terms of full-time equivalent staff) was available on a monthly basis. These figures represent the average full time equivalent staff over the financial year.

Note a: The 'Core Project' category largely relates to personnel involved in the preparation of the Respect at Work report.

Note b: Corporate services includes personnel who provide corporate enabling services such as Finance, People and Culture and ICT teams.

Note c: Executive personnel include the Commissioners, President and Chief Executive Officer.

Note d: Legal team includes personnel to provide internal legal advice, act on behalf of the Commission in litigation and prepare reports to the Attorney-General.

Note e: Policy teams include personnel to support Commissioners, international engagement and partnerships team.

Source: ANAO analysis of AHRC human resources data.

Staff efficiency

3.54 A common approach to measuring efficiency is to calculate the ratio of inputs to outputs. The ANAO therefore calculated the ratio of complaints finalised to ICS staff (including management, National Information Service staff and investigation/conciliation officers) between July 2018 to June 2024. Table 3.6 indicates that the number of complaints finalised per full-time equivalent staff member improved each financial year between July 2018 to June 2022 (an average growth of

complaints finalised per FTE of 12 per cent). This reflects an efficiency gain as a result of the increased number of complaints finalised with a small increase in resources.

Table 3.6: Ratio of complaints finalised to ICS staff

Financial year	ICS staffing ^a	Number of complaints finalised ^b	Ratio of ICS staff to complaints finalised ^c
2018–19 ^d	25.4 ^a	2,131	84
2019–20 ^e	25.2	2,164	86
2020–21 ^e	27.3	2,554	93
2021–22 ^e	27.4	3,262	119
2022–23 ^e	27.2	2,507	92
2023–24 ^e	30.5	2,745	90

Note a: ICS staffing includes management staff, investigation and case officer staff and National Information Service (NIS) staff. The Respect@Work information service staff (which contributed to ICS expenses in 2023–24) were excluded from this analysis in order to compare similar inputs. This is different to analysis in Figure 3.6.

Note b: The number of complaints finalised includes primary and secondary matters opened by the Commission (refer to discussion in paragraph 3.4 to 3.9).

Note c: The ratio of ICS staff to complaints finalised is different to the output target discussed in paragraph 2.19 for Investigator/Conciliator staff. The efficiency ratio calculated in this table includes management staff, NIS staff and management staff.

Note d: Resourcing data was available for the final quarter of 2018–19. This figure represents the average number of ICS staff of the final quarter of 2018–19.

Note e: Staffing data (in terms of full-time equivalent staff) was available on a monthly basis. These figures represent the average full time equivalent staff over the financial year.

Source: ANAO analysis of AHRC records.

3.55 There has been a decrease in the number of complaints finalised per full-time equivalent staff member in 2022–23 and 2023–24, compared to 2020–21 and 2021–22. This reflects the lower number of complaints finalised and higher staffing level of ICS as a result of increased staffing to address the complaints backlog.

Internal allocation of resources

3.56 The actual number of staff managing complaints in 2023–24 in ICS (30.5 full time equivalent staff) does not reflect the budget estimates advised to government in the course of seeking additional funding that it estimated it would need to clear the backlog within two years (37 fulltime equivalent staff). There were comparatively more resources allocated to policy (four extra full time equivalent staff), corporate services (4.5 extra full time equivalent staff) and legal (1.5 extra full time equivalent staff) compared to the estimates advised to government.

3.57 In November 2024, the Commission advised the ANAO that:

there remains limited discretion to shift staffing resources between statutory functions, due to the limits of the Commission’s budget. As previously noted, the Commission has advised Government that it requires an average staffing of 145 ASL to appropriately deliver on its functions, and yet the Government in the October 2022 budget agreed to support a staffing profile of 105 ASL. The systemic underfunding of the Commission’s statutory functions remains the primary barrier to the Commission appropriately resourcing the ICS functions.

... Backlog funding was for both the ICS and the Legal Section as both sections are involved in clearing the backlog.

3.58 In contrast, the AHRC's Budget Subcommittee papers indicate that the ICS budget for 2023–24 was initially \$5.4 million. At the mid-year review point in November 2023, an ICS underspend was highlighted because of 'savings in employee costs due to the large number of part time employees.' The ICS budget was reduced from \$5.4 million to \$4.6 million (a reduction of \$708,000). The Executive budget was also reduced from \$5.3 million to \$4.8 million to reflect the vacant commissioner positions (age, disability and sex discrimination roles). These savings in part offset a \$1.1 million increase to undertake additional projects⁸⁸ and a \$225,709 increase in the Strategic Communications budget to undertake AHRC website redevelopment.

Recommendation no. 4

3.59 The Australian Human Rights Commission improve its management of complaint handling efficiency by developing an internal budget strategy that supports the delivery of its targets outlined in its Portfolio Budget Statement and Corporate Plan.

Australian Human Rights Commission response: *Agreed in principle.*

3.60 *The Commission acknowledges that operational changes are required to ensure its complaint handling team is able to fully utilise the budget allocated to it. This may mean that staffing levels are ostensibly recruited to a higher level than budget, in anticipation of the impact of staff turnover. Since 2021 the Commission has been reluctant to do this due to the financial sustainability issues identified by ANAO in 2021. These issues have now been addressed. The savings realised by the complaint handling team in 2023–24 and for 2024–25 financial year to date will inform the level of risk the Commission is prepared to accept in this regard.*

88 Projects included historic disclosures supplementation (\$216,400), a project to develop a report mapping threats to the human rights of trans and gender diverse people in Australia (\$185,974), additional staff to support the release of the Children Commissioner's statutory report (\$138,106) and policy team support (\$113,144).

4. Complaint handling effectiveness

Areas examined

The ANAO examined whether the Australian Human Rights Commission (AHRC or the Commission) handles complaints effectively.

Conclusion

A lower proportion of complaints are being conciliated by the Commission, with the Commission not meeting its related performance indicator for the last three years. A greater proportion of complaints are being terminated or discontinued. Data on complainant and respondent satisfaction with the AHRC's complaint handling is not reliable.

Areas for improvement

The ANAO made one recommendation aimed at improving the Commission's approach to measuring whether parties are satisfied with its complaints handling and two suggestions for improvement aimed at improving transparency of reporting of conciliated matters and timeliness of human rights reports.

4.1 The Office of the Commonwealth Ombudsman's (Commonwealth Ombudsman) *Better Practice Complaint Handling Guidance* sets out that indicators of an effective complaint handling system may include whether the system is accessible to all users, whether complaints are resolved within reasonable timeframes, whether appropriate outcomes and remedies are provided and overall complaint satisfaction is high.⁸⁹

4.2 The AHRC's 2023–24 Corporate Plan and Portfolio Budget Statements contained one performance measure related to complaints handling: 'we deliver a fair and effective investigation and conciliation service'. This measure has three targets and two other indicators of performance:

- 85 per cent of complaints are finalised in under 12 months (refer to discussion in paragraph 3.17 to 3.41);
- 40 per cent of complaints are resolved by conciliation;
- instances where the terms on which the investigation and conciliation disputes are resolved include systemic outcomes that accord with the objectives of the law;
- 85 per cent of participants are satisfied with the service they receive; and
- instances where participation in the investigation and conciliation process results in an increased understanding of rights and responsibilities in the law.

Are complaints handled effectively?

It has become less likely for complaints to be conciliated and more likely for complaints to be discontinued, terminated or declined by the AHRC.

- An increasing number of complaints received have been assessed as suitable for conciliation and an increasing number of conciliations have been held over the last seven financial years (reflecting higher complaint numbers overall). The proportion of complaints

89 Commonwealth Ombudsman, *Better Practice Complaint Handling Guide* [Internet], p. 39.

recorded⁹⁰ as resolved through conciliation decreased from 46 per cent of complaints in 2017–18 to 33 per cent in 2023–24. The Commission did not meet its target of conciliating 40 per cent of complaints in 2021–22, 2022–23 or 2023–24, notwithstanding the additional resources provided through the October 2022 Budget.

- The proportion of complaints terminated, declined or discontinued has grown, increasing from 40 per cent of complaints finalised in 2017–18 to 58 per cent of complaints finalised in 2023–24.

4.3 As discussed at paragraph 2.46, the ANAO’s analysis of 137 randomly selected complaints identified that complaints are largely being handed in accordance with legislation and procedural guidance. Further in this respect, in November 2024 the AHRC advised the ANAO that:

Despite having several administrative decisions under review at any time, the current primary decision-making delegates have not had a decision overturned on review or remitted back to the Commission, including during the audit period. It is the robustness of this decision making which allows the ICS to effectively administer federal discrimination laws and provide a service that is fair to both complainants and respondents.

Complaints conciliated

4.4 As discussed in paragraph 1.4, the core functions of AHRC include to inquire into and conciliate complaints of breaches of human rights, complaints of International Labour Organisation (ILO) discrimination in employment (also referred to as ILO complaints) and complaints of unlawful discrimination.⁹¹ The purpose of conciliation is for ‘parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute and develop options, consider alternatives and endeavour to reach an agreement.’ Parties with successful resolution of unlawful discrimination complaints will not progress to Court. The Commission is the only forum where complainants claiming breaches of human rights or ILO discrimination in employment may seek resolution of their complaints.

4.5 Complaints are assessed and accepted by a delegate with a recommended action following receipt.⁹² Recommended actions include conciliation, seek response, upfront termination or decline and administrative closure. As set out in Table 4.1, the total number of complaints received and assessed as suitable for conciliation has almost doubled over the seven years examined from 1179 in 2017–18 to 2094 in 2023–24. The total number of conciliations held (based on the number of finalised complaints) has also increased over the time period from 1265 in 2017–18 to 1617 in 2023–24. This reflects the high volumes of complaints received and finalised.

90 The ANAO’s analysis of 54 matter files with an outcome type recorded as conciliated identified that 27 per cent of these matters had not been conciliated by the AHRC. Rather, they had been withdrawn by the complainant, discontinued by AHRC or resolved outside of Commission processes. This indicates that the Commission’s performance reporting overstates the number of conciliations it undertakes.

91 *Australian Human Rights Commission Act 1986*, paragraphs 11(1)(f), 11(1)(aa) and 31(b).

92 The Resolve User Guide defines a recommended action as indicating ‘the delegate’s instruction about how the complaint should be handled.’

Table 4.1: Proportion of complaints recommended for and resolved through conciliation, July 2017 to June 2024

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Total number of complaints received assessed as suitable for conciliation ^a	1,179	1,497	1,523	1,704	2,678	2,081	2,094
Proportion of complaints received assessed as suitable for conciliation ^a (%)	54	71	65	54	70	79	77
Number of complaints finalised with conciliations held ^b	1,265	1,425	1,458	1,543	1,865	1,332	1,617
Proportion of complaints successfully resolved through conciliation (%)	74	71	69	68	60	57	56
Proportion of complaints not resolved through conciliation (%)	26	29	31	32	40	43	44

Note a: The total number of complaints received and assessed as suitable for conciliation is based on summary-level reports data provided by AHRC from Resolve in November 2024. AHRC advised the ANAO in November 2024 that ‘this data is the record of the original recommended action on file after reviewing the complaint documents only’ and may be re-assessed throughout the course of the complaint handling process (not reflected in these figures).

Note b: The number of conciliations held was calculated by counting the number of complaints reported as conciliated, the complaints terminated or declined due to no reasonable prospect of conciliation, complaints discontinued post unsuccessful conciliation and complaints withdrawn post unsuccessful conciliation. This is consistent with methodology employed by AHRC in its public reporting.

Source: ANAO analysis of AHRC complaints data.

4.6 Successful conciliation can result in agreement between parties and, for unlawful discrimination complaints, avoid matters continuing to the Federal Court of Australia or Federal Circuit and Family Court of Australia. The AHRC advises potential complainants that complaint outcomes can include an apology, reinstatement to a job, compensation for lost wages, changes to a policy or developing and promoting anti-discrimination policies.⁹³ Table 4.1 indicates the proportion of complaints that proceed to conciliation and are successfully resolved is decreasing.⁹⁴ Complaints successfully resolved through conciliation have decreased from a 74 per cent in 2017–18 to 56 per cent in 2023–24.

4.7 The AHRC outlined reasons in November 2024 to the ANAO for the reducing conciliation rate. The main reason identified was the impact of the COVID-19 pandemic on the subject matter of complaints (for example, complaints regarding COVID-19 pandemic related policies, directions,

93 AHRC, *Conciliation – how it works* [Internet].

94 The proportion of complaints successfully resolved through conciliation was reported each year for the time examined in the complaint statistics attachment to the AHRC annual report.

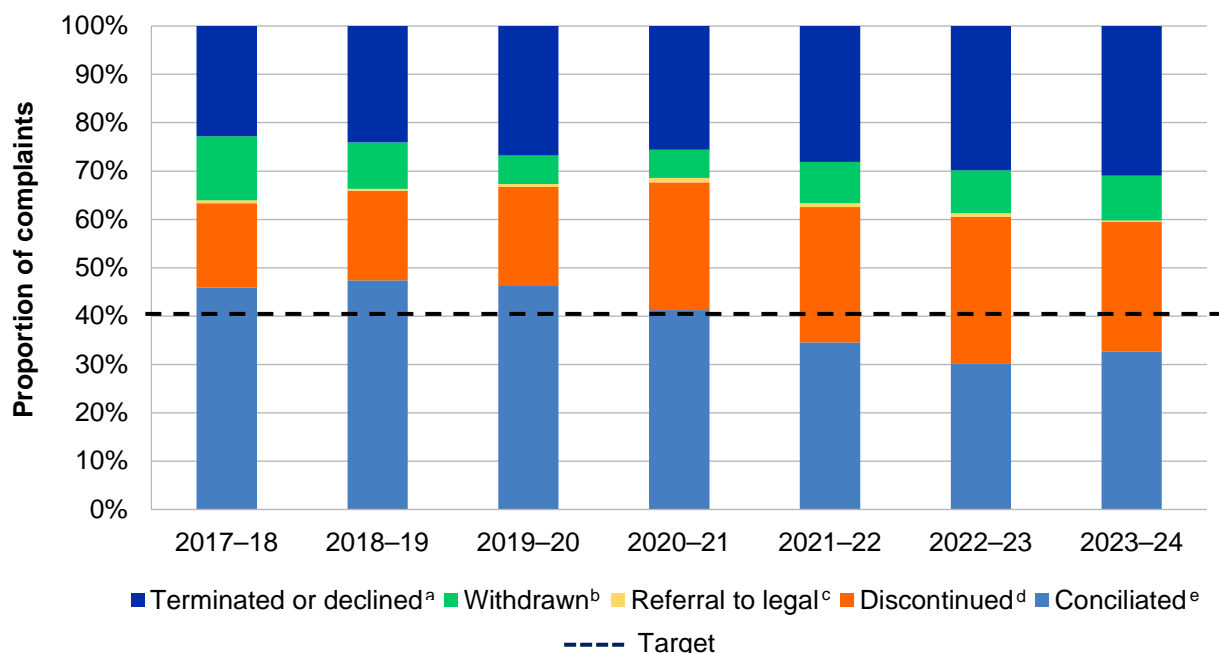
health orders, mask wearing, vaccination and migration) which may not be amenable to conciliation and volume of complaints. Another factor identified by the Commission included the April 2017 amendments in terms of the ‘differential treatment of grounds for termination in the AHRC Act’ has led to ‘an observable, increasingly “litigious” and legalistic approach being adopted by parties’.

Proportion of complaints conciliated

4.8 As set out in paragraph 4.2, the AHRC monitors its delivery of a fair and effective complaints management service by measuring the proportion of complaints conciliated. The Commission adopted the target of 40 per cent of complaints conciliated in 2016–17. This represented an increased target compared with that previously adopted of 30 per cent in its 1999–2000 Annual Report.

4.9 Figure 4.1 demonstrates that the proportion of complaints finalised by AHRC with the outcome type ‘conciliated’ decreased from 47 per cent in 2018–19 to 30 per cent in 2022–23. There was an increase in the proportion of complaints conciliated in 2023–24 to 33 per cent. Of the seven financial years examined, AHRC did not meet its target to conciliate 40 per cent of complaints for the last three financial years.⁹⁵ Performance remained below the 40 per cent target notwithstanding the additional resources provided to the AHRC in the October 2022 Budget to manage its increasing complaints load and resolve its backlog over a period of two years (see further information at paragraph 3.43).

Figure 4.1: Proportion of complaints by outcome type, July 2017 to June 2024



Note: This figure excludes the outcome type ‘negative report’, where a matter has been referred for reporting but on balance the AHRC found there is no discrimination. One complaint finalised between July 2017 to June 2024 was finalised with a negative report.

⁹⁵ Prior to 2021–22, the proportion of complaints conciliated had not been below 40 per cent since 2005–06. Appendix 4 sets out AHRC’s performance against its targets for complaints conciliated from July 1999 to June 2024.

Note a: An unlawful discrimination complaint may be terminated by the President for reasons set out in the AHRC Act. The President may decide to not inquire into any act or practice or decide not to continue inquiring into an act of practice for breaches of human rights and complaints of employment in discrimination (reported by AHRC as a 'decline'). Refer to paragraph 1.6 for further discussion on the difference in these outcome types.

Note b: A complainant may withdraw an unlawful discrimination complaint with leave of the President.

Note c: If the President is of the opinion that a breach of human rights or ILO discrimination in employment has occurred, the President may report the matter to the Attorney-General. An outcome type of 'Referral to Legal' represents an internal outcome where these complaints are referred to the Legal team for possible reporting (refer to discussion at paragraphs 4.14 to 4.20).

Note d: The President may discontinue a complaint where they are satisfied the complainant does not wish to proceed with their complaint. For example, this may be due to a loss of contact with the complainant.

Note e: A complaint is reported as 'conciliated' if the President is satisfied that the complaint has been settled or resolved.

Source: ANAO analysis of AHRC records.

4.10 Table 4.2 sets out the number, rather than proportion, of complaints finalised by outcome over the period examined by the ANAO. It further illustrates that the number of complaints being conciliated has reduced over time. For example, fewer complaints were finalised with an outcome type conciliated in both 2022–23 and 2023–24 than in any of the years between 2017–18 and 2021–22 notwithstanding that more complaints are being received.

Table 4.2: Number of complaints by outcome, July 2017 to June 2024

Outcome	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Conciliated	930	1,010	1,004	1,054	1,128	755	898
Discontinued	354	395	440	674	913	764	735
Referral to legal	12	8	13	23	25	18	8
Withdrawn	268	205	127	149	279	222	255
Terminated or declined	463	513	580	654	917	748	849
Total	2,027^a	2,131	2,164	2,554	3,262	2,507	2,745

Note: Table 4.1 sets out the number of complaints received recommended for conciliation, the number of conciliations held based on complaints finalised and the declining proportion of complaints resolved through conciliation.

Note a: This table excludes the outcome type 'negative report', where a matter has been referred for reporting but on balance the AHRC found there is no discrimination. One complaint finalised between July 2017 to June 2024 was finalised with a negative report.

Source: ANAO analysis of AHRC records.

4.11 ANAO analysis of individual complaint files identified that an outcome type of 'conciliated' captures all complaints closed by the President if satisfied the complaint has been settled or resolved.⁹⁶ ANAO examination of individual complaint files included examination of 54 matter files with an outcome type reported as conciliated. Of these matters recorded as conciliated, fifteen complaints (27 per cent of conciliated matters examined) were withdrawn by the complainant, discontinued by AHRC or resolved outside of Commission processes.⁹⁷ This meant that the AHRC records overstated the number of matters that had been conciliated. There is a risk that if this

96 *Australian Human Rights Commission Act 1984*, subparagraphs 20(2)(c)(vii), 32(3)(c)(vii) and paragraph 46PF(5)(b).

97 As discussed in paragraph 4.4, the purpose of conciliation is for parties to a dispute with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute and develop options, consider alternatives and endeavour to reach an agreement.

overstatement was repeated across the population of complaints for the seven year period examined by the ANAO, it would have a significant impact on the AHRC's performance reporting.

4.12 In November 2024, the AHRC advised the ANAO that 'it would assist to include a footnote in its data reporting to the effect that outcomes reported may include complaints that have resolved outside the Commission's processes'.

Opportunity for improvement

4.13 Transparency over the AHRC's complaint handling performance would be improved if the AHRC did not count complaints resolved outside its processes as being resolved through conciliation by the Commission.

Referral to legal and reports to the Attorney-General

4.14 As discussed in paragraph 1.7, the President may refer complaints of breaches of human rights or ILO discrimination in employment complaints for reporting to the Attorney-General.⁹⁸ Between July 2017 and June 2024, the AHRC finalised 107 complaints as 'referral to legal'.

4.15 The number of days from receipt of a complaint to referral to legal for possible reporting has increased over time from a median of 238 days and an average of 299 days in 2017–18 to a median of 441 days and an average of 527 days in 2023–24. The increase in the timeframes for referral has been accompanied by an increase in the number of days complaints are deferred from a median of 0 days and average of 80 days in 2017–18 to a median of 59 days and an average of 263 days in 2023–24.

4.16 The AHRC transmitted to the Attorney-General 48 reports on breaches of human rights or ILO discrimination in employment complaints between July 2017 and June 2024.⁹⁹ Seventeen reports (35.4 per cent) in the last seven years were transmitted in 2023–24. The ANAO examined the timeframes between complaint receipt, referral to legal and report transmission to the Attorney-General, as set out Appendix 5. For 2023–24 the average time between complaint receipt to report transmission was 1455 days or 4 years. The average time:

- between receipt to referral to legal for these complaints was 404 days (1.1 years); and
- from referral to legal to transmission of the report was 1050 days (2.9 years).

4.17 In November 2024, the AHRC advised the ANAO that:

A significant period of delay in the human rights complaint process was the time between the referral to the Legal Section and allocation of the complaint to a lawyer. This was due to resource constraints within the Legal Section. In a sample of three complaints [*analysed by the ANAO*], this period was 793 days (Report 150), 520 days (Report 152) and 849 days (Report 166). This period is calculated from the date the matter was referred to the Legal Section, until the first information request was made by a legal officer to a respondent. In 2023-24, following receipt of the backlog

98 Reports are tabled in Parliament and published on the AHRC's website: AHRC, *Human Rights Reports*, AHRC, Sydney, 2022, available from <https://humanrights.gov.au/our-work/legal/projects/human-rights-reports> [accessed 3 October 2024].

99 The Department of Home Affairs was named as the respondent to 44 of the 48 human rights reports between July 2017 and June 2024. Breaches of human rights complained of related to arbitrary detention, use of force and arbitrary interference with family.

funding, six new human rights complaints were referred to the Legal Section. Of these complaints, the average period of time from referral to the Legal Section until the first information request was 43 days. This demonstrates that as a direct result of the government investment in reducing the backlog of human rights complaints, the Commission has made a very significant difference in what was previously one of the longest periods of any investigation – allocating the file to a lawyer with capacity to do the work.

4.18 Another factor identified by AHRC to the ANAO in November 2024 as affecting the timeliness of reporting once referred to legal is the amount of time elapsed waiting for information or responses from respondent parties.¹⁰⁰ Following referral to legal, the AHRC must provide a responding party with a reasonable opportunity to appear before the Commission or make submissions¹⁰¹ and must provide a notice to a responding party where it finds that an act or practice is inconsistent with or contrary to any human rights.¹⁰² The Commission may request additional information to inform its reporting.

4.19 The ANAO analysed the time elapsed waiting for responses in each of the key phases for reports transmitted to the Attorney-General in 2023–24. The average number of days elapsed per report waiting for responses to information requests or notices was 282 days (0.75 years). The highest number of days for a report tabled in 2023–24 was 695 days elapsed (comprised of 344 days between an initial information request and receipt, 222 days between issuing a section 27 preliminary view and receiving a response and 129 days between issuing a section 29 notice and receiving a response).

Opportunity for improvement

4.20 The Australian Human Rights Commission identify opportunities to improve the timeliness of its reports, such as establishing key performance indicators for the average time taken from when a complaint is referred for possible reporting and the completion of a report to the minister.

Other complaint outcomes

4.21 Figure 4.1 shows that the proportion of complaints being discontinued, terminated and declined has increased over the seven years examined. In total, the proportion of complaints finalised with these outcome types has increased from 40 per cent of complaints finalised in 2017–18 to 58 per cent of complaints finalised in 2023–24.

100 The Department of Home Affairs was the respondent for all human rights reports transmitted to the Attorney-General in 2023–24.

101 The AHRC Act sets out the Commission must not furnish a report to the minister in relation to an act or practice until it has given a reasonable opportunity to the person to appear before the Commission or make written submissions: *Australian Human Rights Commission Act 1986*, section 27.

102 The AHRC Act sets out that if after an inquiry it finds that an act or practice is inconsistent with or contrary to any human rights, the Commission shall service notice in writing on the person setting out its findings and the reasons for those findings and may include recommendations: *Australian Human Rights Commission Act 1986*, subsection 29(2).

Terminated complaints

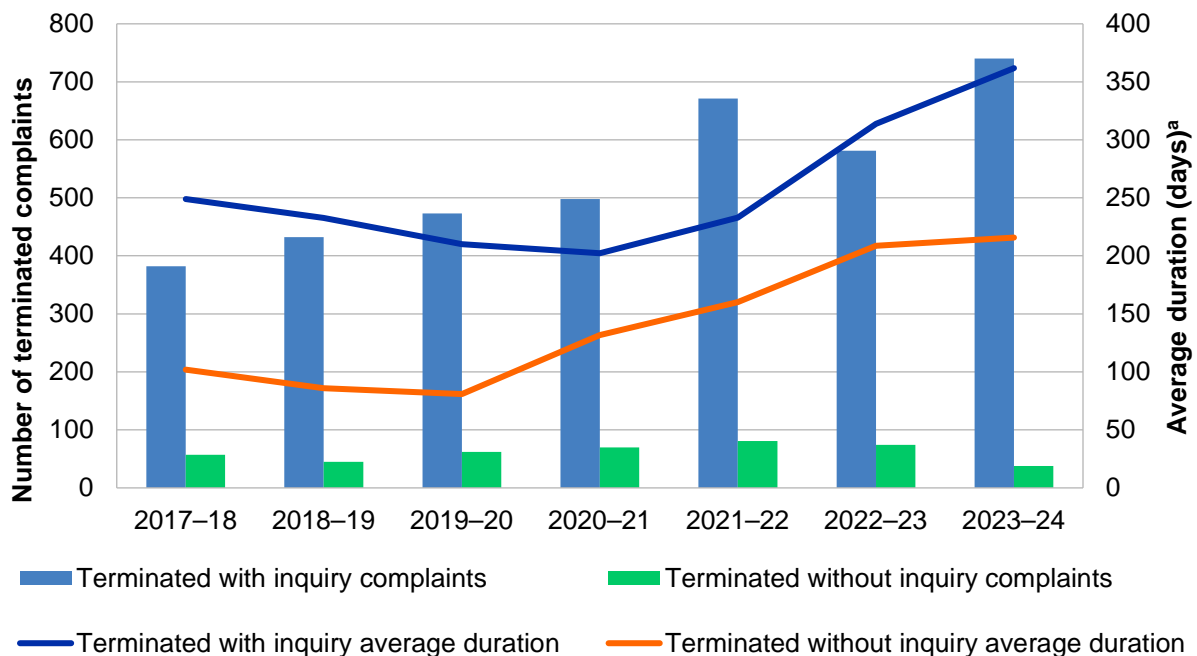
4.22 A complaint of unlawful discrimination may be terminated by the President or their delegate with or without inquiry.¹⁰³ Additional powers to terminate complaints without inquiry were introduced in 2017¹⁰⁴ to ‘terminate unmeritorious complaints at the earliest opportunity’. A termination represents the end point of AHRC dealing with the complaint and means that a complaint has not been resolved between parties.

4.23 Figure 4.2 indicates the number of complaints being terminated has increased, driven by the number of complaints terminated following inquiry almost doubling over the seven years examined.

- In 2017–18, the number of complaints terminated was 439 comprised of 57 complaints terminated without inquiry and 382 terminated complaints following inquiry.
- In 2023–24, this increased to 778 complaints terminated, comprised of 38 complaints terminated without inquiry and 740 complaints terminated following inquiry.

4.24 The Commission does not often use its powers to terminate complaints without inquiry: the number of complaints terminated without inquiry has decreased from 57 in 2017–18 to 38 in 2023–24. The average duration has increased from 102 days in 2017–18 to 216 days in 2023–24. The increased handling timeframes are not aligned with AHRC’s processes where the assessment to terminate a complaint without inquiry is made at the point of acceptance of a complaint during initial triage.

Figure 4.2: Number and average duration of terminated complaints, July 2017 to June 2024



Note a: The average duration of terminated complaints was calculated as the number of days from receipt to finalisation of the complaint, including ‘inactive’ time.

Source: ANAO analysis of AHRC complaint data.

103 Upon receipt and acceptance of a complaint, the President must consider whether a complaint should be terminated without inquiry: *Australian Human Rights Commission Act 1986*, paragraph 46PF(1)(b).

104 *Human Rights Legislation Amendment Act 2017*, Schedule 2, item 31.

4.25 Consistent with the trend in Figure 3.4, the main driver of increased complaint handling timeframes for complaints terminated without inquiry is the increase in the average number of days between acceptance of the complaint and allocation to a case officer. This has grown from 39.5 days in 2017–18 to 129.2 days in 2023–24. Another factor affecting the time taken to terminate complaints without inquiry is the design of the complaint process. While complaints are terminated without inquiry, processes are designed to ensure complainants are treated fairly. Under existing procedure, complainants receive letters setting out reasons a complaint may be terminated. Letters also invite complainants to provide further supporting information within a given timeframe which may affect the assessment.

4.26 The average duration of terminated complaints with inquiry has increased from 249 days in 2017–18 to 362 days in 2023–24. The most common reason a complaint is terminated following inquiry, representing 85 per cent of terminated complaints with inquiry outcomes, is that there is no reasonable prospect of conciliation.

4.27 As discussed in paragraph 1.6, if an unlawful discrimination complaint is terminated by AHRC, a complainant may apply to the Federal Circuit Court and Family Court of Australia or Federal Court of Australia (Federal Courts) if the Federal Courts grant leave, the President is satisfied the subject matter of the complaint involves a matter of public importance that should be considered by the Federal Courts or the complaint was terminated on the basis there was no reasonable prospect of conciliation. The Federal Courts may make orders they see fit.¹⁰⁵ The proportion of matters with applications to court has increased from 2.6 per cent in 2017–18 (55 matters) to 4.1 per cent in 2023–24 (113 matters). The average growth rate of applications to court (12 per cent) over seven years is higher compared to the average growth in complaints finalised as terminated by 10 per cent. The ANAO could not verify the completeness of these statistics as this is dependent on other government entities (Federal Courts) sharing applications to court with AHRC.

Discontinued & withdrawn complaints

4.28 Complaints may also be finalised if complainants request to withdraw complaints or may be discontinued by AHRC if it is satisfied the complainant does not wish to proceed with their complaint.¹⁰⁶ As discussed at paragraph 4.37, complaints withdrawn or discontinued are under-represented in the Commission’s client satisfaction surveys.

4.29 As set out in Figure 4.3, there was a small decrease in the number of withdrawn complaints from 268 in 2017–18 to 255 in 2023–24. In contrast, the number of complaints discontinued by the AHRC increased from 354 in 2017–18 to 735 in 2023–24, with the highest number of complaints finalised as discontinued occurring in 2021–22.

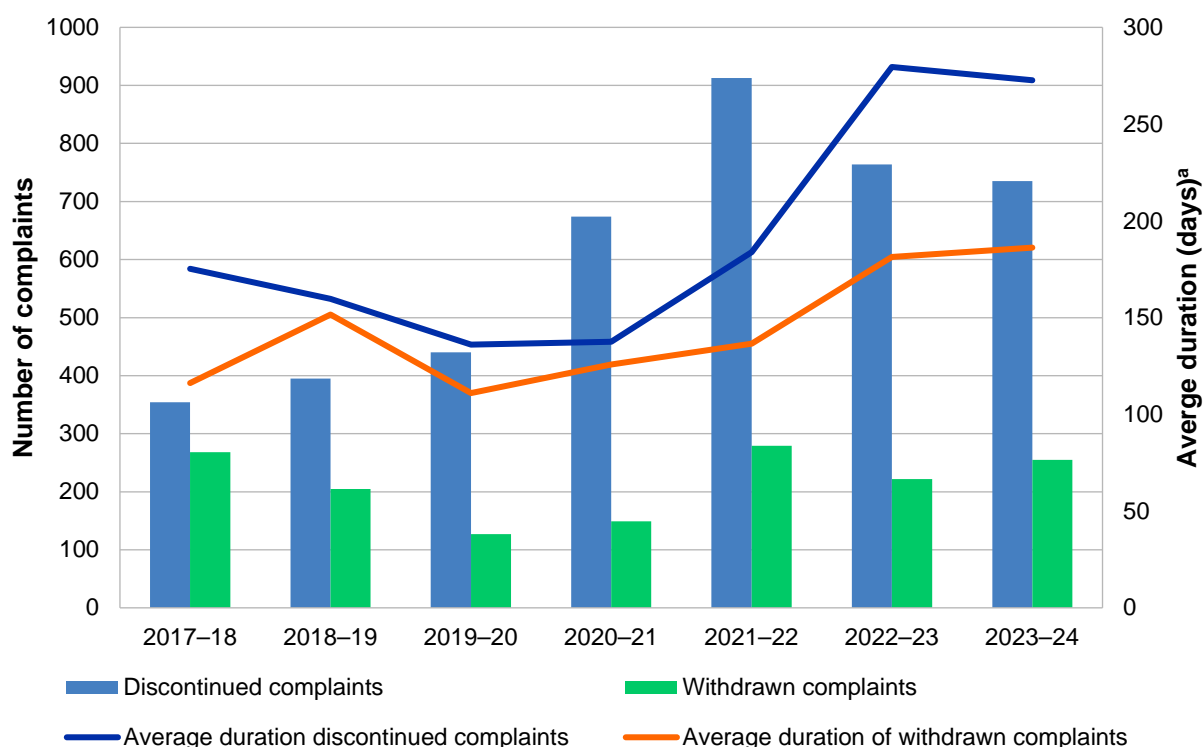
4.30 The most common reason complaints were discontinued over the seven years examined by the ANAO was loss of contact by the AHRC with the complainant (representing 46 per cent of discontinued outcome reasons). As discussed at paragraph 3.32 there is an increasing amount of time between acceptance of a complaint and allocation to a case officer, which means that complainants are waiting considerable periods of time to receive a substantive response from the AHRC. By surveying less than 16 per cent of complainants for discontinued complaints (see Table 4.4) the AHRC is not well placed to assess the extent to which the delays in its complaint handling

105 *Australian Human Rights Commission Act 1986*, subsections 46PO(1), 46PO(3A), 46PO(4) and section 49B.

106 *ibid.*, paragraphs 20(2)(b), 32(3)(b), section 46PG and paragraph 46PF(5)(a).

is contributing to loss of contact.¹⁰⁷ The second most common reason was complaints discontinued following information or discussion (representing 26 per cent of discontinued outcome reasons).

Figure 4.3: Number and average duration of discontinued and withdrawn complaints, July 2017 to June 2024



Note a: The average duration of terminated complaints was calculated as the number of days from receipt to finalisation of the complaint, including 'inactive' time.

Source: ANAO analysis of AHRC complaints data.

4.31 The ANAO examined 27 complaints in detail finalised as discontinued. Thirteen complaints were discontinued due to loss of or no meaningful contact with the complainant. The amount of time provided to complainants to contact the Commission was not always reasonable in the context of the time between acceptance and allocation of the complaint. For example:

- A complaint of disability discrimination as a result of mask wearing was received and assessed three days later in October 2021. Ahead of allocation to a case officer, an email was sent to the complainant on 11 March 2022 querying whether they wished to proceed. A follow-up email was sent on 21 March 2022, requesting a response by 2 April 2022. The complaint was finalised as discontinued on 4 April 2022 with no further contact from the complainant.
- Another complaint of disability discrimination was received in January 2022 and assessed as a standard complaint three days later. Ten months later (in mid-October 2022) the Commission attempted to re-establish contact. AHRC could not re-establish contact and the complaint was closed three weeks later in November 2022.

¹⁰⁷ Complainants or their representatives provide contact details to the Commission when submitting the complaint forms which the Commission records in Resolve. These contact details usually include email address, phone number and mailing address.

Systemic outcomes of conciliated matters

4.32 AHRC also reports the instances where the terms on which resolved conciliations include systemic outcomes that accord with the objectives of the law. AHRC defines a ‘systemic outcome’ as an outcome with benefits for people beyond the individual complainant. Examples include anti-discrimination policies and training within workplaces, changes to built environments to increase accessibility and adjustments in the way services are provided to all customers. ANAO analysis of AHRC data indicates the number of instances of systemic outcomes has reduced from 39 per cent of outcomes in 2019–20 to 23 per cent of outcomes in 2023–24.

Table 4.3: Number of systemic outcomes for conciliated matters, July 2017 to June 2024

Financial year	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
AHRC’s reported result ^a (%)	31	30	39	38	24	38	23
ANAO recalculated result based on AHRC data ^b (%)	31	29	39	26	24	23	23
Difference ^b (%)	0	(1)	0	(12)	0	(15)	0

Note a: All complaints finalised in a financial year are reported against this target, including standard and priority complaints.

Note b: To test the verifiability of reported performance results, the ANAO obtained the data AHRC used to calculate the proportion of conciliated matters with systemic outcomes between July 2017 to June 2024 and reperformed calculations based on the data provided and documented business rules. No manual interventions were applied by ANAO to AHRC complaints data.

Source: ANAO analysis of AHRC data.

4.33 ANAO analysis also identified that AHRC overstated its performance in 2020–21 and 2022–23 by 12 per cent and 15 per cent respectively against this indicator of performance (Table 4.3). As discussed in paragraph 3.9, entities must be able to demonstrate that reported performance information use sources of information and methodologies that are reliable and verifiable.¹⁰⁸ Department of Finance guidance to entities sets out that performance measures should be supported by clearly identified data sources and methodologies to demonstrate reliability and verifiability of reported information. Methodologies used need to be designed in a way to produce accurate data, be applied consistently and be able to be substantiated.¹⁰⁹

4.34 In November 2024 the AHRC advised the ANAO that ‘an agreed process of calculating and cross-checking the results has been implemented and the percentage calculated in the 2023–24 Complaint Statistics document (as well as in three other years within the audit period) matches the ANAO’s calculations’.

108 Public Governance, Performance and Accountability Rule 2014, subrule 16EA(b).

109 Department of Finance (Finance), *Resource Management Guide 131: Developing performance information: Reliable and verifiable* Finance, May 2024, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/developing-performance-measures-rmg-131/reliable-verifiable> [accessed 23 September 2024].

Are parties satisfied with complaint handling process?

The AHRC is not obtaining reliable data on the extent to which complainants and respondents are satisfied with its complaint handling process.

- Parties' measured level of satisfaction with Commission's complaint handling processes has been decreasing over time. Overall satisfaction decreased from 91 per cent in 2017–18 to 85 per cent in 2023–24.
- Respondents and their representatives report higher levels of overall satisfaction than complainants do with AHRC complaint handling processes. Respondents also report higher levels of agreement that Commission processes are timely and fair.
- The results of the surveys reported by the Commission are not demonstrably reliable and unbiased. Of note is that 61 per cent of participants were not sent the satisfaction survey over the seven years examined. Satisfaction surveys were most often sent to participants with conciliated (53 per cent of complainants and 51 per cent of respondents) and terminated or declined outcomes (53 per cent of complainants and 52 per cent of respondents). Complainants who withdraw their complaints or complainants whose complaints are discontinued by the AHRC were less likely to be surveyed.

4.35 As discussed in paragraph 4.2, the AHRC monitors its delivery of a fair and effective complaints management service by measuring the proportion of parties satisfied. The Commission adopted the target of 85 per cent of parties satisfied in 2016–17, increasing the target previously adopted of 80 per cent in its 2000–01 Annual Report. The data source for this target is a survey sent to parties following the finalisation of complaints. The survey may be sent to the complainant or respondent directly, or to their representatives.

4.36 Performance measures for entities should provide an unbiased basis for the measurement and assessment of the entity's performance.¹¹⁰ Department of Finance guidance states that when performance measures are based on survey results, to mitigate the risk of biased performance results, documentation should be created which identifies factors including the survey sample population and size, how the survey will be conducted (including controls over the survey process and data) and an acceptable survey response rate. Further, Finance cautions that, where performance measurement is undertaken by those responsible for the management of the program, there should be adequate controls in place to demonstrate that results are objectively assessed.¹¹¹

4.37 Table 4.4 indicates that between July 2017 to June 2024, of the complaints finalised, the Commission did not send the satisfaction survey to 61 per cent of complainants and respondents (or their representatives). A higher number of satisfaction surveys have been sent to parties where a complaint is conciliated, terminated or declined. For example, for complaints finalised with the outcome type 'conciliated', the satisfaction survey was sent to 53.1 per cent of complainants (or

110 Public Governance, Performance and Accountability Rule 2014, subrule 16EA(c).

111 Department of Finance (Finance), *Resource Management Guide 131: Unbiased measurement & assessment* Finance, May 2024, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/developing-performance-measures-rmg-131/unbiased-measurement-assessment> [accessed 23 September 2024].

their representatives) and 52.1 per cent of respondents (or their representatives). Fewer satisfaction surveys are sent to parties where the outcome type is discontinued or withdrawn.

Table 4.4: Number of satisfaction surveys sent by outcome type, July 2017 to June 2024

Outcome of finalised complaint	Number of surveys sent to complainants ^a	Proportion sent to complainants (%)	Number of surveys sent to respondents ^a	Proportion sent to respondents (%)
Conciliated	3,602	53.1	3,533	52.1
Terminated & declined	2,485	52.6	2,444	51.7
Referral to legal	1	0.9	1	0.9
Discontinued	669	15.6	655	15.3
Withdrawn	250	16.6	243	16.1
Administration closure	9	2.2	5	1.2
Total	7,016^b	39.4	6,882^b	38.7

Note a: This includes satisfaction surveys sent directly to the complainant or respondent, or their representatives.

Note b: This figure excludes the outcome type 'negative report', where a matter has been referred for reporting but on balance the AHRC found there is no discrimination. One complaint finalised between July 2017 to June 2024 was finalised with a negative report.

Source: ANAO analysis of AHRC complaints data.

4.38 The AHRC's acceptable survey response rate has not been established. The number of satisfaction surveys sent and returned indicates that both the respondent and complainant survey response rate has been decreasing over the seven years examined (refer to Table A.1 in Appendix 6). The survey response rate for respondents (and their representatives) has decreased from 26.7 per cent in 2017–18 to 11.5 per cent in 2023–24. The complainant survey response rate has decreased to a lesser extent from 26.8 per cent in 2017–18 to 14.5 per cent in 2023–24. The survey response rate and difference in response rates between complainants and respondents is not reflected within the AHRC performance statements when reporting the proportion of survey participants satisfied.

4.39 The AHRC does not have adequate controls in place regarding the survey process for participant satisfaction. There is no documented guidance for case officers setting out reasons when satisfaction surveys should be sent (and when not). The reasons a survey may not be sent to parties is also not captured within the complaint file. The lack of adequate controls means that there is a risk that the performance information based on the survey data is biased. There is also a lack of transparency and accountability for these decisions.

4.40 The Commission advised the ANAO in November 2024 that it is:

considering the information it includes when reporting its survey results and intends to include more information about the number of surveys sent and returned as well as the type of complaint closures that surveys are sent to, for increased transparency as well as a greater opportunity to gain insight into the reasons for matters being discontinued.

The Commission does note that making contact with parties when they have stopped engaging with the Commission can be inappropriate and in some instance traumatising so discretion is required.

Recommendation no. 5

4.41 The Australian Human Rights Commission improve its approach to measuring complainant and respondent satisfaction with its complaint handling effectiveness by developing a methodology that obtains sufficient levels of reliable, representative feedback.

Australian Human Rights Commission response: Agreed.

4.42 *The Commission considers that it currently does obtain reliable feedback from complainants and respondents. The Commission will review and update its data collection methods to ensure there are sufficient levels of representative feedback. The Commission will also strengthen and test its control processes*

Overall satisfaction

4.43 The satisfaction survey results are drawn from the question: ‘overall: how would you rate the service.’ If a survey participant selects a response of ‘Excellent’, ‘Very Good’, ‘Good’ and ‘Satisfactory’, these are reported by AHRC as participants satisfied (other options participants may select are ‘Poor’). AHRC data indicates that the proportion of participants satisfied with AHRC’s complaint handling has decreased over the seven years examined from 91 per cent in 2017–18 to 85 per cent 2023–24 (see Table 4.5). The total number of participants who responded to the question in the survey on participant satisfaction has also decreased from 464 responses in 2017–18 to 384 responses in 2023–24.

Table 4.5: Reported participant satisfaction, July 2017 to June 2024

Financial year	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Number of responses to question in survey	464	477	402	460	361	312	384
Target for performance measure (%)	≥85	≥85	≥85	≥85	≥85	≥85	≥85
AHRC’s reported result (%)	91	94	93	90	89	82	85
ANAO recalculated result based on AHRC data ^a (%)	91	94	93	90	88	84	85
Difference (%)	0	0	0	0	(1)	2	0

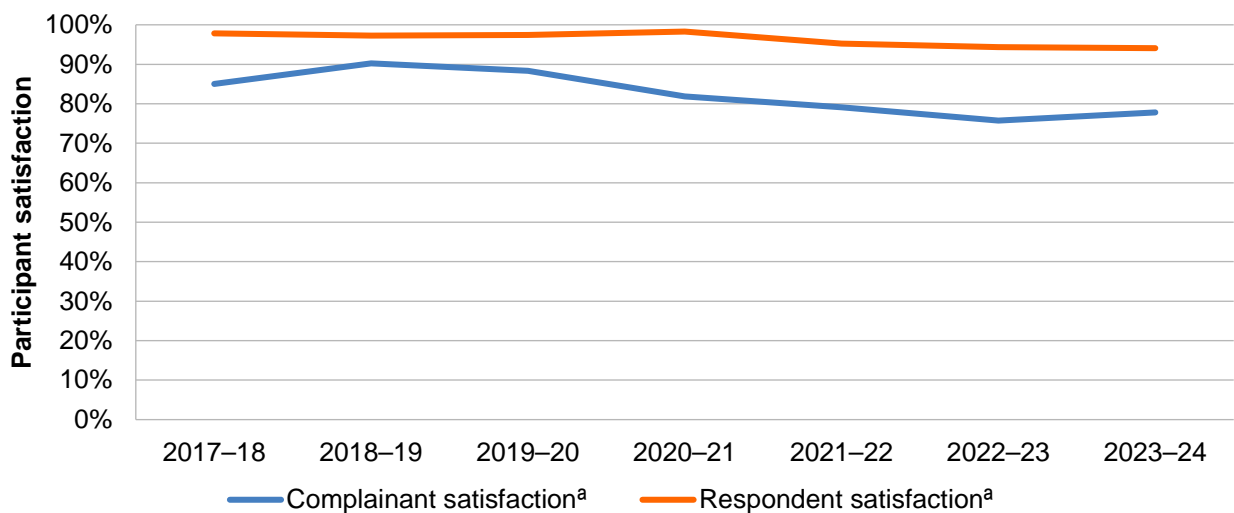
Note a: To test the verifiability of reported performance results, the ANAO obtained the data AHRC used to calculate participant satisfaction between July 2017 to June 2024 and reperformed calculations based on the data

provided and documented business rules. For analysis purposes, the ANAO removed records with identified data quality issues including blank surveys submitted and duplicated survey forms.

Source: ANAO analysis of AHRC complaints data and AHRC annual reports.

4.44 Figure 4.4 illustrates participant satisfaction between July 2017 to June 2024 by complainant and respondent. While overall satisfaction with complaint handling services for both parties has decreased over time, complainants or their representatives expressed lower levels of satisfaction compared to respondents or their representatives for each of the seven financial years examined (see Figure 4.4). In 2023–24, 94 per cent of respondents or their representatives were satisfied compared to 78 per cent of complainants or their representatives. In the financial years since 2020–21, there has been typically a difference between 16 and 19 percentage points between the reported satisfaction of respondents and complainants.

Figure 4.4: Overall satisfaction by party, July 2017 to June 2024



Note: Survey participants who did not select whether they were a complainant, complainant representative, respondent or respondent representative are excluded from this figure. There were 6 responses (out of 2860 responses or less than one per cent of responses) over the seven year period excluded from this figure for this reason.

Note a: A reference to ‘complainants’ or ‘respondents’ includes a reference to their representatives.

Source: ANAO analysis of AHRC satisfaction surveys.

4.45 Appendix 6 sets out further detail of the ANAO’s analysis of data obtained by the AHRC on participant satisfaction. Noting the limitations described in paragraphs 4.37 to 4.38 regarding the sample population across different outcome types, Figure A.1 sets out participant satisfaction by outcome type. Participants with an outcome type ‘conciliated’ report high satisfaction, remaining relatively steady over the seven years examined. In contrast, for terminated and declined complaints, satisfaction reduced from 83 per cent in 2017–18 to 71 per cent in 2022–23 before improving to 76 per cent in 2023–24. Insufficient numbers of surveys are being sent out by the AHRC to parties to withdrawn and discontinued complaints for meaningful analysis.

Increased understanding of rights and responsibilities in the law

4.46 AHRC also reports the instances where participation in the investigation and conciliation process results in increased understanding of rights and responsibilities in the law. There is no target set for this measure of performance.

4.47 The results for this indicator are drawn from the satisfaction survey question ‘better understanding of anti-discrimination law’. Surveyed participants with conciliated outcomes who respond with ‘strongly agree’ or ‘agree’ are reported as increasing their understanding of rights and responsibilities. The number of surveyed participants who reported increased understanding decreased between 2018–19 to 2022–23 from 80 per cent to 71 per cent, with an increase evident in 2023–24 (75 per cent).

Table 4.6: Improved understanding of rights and responsibilities in the law, July 2017 to June 2024

Financial year	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Number of responses to survey question	287	298	235	233	208	163	193
AHRC’s reported result (%)	77	80	78	79	77	68	74
ANAO recalculated result based on AHRC data ^a (%)	78	80	78	79	75	71	75
Difference (%)	1	0	0	0	(2)	3	1

Note a: To test the verifiability of reported performance results, the ANAO obtained the data AHRC used to calculate the proportion of conciliated matters where survey participants responded that participation in conciliation process resulted in increased understanding of the rights and responsibilities in the law between July 2017 to June 2024 and reperformed calculations based on the data provided and documented business rules. For analysis purposes, the ANAO removed records with identified data quality issues including blank surveys submitted and duplicated survey forms.

Source: ANAO analysis of AHRC complaints data and AHRC annual reports.

4.48 There are limitations to this data as a meaningful measure of AHRC’s performance.

- The data is not complete. AHRC reports the improved understanding of rights and responsibilities for conciliated matters only. Survey participants with outcomes types other than conciliated did not agree at the same rate in relation to the ‘increased understanding of rights and responsibilities in the law’.
- The data is not representative or reliable as the satisfaction survey is not sent to all participants, or a sufficiently representative selection of participants across outcome types (refer to Table 4.4).

Timeliness and fairness

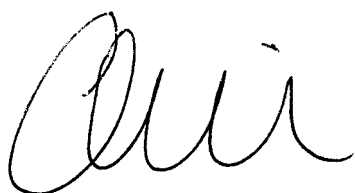
4.49 AHRC also collects data on the number of surveyed participants who agree with the statements that ‘the Commission dealt with the complaint in a timely manner’ and ‘I felt I was treated fairly by Commission staff’.

4.50 Figure A.2 illustrates that the number of surveyed participants who agree that the complaints were handled in a timely manner has been decreasing each financial year since

2019–20, reflecting extended complaint handling timeframes discussed in paragraph 3.17 to 3.41. Respondents (and their representatives) agreed at a higher rate that processes were timely compared to complainants and their representatives. For example, in 2023–24 62 per cent of respondents agreed that complaints were handled in a timely manner compared to 48 per cent of complainants. Complainants experience longer complaint handling timeframes due to the operational practices of the Commission to notify respondent parties once complaints are allocated to case officers (delays between acceptance of a complaint and allocation to a case officer are discussed at paragraph 3.30).

4.51 Figure A.3 and Figure A.4 set out ANAO’s analysis of AHRC data on whether surveyed participants agree that they were treated fairly by the Commission.

- Figure A.3 illustrates that surveyed respondents agree that they were treated fairly by the Commission at a higher rate compared to complainants. For example, in 2023–24, 92 per cent of surveyed respondents agreed with the statement compared to 80 per cent of surveyed complainants.
- Figure A.4 indicates that surveyed participants with outcome type ‘conciliated’ strongly agree that they were treated fairly by Commission staff (between 93 to 96 per cent of surveyed participants over the seven years examined). The sentiment was not as high for participants with an outcome type of terminated or declined: between 65 per cent and 79 per cent of participants over the seven years examined.



Dr Caralee McLiesh PSM
Auditor-General

Canberra ACT
29 January 2025

Appendices

Appendix 1 Entity response



Australian
Human Rights
Commission

President
Hugh de Kretser

14 January 2025

Dr Caralee McLiesh PSM
Auditor General
Australian National Audit Office
38 Sydney Ave
FORREST ACT 2603

Dear Dr McLiesh

Australian National Audit Office Section 19 Proposed Report – Management of complaints by the Australian Human Rights Commission

Thank you for the opportunity to respond to the Australian National Audit Office's (ANAO) report on the management of complaints by the Australian Human Rights Commission (the Commission).

Providing people across Australia with a free, accessible and effective dispute resolution process for discrimination and human rights complaints is one of the Commission's key statutory functions. It is also a core component of the Commission's vision of an Australian society in which people's human rights are respected, promoted and protected.

The COVID-19 pandemic caused the most significant societal impact on the Commission's complaint handling function in the Commission's history. The ANAO audit period encompasses this unique period. The audit findings provide valuable insights into the ongoing impact of a sudden surge in demand for complaint services, particularly on complaint handling timeframes.

The Commission welcomes the ANAO's recognition that the Commission has designed complaint handling arrangements to support the effective management of complaints, with two exceptions, and that the Commission has in place complaint mechanisms and processes which are clear and accessible.

The Commission also welcomes the ANAO's finding that of the random complaints examined in detail, no systemic deviation from legislation or existing procedures was identified.

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President
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The Commission agrees or agrees in principle with all five recommendations made by the ANAO. In addition, the Commission agrees with the two suggested opportunities for improvement, noting that any key performance indicators relating to timeframes for reports to the Attorney-General will need to relate to steps within the Commission's control.

The Commission welcomes recommendations aimed at strengthening quality assurance mechanisms and improving the reliability and verifiability of reported performance information. These will build on current work being undertaken across the Commission to embed performance measure indicators, data sources and outcomes in corporate planning and reporting processes and documents.

The Commission is committed to ensuring that the Commission's complaint function is appropriately resourced to support the delivery of its targets outlined in its Portfolio Budget Statement and Corporate Plan. The Commission agrees in principle with the ANAO's recommendation regarding an internal budget strategy to support this.

I acknowledge the constructive and collaborative engagement of the ANAO audit team with Commission staff throughout the audit process and thank them for their work.

Yours sincerely



Hugh de Kretser
President

Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.

2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.

3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:

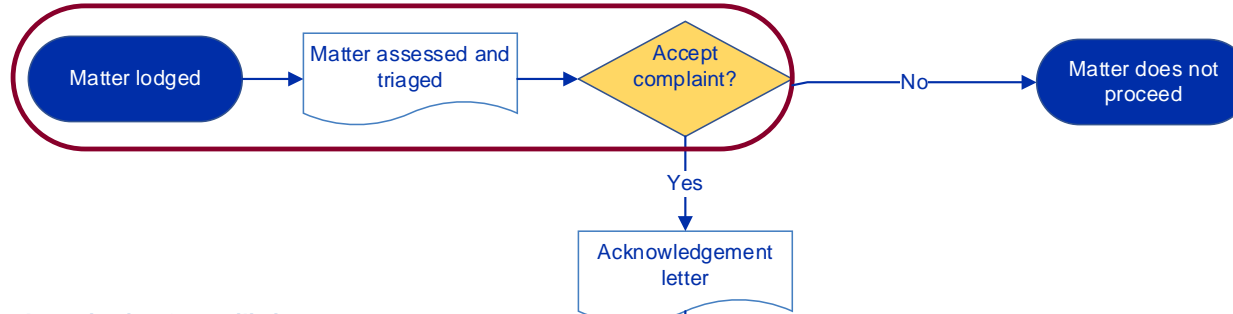
- strengthening governance arrangements;
- introducing or revising policies, strategies, guidelines or administrative processes; and
- initiating reviews or investigations.

4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

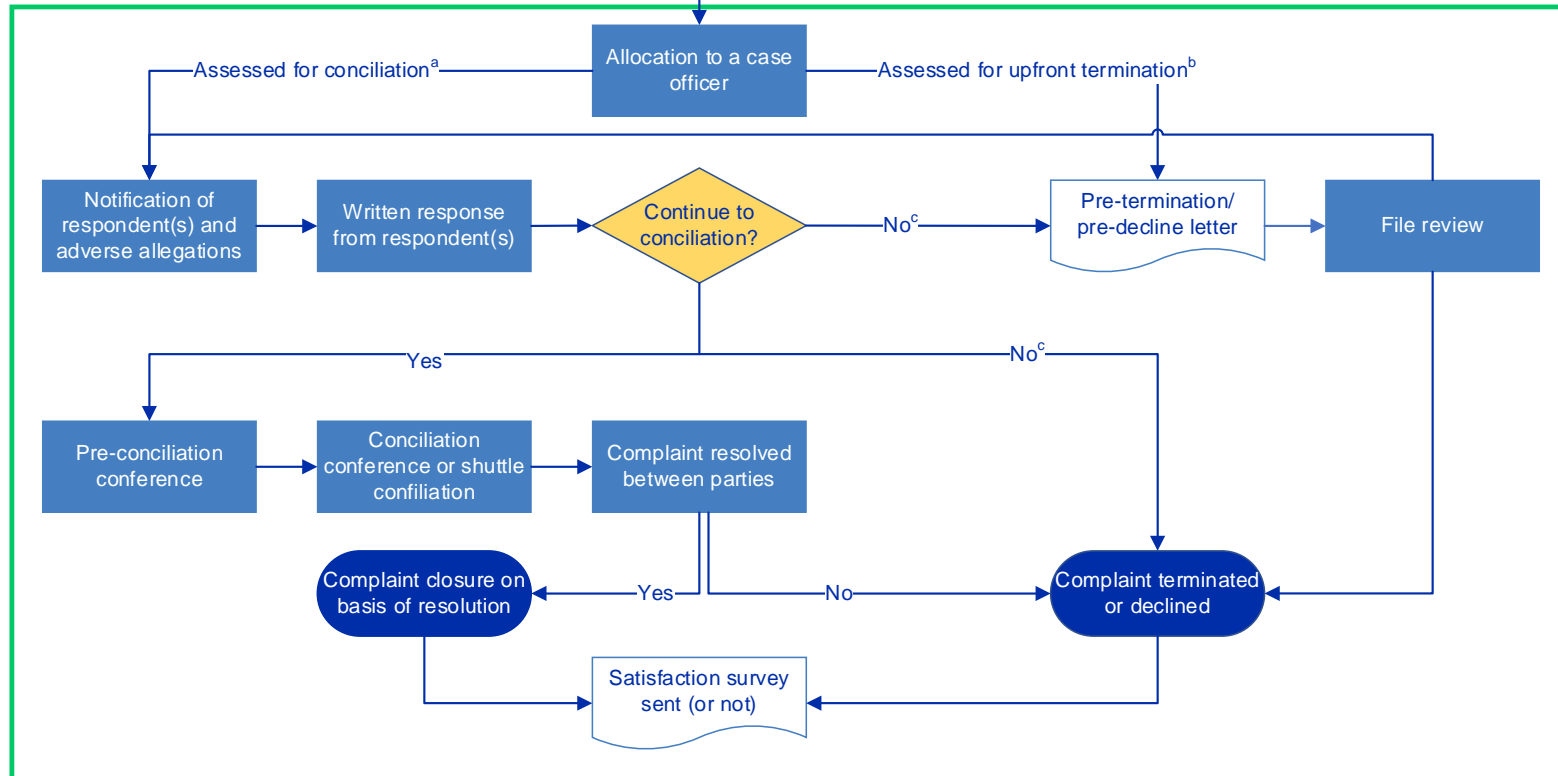
- Improved availability of information sheets regarding ILO complaints of discrimination in employment and complaints of breaches of human rights (refer to paragraph 2.6).
- Strengthened controls over the design of its triage system to assist in the prioritisation of complaints (refer to paragraph 2.25).
- In response to issues raised by the ANAO in August 2024, AHRC updated complaint records to address inaccurate records and changed operational practices regarding deferrals to improve data integrity (refer to paragraph 3.8).
- Agreed to include a note in its annual performance statements against its conciliation target to note that conciliated complaints include matters resolved outside of Commission processes (refer to paragraph 4.12).
- Established a methodology for calculation and cross checking of the target for systemic outcomes of conciliated matters to improve reliability and verifiability of reported performance information (refer to paragraph 4.34).

Appendix 3 Complaint handling process

Assessment (including triage)



Investigation & conciliation



- Note: Complaints may also be withdrawn by the complainant or discontinued by AHRC at any stage during the complaints process following acceptance of the complaint.
- Note a: As discussed at paragraph 4.5 complaints are assessed and accepted by a delegate with a recommended action which may include conciliation, seek further information from the complainant or seek response. Complaints with these recommended actions follow the 'assessed for conciliation' process.
- Note b: Complaints assessed for upfront termination include complaints assessed for upfront decline.
- Note c: Following receipt of written responses from the respondent/s, AHRC advised the ANAO in November 2024 that 'The response may suggest that the complainant has already made a complaint to another statutory agency and/or that the complaint may be lacking in substance. In these circumstances, the assessment is updated (and documented on file) to reflect a new recommended action (such as recommending administrative closure or drafting a preliminary assessment advising that the complainant of the reasons for possible termination of an unlawful discrimination complaint on a ground requiring leave of the court).'

Source: ANAO analysis of AHRC records.

Appendix 4 Publicly reported complaint handling performance

Year	Average complaint handling timeframes (months)	Complaints finalised within 12 months (%)	Proportion of complaints conciliated (%)	Proportion of parties satisfied with complaint handling service (%)
1999–2000	Not reported	67.0	37	65
2000–01	7.0 ^a	88.0	35	65
2001–02	7.0 ^a	88.0	30	83
2002–03	7.0 ^a	84.0	32	84
2003–04	7.0 ^a	85.0	38	89
2004–05	6.5 ^a	91.0	39	93
2005–06	6.0 ^a	93.0	39	93
2006–07	7.0	93.0	48	92
2007–08	6.0 ^a	93.0	48	93
2008–09	6.0 ^a	93.0	48	92
2009–10	Not reported	96.0	50	95
2010–11	5.8	94.0	47	94
2011–12	5.0 ^a	93.0	48	95
2012–13	4.6 ^a	95.0	45	93
2013–14	3.4 ^a	97.0	49	91
2014–15	3.7 ^a	99.0	51	92
2015–16	3.8 ^a	98.0	52	92
2016–17	4.3 ^a	97.0	45	88
2017–18	4.6	97.0	47	91
2018–19	4.3	98.0	47	94
2019–20	3.8	98.5	46	93
2020–21	4.1 ^b	98.0	41	90
2021–22	5.1 ^b	98.0	35	89
2022–23	7.6 ^b	85.0	30	82
2023–24	8.7 ^b	72.0	33	85

Note a: AHRC reported the average time in months from the receipt to finalisation of complaints.

Note b: AHRC reported the average ‘active’ complaint timeframes. This does not include the period for which complaints may be placed on deferral by request (or as a result of an action) of a party.

Source: ANAO analysis of AHRC annual reports.

Appendix 5 Human rights reports transmitted to Attorney-General in 2023–24

Report number	Subject matter	Complaint receipt date	Complaint referral to legal date	Report transmission to minister date	Number of days from complaint receipt to referral	Number of days from referral to report transmittal	Number of days from complaint receipt to report transmittal
150	Arbitrary detention; safe place of detention	2 February 2017	4 December 2019	November 2023	1,035	1,295	2,330
151	Failure to treat a person deprived of their liberty with humanity and respect for their inherent dignity	2 August 2019	19 August 2020	November 2023	382	1,167	1,549
152	Arbitrary detention; safe place of detention	9 October 2017 ^a	19 November 2019	November 2023	770	1,443	2,213
153	Arbitrary detention	16 April 2020	27 November 2020	November 2023	224	1,069	1,293
154	Report into arbitrary detention and arbitrary interference with family	1 October 2019	18 June 2020	November 2023	261	1,231	1,492
155	Report into use of force and arbitrary interference with family	29 September 2020	15 June 2021	January 2024	259	930	1,189
156	Report into arbitrary detention and a safe place of detention	7 November 2017	10 June 2021	January 2024	1,311	935	2,246

Report number	Subject matter	Complaint receipt date	Complaint referral to legal date	Report transmission to minister date	Number of days from complaint receipt to referral	Number of days from referral to report transmittal	Number of days from complaint receipt to report transmittal
157	Report into the use of force	13 December 2019	30 March 2021	February 2024	472	1,038	1,510
158	Report into arbitrary detention	23 July 2020	12 January 2021	February 2024	172	1,115	1,287
159	Arbitrary interference with family; deprivation of the right to enter one's own country	10 September 2019	20 February 2020	February 2024	162	1,442	1,604
160	Arbitrary detention	20 October 2020 ^b	15 June 2021 ^b	April 2024	237	1,021	1,258
161	Arbitrary detention; arbitrary interference with family	1 June 2020	18 August 2021	April 2024	443	957	1,400
162	Arbitrary detention	16 March 2021	14 December 2021	April 2024	273	839	1,112
163	Use of force	8 December 2020	14 July 2022	May 2024	582	657	1,239
164	Arbitrary detention	18 May 2022	9 November 2022	May 2024	174	539	713
165	Arbitrary detention	27 May 2022	17 January 2023	May 2024	234	470	704
166	Arbitrary detention	16 April 2020	18 January 2021	June 2024	277	1,230	1,507

Note a: There were three matter numbers within AHRC's complaints management system related to this report. The complaint received date reflects the receipt date of the first matter.

Note b: There were two matter numbers within AHRC's complaints management system related to this report. The complaint received and referral to legal date and associated calculations reflects the dates of the first complaint.

Source: ANAO analysis of AHRC records.

Appendix 6 Participant satisfaction

1. This appendix provides additional information on matters raised in Chapter 4 ‘Are parties satisfied with the complaint handling process’.
2. As discussed in paragraph 4.35, AHRC sends satisfaction surveys to parties or their representatives following finalisation of complaint processes. The satisfaction survey captures:
 - how strongly survey participants agree or disagree with six statements related to clarity, timeliness and fairness of the complaints process, satisfaction with the complaint outcome and whether participants have developed better understanding of the rights and responsibilities under human rights and anti-discrimination laws; and
 - overall satisfaction with the service (including comments to improve the service).

Survey response rate

3. Table A.1 sets out the number of surveys sent to complainants and respondents (and their representatives) and the survey response rate. The survey response rate between July 2017 and June 2024 has been decreasing. In 2023–24, the lower than average survey response for complainants and respondents is related to the increase in the number of satisfaction surveys sent to parties and lower than average number of responses from respondents.

Table A.1: Survey satisfaction response rate, July 2017 to June 2024

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24
Number of surveys to complainants ^a	870	1,057	969	1,051	790	835	1,446
Complainant survey response rate ^a (%)	26.8	24.0	21.2	21.6	21.5	19.4	14.5
Number of surveys sent to respondents ^a	851	1,022	941	1,012	773	834	1,449
Respondent survey response rate ^a (%)	26.7	21.1	20.5	23.1	23.5	15.9	11.5

Note a: A reference to ‘complainants’ or ‘respondents’ includes a reference to their representatives.

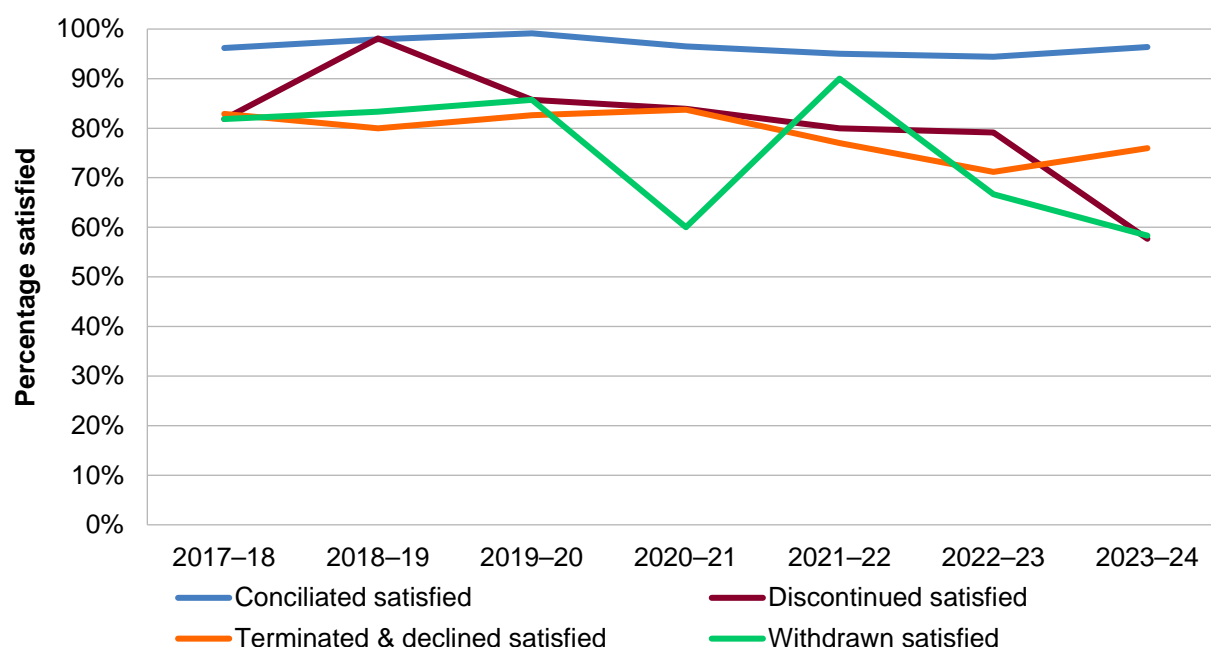
Source: ANAO analysis of AHRC complaints data.

Overall satisfaction rate

4. The satisfaction survey results are drawn from the question: ‘overall: how would you rate the service.’ If a survey participant selects a response of ‘Excellent’, ‘Very Good’, ‘Good’ and ‘Satisfactory’, these are reported by AHRC as participants satisfied (other options participants may select are ‘‘Poor’’).
5. Figure A.1 sets out the overall satisfaction of survey participants by outcome type between July 2017 to June 2024.
 - Participants with an outcome type ‘conciliated’ expressed the highest overall satisfaction over the seven years examined: 96 per cent in 2017–18 and 96 per cent in 2023–24.

- Participants with the outcome type ‘terminated and declined’ expressed lower overall satisfaction, decreasing from 82 per cent in 2017–18 to 76 per cent in 2023–24.
- The overall satisfaction of participants with the outcome type ‘withdrawn’ and ‘discontinued’ fluctuated over the time period examined. The variability in satisfaction is related to the low number of satisfaction surveys sent and received for these outcome types (refer to Table 4.4 for further discussion). For example, in 2023–24, the number of survey responses received for withdrawn outcomes was 12 and 26 for discontinued outcomes. In 2023–24, overall satisfaction for withdrawn outcomes was 58 per cent and 58 per cent for discontinued outcomes.

Figure A.1: Overall satisfaction by outcome type, July 2017 to June 2024



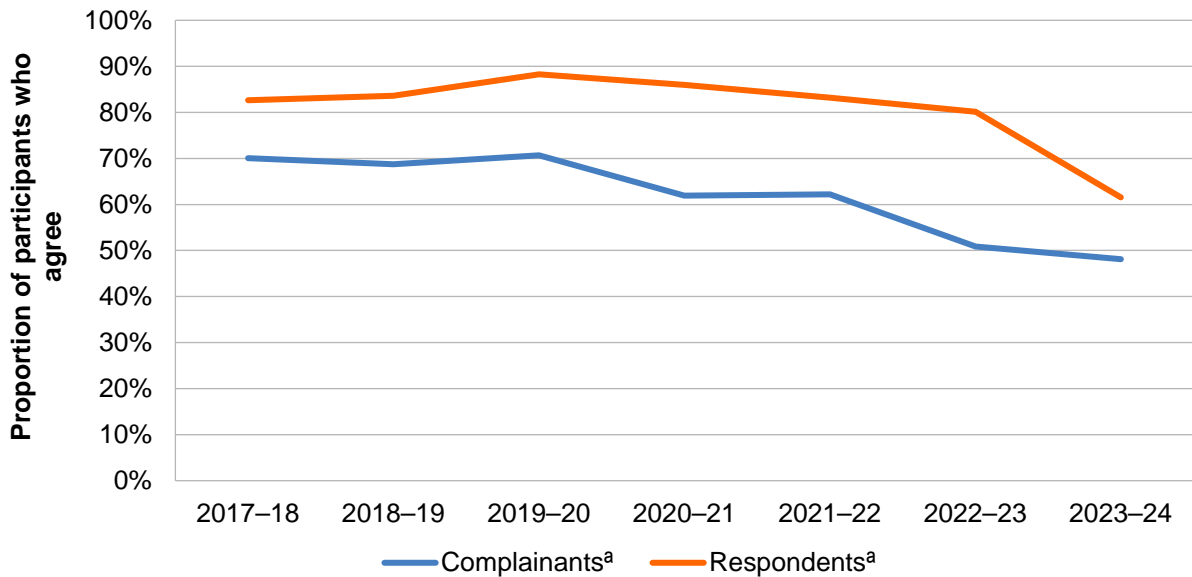
Source: ANAO analysis of AHRC satisfaction surveys.

Timeliness

6. AHRC collects data on how strongly participants agree with the question ‘the Commission dealt with the complaint in a timely manner’. Figure A.2 indicates that the number of surveyed participants who agree the Commission has dealt with their complaints in a timely manner has decreased over the seven years examined. This reflects the overall increased complaint handling timeframes discussed in paragraph 3.17 to 3.41.

7. There is a disparity between the complainant and respondent’s views of timeliness of the complaints process. For example, respondents’ agreement with the timeliness statement reduced from a high of 88 per cent in 2019–20 to a low of 62 per cent in 2023–24. Complainants’ agreement with this statement was highest in 2019–20 (71 per cent) and has decreased since to a low of 48 per cent in 2023–24. Complainants experience longer complaint handling timeframes as a result of the Commission’s operational practice to notify respondent parties once complaints are allocated to case officers (delays between acceptance of a complaint and allocation to a case officer are discussed at paragraph 3.32).

Figure A.2: Proportion of survey participants who agree that the Commission dealt with their complaint in a timely manner, July 2017 to June 2024



Note: Survey participants who did not select whether they were a complainant, complainant representative, respondent or respondent representative are excluded from this figure. There were 30 responses (out of 2,917 responses or one per cent of responses) over the seven year period excluded from this figure for this reason.

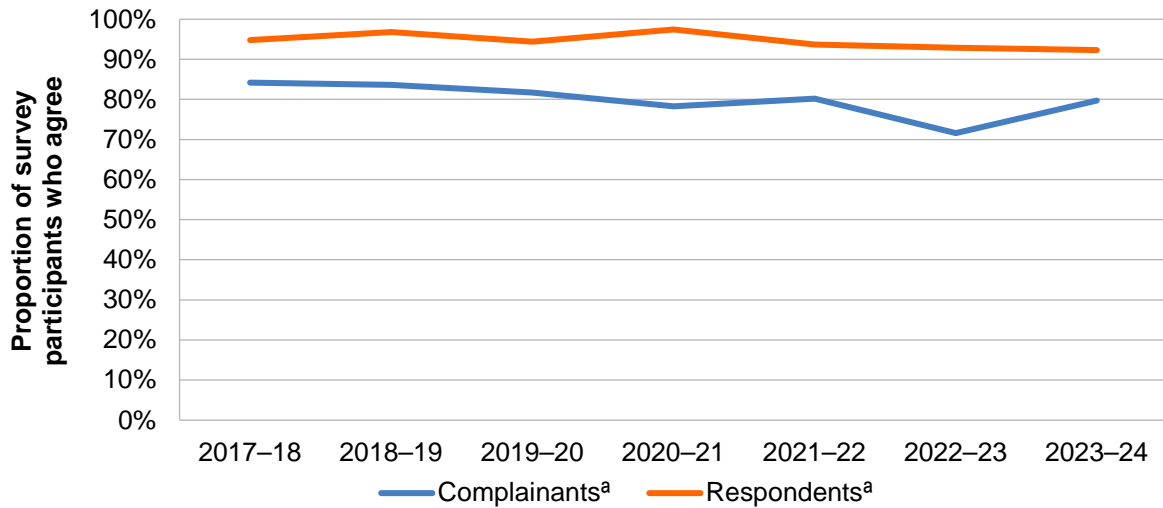
Note a: A reference to 'complainants' or 'respondents' includes a reference to their representatives.

Source: ANAO analysis of AHRC satisfaction survey data.

Fairness

8. The AHRC Act was amended in 2017 to require the Commission to act fairly in the performance of its complaint handling functions. Reflecting this obligation, AHRC collects data on how strongly participants agree with the question 'I felt I was treated fairly by Commission staff'. Figure A.3 illustrates that a high proportion of survey respondents agree with the statement regarding fairness, with small variance in the results over the seven years examined. Complainants (and their representatives) have reported lower levels of agreement compared to respondents (and their representatives) for each of the seven years examined. The disparity was greatest in 2022-23, when 72 per cent of complainants agreed with the statement compared to 93 per cent of respondents.

Figure A.3: Proportion of survey participants who agree that the Commission treated them fairly, July 2017 to June 2024



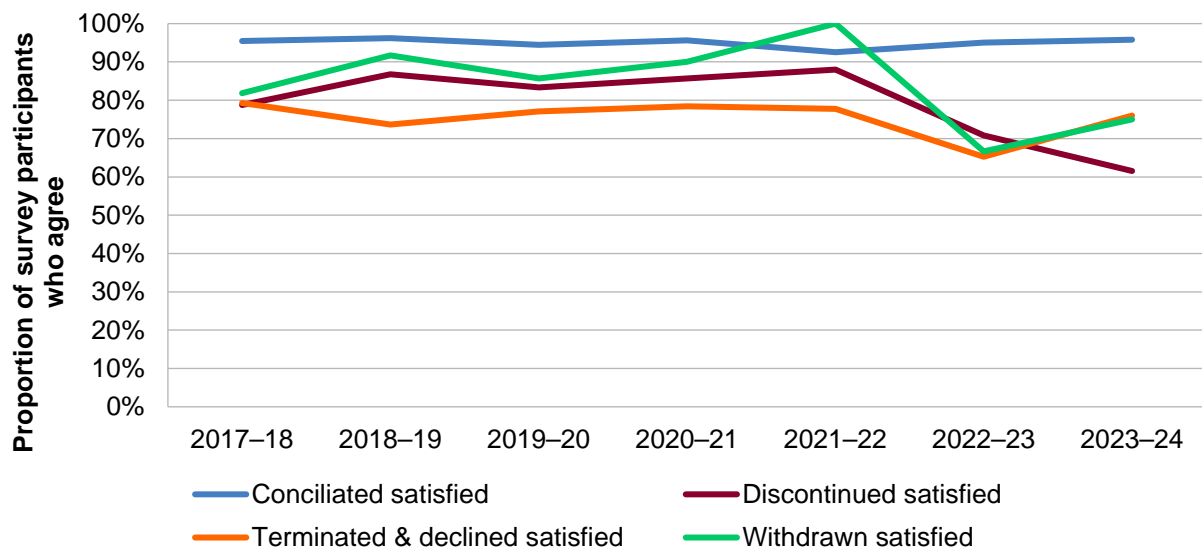
Note: Survey participants who did not select whether they were a complainant, complainant representative, respondent or respondent representative are excluded from this figure. There were 30 responses (out of 2,917 responses or one per cent of responses) over the seven year period excluded from this figure for this reason.

Note a: A reference to 'complainants' or 'respondents' includes a reference to their representatives.

Source: ANAO analysis of AHRC satisfaction survey data.

9. Figure A.4 illustrates that the proportion of surveyed participants who agree with the statement regarding fairness varies by outcome type. For example, participants with an outcome type 'conciliated' expressed strong agreement with the statement about fairness (between 93 to 96 per cent agreement). The sentiment of surveyed participants with the outcome type 'terminated or declined' was lower, with 65 to 79 per cent agreeing with the statement regarding fairness. The sentiment of participants with other outcome types was more varied, related to the low number of satisfaction surveys sent and received for these outcome types.

Figure A.4: Proportion of survey participants who agree that the Commission treated them fairly by outcome type, July 2017 to June 2024



Source: ANAO analysis of AHRC satisfaction survey data.