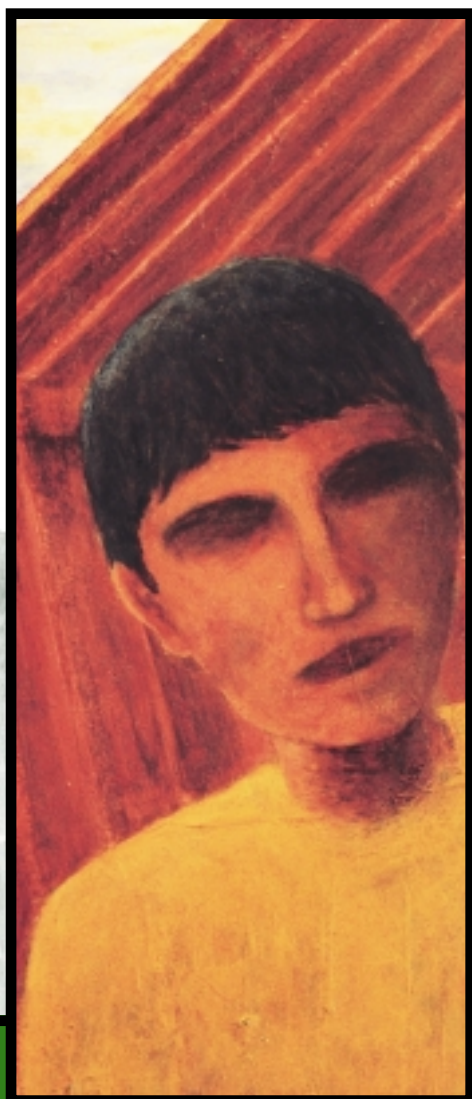


NEW COUNTRY,

NEW STORIES



*Discrimination and disadvantage
experienced by people in small
and emerging communities*

*Human Rights and
Equal Opportunity Commission*



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Race Discrimination Commissioner

**Human Rights and
Equal Opportunity Commission**



New Country, New Stories: Discrimination and disadvantage experienced by people in small and emerging communities

**A report by the Race Discrimination Commissioner, September 1999
Human Rights and Equal Opportunity Commission**

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Foreword

People from all over the world have come to Australia either of their own volition as migrants, or as refugees to escape human rights violations in their former homelands. While their reasons for coming may differ, once here, they share the same aspirations of a better life.

But the experience for some new arrivals falls disappointingly short of expectations. They may feel unwelcome in their new society and are left to deal with varying degrees of discrimination and disadvantage. Those from countries with relatively small numbers in Australia are particularly disadvantaged, as they have limited or no infrastructure within their communities to assist them achieve the same rights as other members of society.

It has been apparent for a number of years that further research was required into the needs of small and emerging migrant and refugee communities. Early works in this area, including some cited in this discussion paper, raised many issues which are still pertinent today. The Commission's 1994 *State of the Nation Report* flagged our intention to do further work in this area. However funding cuts and restructuring within the Commission led to significant delays in our ability to research this project. In fact, the project was ultimately possible only because of assistance from several post and

undergraduate social work students from the University of Sydney. I am grateful for their contribution. Mary Dimech managed the project and prepared the draft report. She was ably assisted by Annette Bastaja, other staff within the Race Discrimination Unit and by Michael Woodhouse. My thanks to them all.

While by no means comprehensive, this discussion paper aims to identify some areas where people from cultural and linguistic minority groups experience discrimination. It is offered as a contribution towards an area where a great deal more work needs to be done.

ZITA ANTONIOS
Race Discrimination Commissioner
September 1999

Introduction

Australia's migrant intake has changed markedly in recent years. Australia is now home to more people from more nations who speak languages not previously spoken in this country. Contemporary Australian migration is more global than ever before. As a result, people from ethnic backgrounds with which many Australians are unfamiliar, have built lives here. Emerging ethnic communities are an ongoing feature of Australia's cultural landscape.

At the same time, the overall number of settlers accepted into Australia each year is far lower than at other times in Australia's history. Australia no longer has a program of mass migration and it limits the number of new residents according to international humanitarian obligations, attracting skills needed in the Australian economy and reuniting close family members already resident in Australia. Lower migration means that individuals from new source countries cannot expect to find large numbers of people from their ethnic background upon arrival in Australia. Emerging ethnic communities are therefore likely to continue to be small communities.

Refugee resettlement and voluntary migration experiences place human rights at risk. The difficulties of rebuilding a life in a new nation can lead to people living without basic human rights. It is a reality across Australian history that new ethnic groups, especially those who are physically different, have encountered racism and discrimination in Australian society. This pattern is likely to continue for people from new ethnic groups in Australian society, especially during their first years after arrival. Migration problems, language barriers, cultural differences and colour bias all suggest that there may be many ways in which the human rights of small and emerging communities are at risk.

There has been relatively little written about the experiences of small and emerging communities in Australia. The huge diversity between different small and emerging ethnic groups makes it inappropriate to consider the needs of the group as a whole. Service providers and government are often unaware of the particular issues facing these groups, partly due to the small numbers of people involved and the difficulty obtaining data about their needs.

Even less work has been done to apply a human rights framework to the experiences of members of small and emerging communities in Australia. The possibility that members of small and emerging communities may not fully enjoy their human rights has not been investigated. This report seeks to investigate that possibility.

In recent years, individual complaints and contact with members of small and emerging communities alerted the Human Rights and Equal Opportunity Commission ('the Commission') to the need for further investigation into the human rights of these communities. This led to consultations between staff from the Commission and members of specific communities and service providers working with these communities across the country.

The table at Appendix 1 to this report provides the locations, dates and some of the communities consulted throughout this process. Consultations in the Northern Territory, Western Australia, Victoria and New South Wales took place in the period from mid-1997 to mid-1998. A broad range of small and emerging communities were consulted, including individuals from Afghanistan, Algeria, Angola, Bosnia-Herzegovina, Ethiopia, Eritrea, Ghana, Myanmar, Pacific Islands, Somalia, Sri Lanka, Timor and others. The consultations were wide-ranging and allowed individuals to raise as many issues of concern as they wished.

This report documents the major issues raised during those consultations. It seeks to identify some of the ways in which individuals find their human rights not fully recognised. The chapters discuss key areas where the human rights of members of small and emerging communities appear to be at greatest risk. Quotes from individuals are included where possible throughout the text of the report and have been identified according to the city and date the consultation took place. Other themes raised have been summarised and included in the text of each chapter. Where possible this information is supplemented by the findings of relevant literature in this area.

This report is not able to make definitive findings about the human rights situation of small and emerging communities or determine whether specific human rights instruments have been infringed. Rather, it seeks to record the concerns of individuals within small and emerging communities and discuss these issues within a human rights context.

Small and emerging immigrant and refugee community groups are reliant on Australia's strong record of protecting and promoting the human rights of our citizens. However, their very size and unfamiliarity to many Australians means that these communities are too easily and too often overlooked. Some of the human rights concerns in this report are similar to other groups in society, such as larger communities of immigrants from non-English speaking backgrounds or other Australians living in poverty. Other concerns are specific to the experience of the individual communities. Most of these issues are in some way determined by the cultural identity of the individuals consulted.

This report is part of an ongoing process to promote and protect the human rights and responsibilities of all Australian residents in order to ensure a just and fair society. Individuals consulted for this paper rely on Australia continuing to maintain this commitment. Key issues that the Commission will investigate for its own future action are outlined in the conclusion.

Chapter 1: Small And Emerging Communities In Australia

Only a few studies have thoroughly researched small and emerging communities in Australia. This is mainly because of the diversity of source countries and the recent arrival of people in these communities. A greater amount of work has been undertaken on specific communities. Such research has primarily focussed on service needs to ensure the effective reach of settlement services.¹ Further, there is no comprehensive demographic data for small and emerging communities. The number of individuals in each community makes the collection of statistically valid data difficult by the means ordinarily used for statistical research.

Precisely which groups are included in the term "small and emerging communities" is also fluid. There are several different definitions. All definitions refer to the total number of people from a specific country of origin as well as the growth rate of that community. Small and emerging communities may have high growth rates but relatively low overall numbers. Participants at the Commission's consultations were from communities with less than 20,000 people in Australia most of

¹ cf Australian Development and Training Group (1999) *Bosnian-Herzegovinians in NSW-1998 Community Profile* Bosnian-Herzegovina Project Inc; Trubenbach, A., (1995) *The Settlement Needs of Five Minority Groups in Sydney: A New Model for Service Delivery* paper presented at the third National Immigration and Population Outlook Conference, Adelaide.

whom had been in Australia for less than 10 years. In many cases, participants were from significantly smaller communities and had been resident for shorter periods.

Table 1 lists the size and population growth rates for a number of small and emerging communities according to the 1996 census. The range of countries of origin is extremely diverse. This diversity is also evident in languages spoken, cultural practices and religious beliefs. The high growth rates for some communities reflects the fact that they are very new to Australia with a large proportion of members arriving during 1991-96. Other communities have some longstanding members but are still absorbing significant numbers of new arrivals to Australia.²

Table 1
1996 Population and rates of population growth for selected small and emerging communities

Country	1996 Population	1991 – 1996 Growth (%)
Afghanistan	5826	113.9
Albania	1123	19.6
Bosnia	13614	n/a
Brazil	3356	16.3
Burma	10123	24.9
Colombia	2682	31.0
Cook Islands	2997	33.1
Eritrea	1143	259.2
Ethiopia	2341	259.2
Ghana	1478	45.8
Iraq	14027	167.3
Kenya	5289	16.0
Nepal	1483	263.5
Nigeria	1267	24.3
Pakistan	8354	37.5
Peru	4889	31.6
Samoa	9867	77.0
Saudi Arabia	1136	84.1
Somalia	2045	435.3
Sudan	2397	79.6
Uganda	1164	32.9
Ukraine	13460	49.2

Source: 1996 Census, Australian Bureau of Statistics.

Table 1 does not reflect the full diversity of Australia's migrant and refugee intake. In several situations people of different ethnicities are represented as coming from the same country of origin. Consequently, country of birth data underestimates the number of ethnic backgrounds in Australia today. For example, the Kurdish and East Timorese communities are ethnic groups distinct from others born in their country of origin.

The total number of individuals from a country of origin does not reflect the number of individuals settled in any one locality. Table 2 provides data on the distribution of members of a select range of small and emerging communities by State and Territory. This shows that the majority of arrivals from small and emerging communities settle in either Victoria or New South Wales. In those countries listed, 75% of individuals took up residence in one of these two States.

² For example, see the discussion of African communities in Australia in Batrouney, T., (1992) *Selected African Communities in Melbourne* AGPS Canberra.

Table 2

Arrivals for selected small and emerging communities 1/7/93 - 30/6/98, distribution by state/territory

	Bosnia	Iraq	Sudan	Afghanistan	Somalia	Eritrea	Ethiopia	TOTAL
NSW	3697	6313	1279	1453	519	32	242	13535
VIC	3707	2994	383	921	1668	375	1188	11236
QLD	1493	225	150	111	149	39	135	2302
SA	1217	255	87	41	113	40	176	1929
WA	1350	800	133	182	311	122	249	3147
TAS	207	42	24	3	2	0	15	293
NT	52	19	5	0	0	0	3	79
ACT	184	32	10	58	13	4	33	334
TOTAL*	11908	10710	2073	2770	2799	612	2046	32918

Source: Settlement Database, Department of Immigration and Multicultural Affairs.

*** Total includes individuals who did not provide geographical information.**

Although many settle in NSW and Victoria, the individuals from small and emerging communities are dispersed across Australia. The national figures are a total of all the members of a particular ethnic community. But the total consists of a number of small communities with people of the same national origin or ethnicity, which are located in many different areas. Each small community is geographically isolated from other similar communities around Australia. Even numerically larger communities, such as those from Iraq or Bosnia, can still be considered small and emerging communities because of their diverse locations in cities and regions around Australia.

Much of the literature examining small and emerging communities highlights the fact that there are often high concentrations of refugees in small and emerging communities.³ In 1996-97, humanitarian entrants accounted for 12% of the total number of new arrivals intending to settle in Australia.⁴ Small and emerging communities often have far higher numbers of humanitarian arrivals, suggesting that the particular needs and experiences of refugees are very significant for small and emerging communities.⁵

Table 3 shows the number of arrivals from a range of source countries since the 1996 Census, separated into humanitarian and other arrivals. The figures demonstrate that for some communities a very high number of individuals arrive through the humanitarian program. All of these source countries had greater than 12%, and some up to 96% of humanitarian arrivals, indicating that refugee concerns are likely to be of greater importance for small and emerging communities than for the migrant intake as a whole.

Table 3 also demonstrates considerable diversity between different small and emerging communities. For some communities the greatest number of new arrivals are entering Australia through family or skilled migration, presumably leading to different settlement and life experiences in Australia. Nevertheless, individuals arriving through skilled or family migration may also have lived through experiences of significant political, social or economic turmoil. While these individuals do not meet the definition of a refugee, they may have had similar experiences and may need similar forms of assistance.

³ Bruce, A., (1999) *Remake Our World* Ogaden Relief Society, Sydney; Batrouney op cit n. 2.

⁴ Australian Bureau of Statistics, (1999) *Australia Now - A Statistical Profile: Population, Migration* available at <http://www.abs.gov.au> at 1.

⁵ Iredale, R., Mitchell, C., Pe-Pua, R. and Pittaway, E., (1996) *Ambivalent Welcome* DIMA, Canberra, discusses the settlement needs of refugees in detail.

Table 3:

Number of humanitarian and other arrivals for selected small and emerging communities post 1996 Census (1996 – 30/6/98)

Country of Birth	Number of Humanitarian Arrivals (%)	Number of Other Arrivals (%)	Total Arrivals
Afghanistan	1049 (78%)	293 (22%)	1342
Bosnia	4699 (96%)	175 (4%)	4874
Burma	361 (60%)	237 (40%)	598
Eritrea	173 (65%)	93 (35%)	266
Ethiopia	322 (43%)	432 (57%)	754
Iraq	3514 (76%)	1073 (24%)	4587
Kenya	72 (17%)	342 (83%)	414
Pakistan	150 (12%)	1060 (88%)	1210
Somalia	987 (65%)	540 (35%)	1527
Sudan	906 (91%)	90 (9%)	996
Ukraine	172 (27%)	470 (73%)	642

Source: Department of Immigration and Multicultural Affairs, Settlement Database.

Qualitative research suggests that there are a number of areas of life in which people from small and emerging communities encounter difficulties and infringements of human rights.⁶ Primarily these reports have focussed on the particular needs of individual communities, however some common themes emerge.

Poverty is a serious issue for many from small and emerging communities. The poverty experienced among these communities is linked not only to high unemployment but also to very low income levels. Bruce found that 37% of Somali males and 53% of females were unemployed.⁷ Of the employed Somalis, 80% of those aged over 15 earn less than \$20,000pa and 97% earned less than the Australian average wage.⁸ People from small and emerging communities are at risk due to the direct and indirect effects of poverty. Poverty affects a range of other areas of life including accommodation, education and training, health and family life.

Batrouney found that members of African communities in Australia encountered significant difficulty in the housing market. Particular issues included:

- major problems relating to extremely long delays in obtaining public housing;
- problems gaining access to bridging accommodation, such as transit flats;
- problems finding suitable accommodation for large families; and
- problems obtaining references and raising bond money as tenants.⁹

Access to family members is an ongoing concern for many individuals from small and emerging communities.¹⁰ This is because of the support which the family would provide if they were in Australia and because of concern about the living conditions of family members still overseas. Over 60% of the individuals interviewed by Bruce had close family members, either spouses, parents or children, in their countries of origin whom they regarded as particularly vulnerable.¹¹

⁶ Batrouney op cit n2; Bruce op cit n3; Iredale et al op cit n5; Jupp, J., McRobbie, A., York, B., (1991) *Settlement Needs of Small Newly Arrived Ethnic Groups* AGPS, Canberra.

⁷ Bruce, op cit n3 at 68.

⁸ *ibid.*

⁹ Batrouney, op cit n2 at 61.

¹⁰ Batrouney, op cit n2 at 79; Jupp et al, op cit n6 at 52-56.

¹¹ Bruce, op cit n3 at 82-86.

The impact of racism and discrimination is also a common theme of the literature. The National Inquiry into Racist Violence found that racism was more likely to be directed at migrants who could be identified as visibly different from other Australians.¹² Other reports have documented the difficulties encountered due to racial discrimination in a variety of areas of public life.¹³ Much of the discrimination reported relates to skin colour.¹⁴ Many of the black immigrant communities in Australia are small and emerging communities, suggesting that the experience of discrimination on the grounds of colour may be more significant within these communities.

Discrimination faced by people from small and emerging communities is often reported to be subtle and difficult to prove.¹⁵ Research has shown racial discrimination in all areas of public life, often in forms that are part of social interactions but not overt. Researchers report low levels of usage of formal complaint mechanisms either because of lack of confidence in the outcomes, or other constraints or priorities in the lives of people from small and emerging communities.¹⁶

Summary

Small and emerging communities include a diverse collection of migrants and refugees now resident in Australia. Statistical evidence and qualitative research suggests however that there are a range of factors shared by small and emerging communities which place the human rights of individuals at risk. The cultures, languages and religions of these communities are unfamiliar to many Australians and this heightens the potential for race discrimination and for the alienation of these communities. For the people themselves the difficulties of the pre-migration and resettlement experience, including dislocation from their families and culture, together with their poor economic position and the challenges of employment, accommodation, education and access to services, all suggest that closer examination of their human rights is warranted.

Chapter 2: Human Rights Framework

Australia has a long history of promoting human rights on the international stage. Active in the development of human rights instruments, Australia has ratified all of the central human rights instruments of the United Nations. This includes the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Many of these instruments have been adopted in Australian domestic legislation. The Human Rights and Equal Opportunity Commission Act 1986, Racial Discrimination Act 1975, Sex Discrimination Act 1984, Disability Discrimination Act 1993 and Privacy Act 1988 all seek to bring into operation within Australia the international human rights standards. The Commission has statutory responsibility for the administration of these Acts and the promotion of their objects.

Australia's commitment to the human rights of all people in Australia includes a recognition of the rights of people from small and emerging communities. There are particular human rights which are of special relevance to these communities and provide a framework for considering whether Australia has fulfilled its human rights responsibilities.

¹² Human Rights and Equal Opportunity Commission (1991) *National Inquiry into Racist Violence* AGPS, Canberra at 138.

¹³ Ethnic Minorities Action Group (1996) *Emerging Communities Emerging Needs* Sydney

¹⁴ cf Ryan, L., (1998) *Racism and Quality of Life Among Horn of Africa Communities in Sydney* unpublished research in partial completion of a B. Soc Welf (Hons) UNSW.

¹⁵ Batrouney, op cit n2 at 75; see also the discussion of the difficulties of reporting and proof of discrimination, in Race Discrimination Commissioner (1996) *State of the Nation: A report on people of non-English speaking backgrounds* AGPS, Canberra.

¹⁶ For a general discussion of the low levels of complaints by persons from a non-English speaking background, see Race Discrimination Commissioner, (1996) op cit n15 at 69.

Fundamental human rights

One of the first acts of the United Nations was the Universal Declaration of Human Rights 1948. The Universal Declaration is a common statement by the nations of the world that human dignity requires the recognition of all people's fundamental human rights. The declaration lists the fundamental rights that all people are owed, including rights to political participation, civil liberties, economic, social and cultural rights.

The Universal Declaration was further developed with the drafting of two conventions, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These instruments create binding obligations upon nations. By ratifying the Conventions nations agree to recognise that all people under their jurisdiction hold the rights listed and agree to take steps to ensure that those rights are protected and fulfilled. Australia ratified these instruments on 13 November 1980 and 10 March 1976 respectively.

The Conventions list a broad range of fundamental rights. The ICCPR commits national governments to recognise political and procedural rights such as the right to vote and equal protection of the law as well as civil liberties, such as the right to life and freedom of movement, opinion and association. The Convention requires nations which agree to be bound by its terms to take steps to protect and promote the rights listed. Most commonly, civil and political rights are recognised through the passage and enforcement of legislation.

The ICESCR recognises that individuals must also have rights in other areas of life to enjoy and participate fully in civil society. The Covenant commits nations to recognise:

- economic rights, such as the right to work, to just and favourable conditions of work and to social security;
- social rights, such as the right to health, education and to an adequate standard of living including adequate food, clothing and housing; and
- cultural rights such as the right to take part in cultural life and to enjoy the benefits of scientific progress.

The ICESCR requires Australia to acknowledge that residents possess these rights and to take steps, to the utmost of Australia's resources, to progressively achieve their full realisation. Economic, social and cultural rights require ongoing action in the form of government policies and programs to ensure that these rights are recognised and progressively advanced in accordance with Australia's international commitment.

The human rights contained within the Conventions are important for members of small and emerging communities. For new arrivals in Australia, the ICCPR maintains that immigrants have a right to join Australian society and enjoy the freedoms and protections accorded to other citizens. Similarly, the ICESCR recognises that all Australians, including members of small and emerging communities, have a right to a basic standard of living in order to fully participate in the Australian community. For members of small and emerging communities who arrive in Australia as a result of social upheaval or with limited finances, a basic standard of living is fundamental to rebuilding a new life.

Right to non-discrimination

Both Conventions also recognise the right to non-discrimination. They state that all members of society are entitled to enjoy their rights equally 'without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'¹⁷ Australia has a commitment to ensure that all Australians are able to enjoy these fundamental human rights.

¹⁷ Article 2(2) ICCPR, Article 2(2) ICESCR.

The ICCPR includes a further requirement of non-discrimination. Article 26 states that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Human Rights Committee, the body established under the ICCPR to monitor the implementation of the Convention, has indicated that Article 26 creates an obligation to ensure that the legal system is free from any form of discrimination, not only discrimination in relation to fundamental rights.¹⁸ The Human Rights Committee has stated that Article 26 prohibits all discrimination under the law and guarantees that all people will be protected against discrimination by the law. This right is also a fundamental right.

The right to non-discrimination is also supported by other instruments of international law. The *Convention on the Elimination of All Forms of Racial Discrimination* (CERD) and the *Convention on the Elimination of Discrimination against Women* (CEDAW) prohibit at international law discrimination on the grounds of race and discrimination against women. The Conventions are enacted in Australian domestic law respectively by the *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984*.

The right to non-discrimination in international law is a right to substantive equality between social groups and not simply a right to formal equality. The Human Rights Committee has affirmed that the right to non-discrimination prohibits actions which have either the purpose or effect of nullifying or impairing the enjoyment of a group's human rights.¹⁹ The Committee also found that at times the principle of equality requires the introduction of special measures to address causes of discrimination among disadvantaged groups so as to ensure that they can equally exercise their human rights.²⁰

The CERD and the *Racial Discrimination Act 1975* prohibit both direct and indirect racial discrimination.²¹ The prohibition of racial discrimination extends across the full range of rights covering both fundamental human rights and any other rights Australian society may bestow.²²

Small and emerging communities are at risk of violation of their right to non-discrimination. The history of Australian migration confirms that language and cultural differences can be significant barriers to the full enjoyment of human rights. The recognition of the right to non-discrimination places an obligation on Australian social structures to ensure that members of small and emerging communities enjoy substantive equality irrespective of these differences.

Rights to culture and freedom from racism

Linked to the right to non-discrimination and included within the fundamental rights of the ICCPR is the recognition that ethnic, religious and linguistic minorities have a right to a distinct culture.²³ International law recognises that ethnic minorities have a right to pursue a distinct cultural identity and to maintain and develop language and culture.

¹⁸ Human Rights Committee, General Recommendation 18, *Non-discrimination* (1989) UN Doc HRI/GEN/1/Rev 1, Article 12.

¹⁹ Human Rights Committee, General Recommendation 18, op cit n 18 at Articles 6, 7.

²⁰ *ibid* at Article 10.

²¹ Article 1(1) CERD and section 9, RDA.

²² cf Article 5 CERD. The Committee on the Elimination of Racial Discrimination has held that Article 5 is not an exhaustive list of the rights covered by the Convention; see Committee on the Elimination of Racial Discrimination, General Recommendation XX, (1996) UN Doc. CERD/48/Misc.6/Rev.2 at Article 5.

²³ ICCPR Article 27.

Indigenous communities have most frequently relied on the right to a distinct culture. International law suggests that non-Indigenous ethnic minorities also possess the right to develop and maintain their culture.²⁴ This is also supported by statements of other international organisations such as the United Nations Educational, Scientific and Cultural Organisation (UNESCO) *Declaration on Race and Racial Prejudice*.²⁵

The right to a distinct cultural identity confirms that immigrants are not expected to relinquish the culture of their country of origin after taking up residency in a new nation. New citizenship is not conditional on cultural assimilation. In Australia, the policy of multiculturalism provides that all Australians have a right to a distinct cultural identity and recognises the right of individuals to express and share their own cultural heritage, including their language and religion. Members of small and emerging immigrant communities have an interest in maintaining and developing their own culture as they re-establish themselves in Australia.

Multiculturalism is also framed by a series of rights and responsibilities. These include that all Australians should have an overriding and unifying commitment to Australia, acceptance of the Constitution, the rule of law, tolerance and equality, English as the national language and equality of the sexes. In return all Australians have the right to participate in decision-making which affects them, the right to an equitable share of Government resources and the right to be free from discrimination based on race, ethnicity, colour, language, gender and place of birth.

International and domestic law recognise that people have a right to be free from racism. In addition to provisions dealing with the right to non-discrimination, CERD commits nations to take actions to discourage activities which strengthen racial division.²⁶ Nations are required to take steps to prevent actions promoting racial hatred or theories of racial superiority. This requirement formed the basis for Australia's domestic legislation prohibiting acts of public racial hatred.²⁷

International and domestic human rights law therefore recognises that members of small and emerging communities have a right to a distinct culture and can expect that Australian society will take action to address racism, including the provision of effective remedies against racism and racial discrimination.

The rights of non-citizens

Most members of small and emerging communities have chosen to become citizens. Citizenship rates in Australia are generally very high and it is to be expected that members of small and emerging communities will be no different to other migrant communities. Some individuals, however, are not Australian citizens, either because they have not yet been in Australia long enough or have chosen not to take up Australian nationality.

International human rights law recognises that nations must be able to accord different rights to citizens and non-citizens. Certain political rights for instance arise because an individual has chosen to become an Australian citizen. It is also clear that host countries are required to recognise certain rights among non-citizens. The ICCPR provides that nations must recognise the rights of all individuals subject to their jurisdiction.²⁸ This suggests that non-citizens have basic human rights which should be recognised and provided for. Similarly, CERD allows nations to draw distinctions between citizens and non-citizens but not to act in a way which deprives non-citizens of fundamental

²⁴ Committee on the Elimination of Racial Discrimination, General Recommendation XXI, Article 5. For discussion of the application of Article 27 to Indigenous communities see Aboriginal and Torres Strait Islander Social Justice Commissioner (1995) *Third Report* AGPS Canberra.

²⁵ UNESCO Article 1(2) provides that: All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such. However, the diversity of lifestyles and the right to be different may not, in any circumstances, serve as a pretext for racial prejudice.

²⁶ Article 2, CERD.

²⁷ Part IIA, Racial Discrimination Act 1975 (Cth).

²⁸ Article 2, ICCPR.

human rights provided for in instruments such as the *Universal Declaration*, nor to draw distinctions against non-citizens because of their race, colour or ethnic or national origin.²⁹

Australia's most fundamental human rights obligations to non-citizens are to recognise and promote rights to housing, employment and equality before the law.

Summary

As a nation, Australia has legal obligations to recognise, promote and protect the human rights of members of small and emerging migrant communities. Domestic and international human rights law defines the content of the human rights most relevant to these communities.

These human rights instruments provide that, along with all other Australians, members of small and emerging migrant communities are entitled to:

- fundamental civil, political, economic, social and cultural rights;
- non-discriminatory treatment by society as a whole;
- the opportunity to develop and maintain their culture and language; and
- freedom from racism.

The human rights instruments provide a framework against which to examine the extent to which members of small and emerging communities enjoy full recognition of their human rights.

Chapter 3: Arrival, Settlement and Community Support

Adjusting to a new culture and community is neither quick nor easy. This is particularly the case for individuals who do not speak the local language or have been forced to leave their countries of origin due to social or political unrest. Settlement is also a time at which the human rights of migrants and refugees can be at risk. The pressures of arrival and resettlement are such that not all people fully enjoy fundamental human rights including rights to equality.

In Australia, settlement services are specifically designed to assist refugees and immigrants realise their basic human rights when settling in a new country. Human rights standards recognise the need for nations to provide settlement assistance to ensure that new arrivals fully enjoy human rights.

The United Nations High Commissioner for Refugees (UNHCR) recognises that the realisation of basic rights through the provision of essential services is necessary for any individual to be able to successfully settle in a new country. UNHCR maintains that there are a number of outcomes that nations should support refugees to achieve including:

- access to stable employment and income;
- language competency;
- access to education;
- good physical and mental health;
- secure and affordable accommodation;
- presence of family members; and
- support of people from similar background.³⁰

It is not only refugees that require settlement support. The human rights of other migrants will also be at risk during the first years after arrival. The UNHCR recommendations can be usefully applied to other groups of migrants as well.

²⁹ See General Recommendation XI on non-citizens adopted 19 March 1993.

³⁰ UNCHR (May 1997) *Broad Survey on the Integration of Resettled Refugees*.

The consultations confirmed that for members of small and emerging communities there are considerable difficulties during the first years after arrival. For many, settlement services play a crucial role in assisting people to build their lives in a new country. By international standards, Australia provides good settlement support. In many cases whether or not individuals fully enjoy their human rights is determined by the category under which they arrive in the country. Different groups of arrivals receive different services which may result in reduced human rights outcomes in some cases. Australia still has work to do to protect the human rights of members of small and emerging communities on arrival.

Housing on arrival

Accommodation is a pressing need for most new arrivals. Support provided in finding new accommodation depends on the visa category under which someone has arrived. The major visa categories are:

- Skilled – which includes Independent Skilled, Skilled Australian-Linked (with family ties), and Business Skilled migrants.
- Family Migrants – selected on the basis of an immediate family relationship to a sponsor in Australia, such as spouses and dependent children.
- Humanitarian – consisting of various categories:
 - Refugee - defined by the United Nations as those who are outside their country of nationality or habitual residence and are unable or unwilling to return to that country due to a well-founded fear of persecution for reasons of race, nationality, membership of a particular social group or political opinion. Includes the Women at Risk program.
 - Special Humanitarian - people with close links to Australia who have suffered gross violations of their human rights.
 - Special Assistance Category - people with close links to Australia who are displaced or otherwise in situations of hardship and special need.

In 1997-8 the Humanitarian Program intake comprised 12,000 places.³¹

Refugees and women at risk are entitled to short term “On Arrival Accommodation”. Families are provided with housing for an initial twelve weeks, with the possibility of a further extension of thirteen weeks in cases of hardship. Participants reported that in practice families are required to move out as soon as possible. This resulted in people seeking private rental accommodation in a short space of time, often long distances from services needed for successful settlement. Other researchers agree with the view that the length of time allocated to on arrival accommodation is inadequate. Iredale *et al* found that:

[The] time period is totally inadequate for families who have experienced high levels of trauma prior to coming to Australia ... One consequence of this, is that often those most in need of specialist Post Traumatic Stress Disorder support are housed far from the few available specialist service providers.³²

Humanitarian entrant families assisted by the Community Refugee Settlement Scheme (CRSS) reported greater satisfaction with their early accommodation, frequently making links with the support provided as part of this accommodation package. CRSS groups are community groups contracted by the government to provide on arrival assistance, accommodation and support for newly arrived humanitarian entrant families. There is strong community commitment to the scheme.

A major strength of the scheme is that the service is available to families after hours and at the weekend when other services are usually closed. Each CRSS group is entitled to funds to assist with

³¹ Department of Immigration and Multicultural Affairs (15 October 1998) *DIMA Fact Sheet 1* DIMA Canberra at 2-3.

³² Iredale *et al*, *op cit* n 5 at 45.

the costs of settling a family, including funds for essential household items for families. CRSS appears to establish new arrivals more successfully in ongoing accommodation and provide a greater level of support over a longer period.

Sponsored migrants are not entitled to on arrival housing assistance. Special Humanitarian Program and Special Assistance Category entrants are totally dependent on their sponsors for housing. Within small and emerging communities, the impact of being without assistance is that some sponsored migrants live in overcrowded, low quality housing at least until they are able to secure an income and move into the private rental market.

Consultations and the relevant literature suggest that not all members of small and emerging communities enjoy the right to adequate housing on arrival in Australia. This is particularly the case where new arrivals are unable to rely on the resources of an already established community of people from their country of origin.

The relative success of the CRSS programs suggests there may be value in finding greater ways of involving individuals and community organisations who understand the migration experience and are able to provide longer term support in finding and establishing housing in the delivery of services to new arrivals.

English language training

English language courses have been recognised as essential for migrants to be able to interact with Australian society and obtain employment. With the exception of sponsored migrants, the Australian government provides 510 hours of English language training through the Adult Migrant English Program. This service is intended to equip migrants with basic language skills as soon as possible after arrival in Australia.

Consultation participants raised a number of concerns about services provided through the Adult Migrant English Program. Individuals who had arrived in Australia under humanitarian categories reported that other concerns made it difficult to focus on English language training. This included the pressures of finding housing or employment as well as concerns for family members still overseas. Comments included:

Learning English is very hard ..I always think [about] what happened to me and my family ..they torture[d] us, ..we [lost] our homes...hard to learn, I still worry about [my] family and friends back home. (Melbourne, May 1998)

Even if [though] have English classes, too hard, because we have to live, to work, hard to go to classes. Many of my people very worried about their families and [are] still upset and frightened ...hard to learn like this. (Darwin, August 1997)

Skilled migrants reported that English language training was not well suited to their needs. They stated that courses were not well tailored to the educational backgrounds of students and that as a result training did not equip them with sufficient language skills to find jobs in their area of expertise.

I want to learn English to help me get a job in my profession ..but [English] classes are not academic ...they are too general. (Melbourne, June 1998)

Other skilled migrants reported that they were placed in courses with individuals with very few literacy skills in their own languages. They suggested that this meant that the courses provided were too basic for their needs. A worker with the Burmese community said:

Access to English language program is very important but for new arrivals these programs can be very boring. ... Burmese in Australia are usually highly educated but English classes are often grouped in with people with little education or skills ... (Melbourne, June 1998)

Those members from small and emerging communities with few or no literacy skills in their own language found it particularly difficult to learn English. Limited schooling in their country of origin made it difficult to learn English once in Australia. They required specialised programs that include bilingual teachers and additional hours to learn. One individual said:

My community suffered a lot because of political situation in East Timor ... many suffered ... and have only broken schooling because of trouble in East Timor. (Melbourne, June 1998)

Some participants suggested the social security system created another barrier to completing English language training by requiring people in part-time employment to be available for full-time work. Other participants reported that there was enough flexibility to allow people to complete English language training while working part-time.

Service providers raised the particular issues faced by women in learning English. Some women reported difficulty in attending due to a lack of child care facilities. Others reported that because of cultural understandings of gender roles, they felt uncomfortable in the classroom. In other cases participants indicated that historical or traditional presumptions about gender roles prevented women from accessing English language classes. This included situations in which women did not access English language classes because they were not expected to automatically enter the labour market. Lack of participation in language training raised particular concerns about the levels of social isolation among women.

Government-provided English language classes are not available to those who are not permanent residents and who are awaiting determination of their status. Participants stated that not allowing people to attend government English classes during the generally lengthy waiting time for their applications to be processed hinders the learning and the settlement process.

Community infrastructure

Human rights standards recognise that all people have a right to culture and to fully participate in the community. Human rights instruments also recognise the rights of minorities to maintain and develop distinct languages and cultures.

The existence of community infrastructure is one of the factors that determine whether individuals are able to exercise their human rights including rights to culture. Strong communities appear to provide support which is crucial for individuals in accessing the full range of public services and exercising citizenship rights. Access to family members is one element of strong community infrastructure.

Participants commented repeatedly about the importance of other community members and of community workers in the protection of their human rights. Participants stated that they had a sense of obligation to provide assistance to others from the same ethnic group or country of origin. This included providing financial support and assistance in meeting basic needs in Australia.

A high value was placed on community workers. Migrant workers were seen as providing support for people in finding appropriate services and assisting in building the living skills of individuals and communities. Migrant workers at times emerged from small and emerging communities and used their position to advocate the needs of their communities as well as integrating individuals and families with necessary services.

Some participants felt a sense that current programs were not suited to the recognition of the need for community workers in small and emerging communities. As one participant said:

We don't have much. We need support for our community so we can help each other. We have no money to pay our workers or offices for them to work in. Why do some big groups get money and help and we don't? My people's needs are great and just as important. But we feel we are treated differently. Why [do] they treat us like this? (Sydney, July 1998)

Historically, larger ethnic communities have established a significant community infrastructure. This has included ethno-specific service organisations, cultural and language programs as well as ethnic newspapers and radio.

Small and emerging communities are often not large enough to support community infrastructure of this kind. The resilience of small and emerging communities is likely to be far more fragile than larger groups. It is less likely that small and emerging communities will be able to locate services to deliver basic needs or to advocate for their own human rights. This re-emphasises the need for services which are attuned to the experience of migration and settlement and which are able to build the skills of community members in advocacy. These services need to link people with other services and organisations and develop social supports within communities themselves. Bruce found that:

Solid partnerships between community organisations and government and non-government service providers need to be developed so that community organisations do become a bridge between the public and the private.³³

The consultations revealed that these partnerships should not only be targeted at the immediate period of settlement. There are a range of issues facing members of small and emerging communities which do not relate to settlement but for which communities require support if they are to address them. Ongoing experiences of racism, underemployment and poor housing will be more effectively addressed where communities are strengthened by infrastructure of this kind.

Family and community contact

Many participants stated that contact with family members made the process of settlement in Australia far easier. The presence and support of family members assisted people to re-establish their lives in Australia and to realise their human rights in less time than may otherwise have been the case.

For several participants there is a concrete relationship between family contact and the level of human rights they enjoy. For many women a significant barrier to obtaining employment appears to be lack of access to the informal child care their parents or other close family members once provided. Family members play important roles in extending the number of people to rely on for financial or emotional support and play an important role in language and cultural maintenance and development. Some individuals felt strongly that their ability to address the range of pressures they encountered in Australia would be improved by access to family members.

Participants also spoke of great difficulty being reunited with family members. Some individuals told of lengthy delays in being reunited with spouses or other immediate family members. This appeared to be associated with long application processes. People spoke of the emotional anguish of being separated from immediate family for long periods and of their very strong desire to be reunited quickly.

Participants stated that they wished to bring parents or extended family members to Australia. At times this was because individuals owed family responsibilities to people outside the nuclear family. One stated:

My sister's children are my responsibility...we send money to the children...we went to Cairo to try to get them to come to Australia. (Melbourne, June 1998)

³³ Bruce, op cit n3 at 55.

In other situations, individuals commented that the Australian concept of immediate family does not reflect the reality of family relationships in their cultures. Participants stated that contact with their extended family was important and in their cultures extended family played a more important role as a support mechanism than was often the case in Australia.

Women arriving in Australia through the Women at Risk program are seen as having particular difficulties. These women are eligible for entry because they have no surviving male relatives. Often these women are single mothers without surviving family and at risk of becoming both isolated and unable to enter the labour market. Some women have reported establishing close emotional and economic ties with other women in similar circumstances either in refugee camps or in their countries of origin. There is however no potential for these women to be resettled together nor flexibility to reunite the units they have established. This contributes to a situation whereby the human rights of these women may continue to be abrogated after arrival in Australia.

Individuals also commented on the difficulty in using systems such as sponsored migration. The relatively low numbers of Australian consulates and embassies near the home countries of people in small and emerging communities meant that processing paperwork and locating individuals was extremely difficult. This was particularly the case for migration from Africa. Individuals from Sierra Leone reported that they were required to travel to Nairobi to process their claim which was both difficult and expensive.

Several individuals were frustrated by the policy and procedures regarding sponsorship. Individuals wishing to sponsor others expressed difficulty with:

- having to send processing fees to the sponsored migrant to be paid at an overseas post rather than pay them in Australia;
- being unable to inquire about the progress of their application in Australia but having to contact the overseas post; and
- obtaining forms locally to assist individuals they wished to sponsor.

While the difficulties of organising sponsored migration exist for any individuals wishing to use this system, the consultations suggested that members of small and emerging communities encounter greater problems due to the difficulties of communicating with individuals in their country of origin. As a result, members of small and emerging communities face longer waiting times for reunion with family and community members.

Immigration status and settlement services

The range of settlement services provided by government is partly determined by the visa category through which an individual obtains entry to Australia. Skilled migrants, refugees, sponsored migrants and humanitarian entrants all receive a different package of benefits upon their arrival in Australia. Sponsored migrants in particular are not entitled to a number of settlement services on the grounds that settlement support for sponsored migrants should be provided privately by their individual or community sponsors rather than publicly through government entitlements.

Irrespective of how an individual arrives in the country, Australia as a nation has an obligation to ensure that all individuals enjoy a basic set of human rights. This includes arrivals who are not yet recognised as citizens or permanent residents. International law obliges Australia to recognise the fundamental human rights of non-citizens to enjoy a basic quality of life as defined by domestic standards.

Settlement services are provided to ensure migrants fully enjoy their human rights. The fundamental goal of settlement policy must be to ensure that all migrants enjoy the full recognition of their human rights as soon as possible after arrival in Australia. Decisions about the allocation of settlement services cannot infringe Australia's international obligations in this regard. This principle is reflected

in the *Racial Discrimination Act 1975*, which prohibits discrimination in the provision of services on the grounds of immigrant status.³⁴

The consultations and the relevant literature raise significant concerns that this may not be the case, especially for individuals sponsored under in the Special Humanitarian Program and Special Assistance Category. As sponsored migrants, these individuals are expected to rely on their sponsors for settlement assistance. Unlike refugees, migrants arriving under these programs are not entitled to a range of services upon arrival and in some instances are subject to a two year waiting period to become eligible. Some examples include:

- mainstream welfare benefits and social security;
- government sponsored access to the Job-Network employment placement scheme;
- free English language tuition; and
- access to higher education institutions.

Throughout the consultations the difficulties faced by sponsored migrants were raised. Many individuals reported that both new arrivals and their sponsors were living in serious poverty resulting in substandard accommodation and underemployment. Migrants are at times sponsored by individuals from their communities who do not have sufficient money themselves. This creates a possible poverty trap for both new arrivals and more established migrants. Bruce commented in relation to migration from nations in the Horn of Africa that:

In practice this has meant that SHP (Special Humanitarian Program) and SAC (Special Assistance Category) entrants are heavily dependent upon their proposers, who themselves often only have a limited knowledge about settlement services, for orientation, information and referral to specialised services. Unfortunately this again places an artificial hierarchy on actual needs and assumes that SAC entrants, in particular do not require the same intensive settlement orientation and assistance as do those considered to be genuine refugees. It is often the case that the only differences between someone considered a refugee and someone who has entered under the SAC program is that the latter failed to make it to an international border.³⁵

Over the last two years a number of organisations have expressed concern that the introduction of a two year waiting period for social security benefits is having a severe impact on some migrants. These concerns include suggestions that a significant number of new arrivals lack basic rights such as adequate housing or employment. This issue was addressed by the Race Discrimination Commissioner during the *Senate Inquiry into the Operation of the Waiting Period on Social Security for Newly Arrived Migrants*.³⁶ In that submission, the Commissioner noted that the denial for a two year period of the special benefit which is paid to those in crisis or emergency situations may constitute a breach of section 5 of the *Racial Discrimination Act 1975*.

Members of small and emerging communities consulted reported that poverty was having a serious impact on members of their communities. The allocation of settlement services according to visa category does not appear to successfully guarantee the rights of all new arrivals. If breaches of fundamental rights can be shown it may be that this system is contrary to both human rights principles and the *Racial Discrimination Act 1975*.

Conclusion

The period immediately following arrival in Australia continues to be a time when many members of small and emerging communities find that their human rights are at risk. For many individuals,

³⁴ s5 *Racial Discrimination Act 1975*.

³⁵ Bruce op cit n3 at 33.

³⁶ Race Discrimination Commissioner (27 March 1998) *Submission to Senate Inquiry Into the Operation of the Two Year Waiting Period on Newly Arrived Migrants* HREOC.

settlement services are a crucial way of ensuring that their immediate needs are met and that fundamental human rights are fulfilled.

This is not however the case for all members of small and emerging communities. English language training is not always matched to the learning needs of individuals and the lack of infrastructure in most small and emerging communities leads to additional difficulties in establishing a new life in Australia. Lack of access to family members and the ineligibility of sponsored migrants for some benefits place additional pressures on the settlement period for some individuals.

Small and emerging communities require Australia to maintain its longstanding commitment to the provision of settlement services. The consultations confirmed that these communities firmly believe that they are more likely to achieve human rights standards and be able to participate in Australian society if they are given this kind of assistance. To be of greatest assistance these services must be responsive to changes in the migrant and refugee intake. There appears to be more work that can be done to ensure that settlement services reach all migrants whose human rights are at risk and are tailored to their needs.

Chapter 4: Housing and Accommodation

Housing was one of the recurring themes raised during consultations. Participants reported difficulties in all areas of housing including accommodation provided on arrival, access to public housing and difficulties in the private rental market.

Housing is well recognised as both a key issue for successful settlement and a fundamental human right. Finding secure, ongoing and appropriate accommodation is a high priority for most new arrivals including members of small and emerging communities. International human rights law recognises the need for all people to have access to acceptable shelter and housing.³⁷ Similarly, international and domestic law recognises that it is unacceptable to discriminate in the provision of housing whether in the public or private sectors.

For members of small and emerging communities, housing is a priority area in which human rights can be at serious risk. Particular issues include experiences of direct and indirect racial discrimination as well as structural issues of finding accommodation that is affordable and appropriate for large families. There is a need for all areas of the housing sector to take steps to better recognise the human rights of members of small and emerging communities.

Public housing

Some participants said public housing was preferable to finding accommodation in the private rental market. Public housing was seen as being more stable and did not create the financial pressures of private rental. One participant stated:

People prefer to apply for housing commission because of rental stability. (Perth, May 1998)

However, public housing was not seen as an option for many consultation participants. Participants reported long waiting lists for public housing, at times for up to 15 years, meaning that they were unable to be placed quickly enough to meet their accommodation needs. It seems that many newly arrived members of small and emerging communities do not apply for public housing because of the length of current waiting lists.

Participants reported that they had tried to have needy individuals given priority for public housing but that they had been largely unsuccessful. This included individuals who had arrived in Australia

³⁷ Article 11, ICESCR.

because they were considered to be at serious risk and as a result had some of the greatest settlement difficulties.

Many women [from Africa] come as single mothers [and] don't have jobs. Department of Housing can't put them on the priority list for appropriate housing despite coming as women at risk. (Melbourne, June 1998)

Where people were able to access public housing, there were difficulties in finding appropriate housing. As with the private rental market, public housing does not cater well for large families. One participant stated that:

Department of Housing doesn't have housing big enough for [large] families. (Perth, May 1998).

Others reported experiences of racial and religious harassment in public housing estates either from other residents or within government departments. One participant said:

When [we] go to [the] housing commission- there are good families but some other Department of Housing tenants ... pull women's veils. (Melbourne, June 1998)

The public housing crisis, and the particular housing issues confronting migrants and refugees, was addressed in some depth in the Race Discrimination Commissioner's 1994 *State of the Nation Report*.³⁸ In particular, concerns were raised regarding the length of waiting lists, the need to implement a policy of priority public housing allocation (particularly for refugees and special humanitarian entrants), the need for anti-racist policies and strategies for housing estates and the need for non-English speaking background clients to be housed near settlement and support services and near family. All of these concerns apply especially to members of small and emerging communities.

Private rental market

Most members of small and emerging communities rely on the private rental market for accommodation. Consultations suggested that there are several ways in which members of small and emerging communities reliant on the private rental market fail to achieve adequate human rights standards.

The cost of private rental accommodation is a significant barrier. Individuals on low incomes or who are reliant on social security benefits reported allocating between one half and two thirds of their income to rent. This contributed to the financial pressures experienced by consultation participants. One individual stated that:

We left all our belongings behind and we are newcomers here. It isn't easy to find a job and paying private rental is very expensive. When you are unemployed and renting a flat, rental is very expensive. (Melbourne, June 1998)

Similarly, other costs associated with private rental added to financial pressures. Individuals reported difficulty in finding money for rental bonds. Others reported that sponsors and more established members of an ethnic community would at times put up bond money to allow new arrivals to establish themselves. However, the more established community members who provided money for new arrivals were also reported to be in financial difficulties and providing assistance to more recent arrivals simply exacerbated their own relative poverty.

³⁸ Race Discrimination Commissioner (1994) *State of the Nation: A report on people of non-English speaking backgrounds* AGPS Canberra, see especially the discussion of the special case of humanitarian arrivals at 13-14, 29-30.

As a result of the high costs of the rental market, participants reported that they were living in accommodation that was not appropriate for their needs. Consultation participants said that the only accommodation they could afford was not large enough for their families, was rundown or not appropriately maintained. One participant stated:

'[There is a] long waiting list for public housing. We don't have much money and we are forced to stay in [a] house [that is] not very healthy for [a] new born baby. (Melbourne, June 1998)

As a result some families were relocating regularly in an effort to secure more appropriate accommodation for their circumstances. Relocation put additional pressures on families and the community.

It is not clear what role existing rental subsidy schemes play in alleviating the financial pressure associated with the private rental market. While closer examination of the utilisation rates of these programs is warranted, the consultations suggested that the current programs are not providing access to good quality, safe and appropriate accommodation. There would be value in examining the utilisation rates of programs such as Commonwealth rental subsidy by members of small and emerging communities.

State and territory governments could also play a greater role in rental subsidy. The New South Wales government currently operates targeted rental subsidy schemes such as the Disability Rental Subsidy and Special Rental Subsidy in recognition of the particular housing issues and support needs of people with disabilities and people living with HIV/AIDS. These schemes recognise that other forms of housing assistance are insufficient to meet the needs of certain target groups. These may provide useful models for state and territory governments to respond to the particular experiences of new arrivals and members of small and emerging immigrant communities.

Aside from financial pressures, there are other ways in which the private rental market appears to be failing members of small and emerging communities. The relative lack of availability of suitable accommodation was a consistent theme in our consultations. Many individuals had large families by general Australian standards and as a result were presented with serious difficulties in finding suitable accommodation. As one participant lamented:

We are expecting child number five and need to find a bigger house. It is very hard. (Melbourne, June 1998)

The extent to which lack of suitable housing is resulting in overcrowding is unclear but the consultations agreed with statements within the relevant literature that this is an issue worthy of further consideration. The need to provide for extended families and the requirement for larger dwellings was also emphasised in the 1994 *State of the Nation Report*.³⁹

Dealing with real estate agents was raised as a significant difficulty. Individuals who had recently arrived reported difficulty in providing references. Others stated that leases were often signed without tenants understanding either the terms of the lease or their tenancy rights. It was asserted that this contributed to problems of insufficient maintenance and landlords transferring the cost of essential maintenance to tenants. A lack of access to information on tenancy rights in appropriate community languages was seen as contributing to this situation.

Participants stated that real estate agents do not view members of small and emerging communities as attractive tenants. Participants reported that real estate agents preferred not to lease accommodation to people with low incomes or with large families. One individual stated that:

³⁹ Race Discrimination Commissioner, op cit n38 at 53.

Real estate agents are very prejudiced against people who are unemployed, even if they can pay (eg. social security). (Melbourne, June 1998)

Another stated:

For most new arrivals, they are on DSS benefits, and because of this they usually find real estate agents to be unhelpful re accessing private rental accommodation. Rather than stating they don't want Burmese, or refugees, they say that they don't want to rent houses to families, preferring to rent the house to people with no kids. (Melbourne, June 1998)

The perceived bias against people with large families appears to have a particularly severe impact on women, especially women with sole parenting responsibilities. One woman told of the lengths she went to in order to find accommodation:

I said I had two children because before I tell them how many children I have, eight, and I don't get the house. They don't want people with many children. I got a house after a long time. (Melbourne, June 1998)

A consistent theme across the consultations was that real estate agents actively discriminated against black and Muslim communities. One participant stated that:

Many Africans believe that the colour of our skin influences our ability to obtain housing in the private rental market If a large family goes in to a real estate agency they are told there are no properties large enough to accommodate them ... [I]f, say, three or four African men apply for accommodation together they are told that there is nothing available. (Melbourne, June 1998)

Summary

Housing continues to be an area of public life in which the human rights of members of small and emerging communities are at significant risk. Some members of small and emerging communities appear to enjoy what would be considered in Australia to be a basic standard of reasonable accommodation. Others are living in overcrowded, substandard accommodation and are unable to find more suitable housing either due to financial or other pressures.

Housing stock, whether in the private or public sectors, does not appear to cater adequately for all families in small and emerging communities. This prevents some people from living in housing that meets minimum standards or achieves socially equitable outcomes.

Finally, members of some small and emerging communities experience various forms of discrimination in their attempts to find suitable housing. This discrimination occurs on grounds of skin colour, family responsibilities and religion. Members of small and emerging communities may be facing unlawful direct and indirect discrimination. This suggests a need to improve compliance with Commonwealth and State anti-discrimination legislation throughout the real estate industry and to ensure that community members are aware of rights available under tenancy and anti-discrimination law.

Chapter 5: Employment

Employment rights were a consistent theme raised throughout the consultations. Participants reported that they encountered significant difficulties in finding employment, especially employment for which they were trained and qualified and reported instances of poor employment conditions and discrimination in the workplace.

There are a number of human rights standards that apply to employment and workplaces. These standards underpin anti-discrimination legislation as well as employment laws. Members of small and emerging communities are entitled to the full enjoyment of fundamental human rights to work as well as just and favourable conditions of employment. The right to non-discrimination suggests that members of small and emerging communities should have the same opportunity to achieve equal employment outcomes as other Australians. In particular, human rights and employment law seeks to achieve the goal of eliminating discrimination on grounds such as race, sex and colour.⁴⁰ This includes placing an obligation on employers to prevent racial harassment and prohibit indirect discrimination.

Consultations demonstrated that not all members of small and emerging communities are enjoying the full range of employment rights, both because of the overall position of these communities in Australian society and due to experiences of racism and other discrimination.

Finding employment

The relative scarcity of jobs caused difficulties for many participants. Many individuals had not been aware of the difficulty they would encounter finding work in Australia. Those migrants who had satisfied skills tests before arrival believed that Australia needed their particular skills and that as a result, finding employment would be relatively easy.

Participants believed that most people obtain employment through contacts and networks that they did not have because they were new arrivals and from small communities. This confirms some of the key findings of the literature that members of small and emerging communities lack access to social networks important in job seeking.

People who belong to small community groups don't know anyone [and] can't use this [means] to get [a] job, which means they are disadvantaged [and] discriminated against. This form of networking is very much legitimised in Australian society but [it] is very exclusive. (Melbourne, June 1998)

It was asserted that the process of finding employment was very difficult for some members of small and emerging communities. People reported difficulty with interview procedures due to the unfamiliarity of Australian recruiting practices. The need to supply references was a problem for many individuals, especially when seeking their first job in Australia. For some participants the circumstances in which they left their country of origin meant that obtaining confirmation of their past employment and references from past employers was very difficult. Batrouney reports one respondent who exclaimed:

He is fleeing for his life and they ask him for references!⁴¹

Many participants reported that they encountered direct discrimination when seeking employment. This included direct discrimination on the grounds of skin colour, religious dress and accent. Reports from participants included:

We're often asked by employers where are you from? When we told them we are from Africa they just replied 'Oh'...

The questions posed during a job interview are often racist for example 'You are from Africa, would you be able to cook here?'

First of all they reject us by name ... most of us [are] Muslim. (Melbourne, June 1998)

⁴⁰ cf. the objects of the *Workplace Relations Act 1996* (Cth).

⁴¹ Batrouney, op cit n2 at 59.

Iredale reported being told:

It is an amazingly racist country. I applied on the phone for a job in which I was qualified. The employer was very happy with me, but when I went to the office I was told 'I was expecting a white'. I applied for the position of chemist for a company in Wagga-Wagga. When I didn't get the job I went to inquire and was told that the best person had the job. I told them that I trained the guy they hired at the uni, I have my Masters and he has his Bachelor degree ... you tell me they selected the best person? (African humanitarian entrant)⁴²

This kind of racial discrimination was reported within employment services. One participant said that after being encouraged to apply for a job by a local African-based job support agency, a prospective employer asked him via the telephone, 'Are you black or are you white?'

Participants reported their very strong sense that the discrimination they experienced was in many ways very subtle and that employers were frequently not explicit in why they were refusing employment.

When [you] have same qualifications [you] can't compete because of English language proficiency. It is hard to prove this. You feel you have been discriminated against, you know it 100%. (Melbourne, June 1998)

Lack of local experience and language skills appear to be frequently cited as reasons why individuals were not successful in obtaining employment. These reasons cause frustration for individuals who are keen to obtain some kind of local employment in order to improve their position in the labour market. Some individuals also considered that where they were refused employment because of lack of local experience or on the grounds of language skills that this was an excuse for discriminatory behaviour. Participants stated that:

We don't get jobs because employers are prejudiced. They tell us we don't have local experience. How can we if they don't give us jobs. We have plenty of experience in our home countries. They don't consider this. (Melbourne, June 1998)

Some participants who had been in the country long-term have attempted to retrain to develop local employment skills. For some, however, local skills were seen as insufficient in the face of discriminatory views of employers.

I did numerous secretarial courses in Australia but still could not find employment in this field. I felt that I was discriminated against by employers based on my accent and the fact that I was born overseas. (Melbourne, June 1998)

Recognition of overseas skills, qualifications and experience

Central to the difficulty finding employment is the recognition of skills, qualifications and experience obtained overseas. Despite the recent development of programs to provide for the recognition of formal training and qualifications obtained overseas, this was frequently cited both during consultations and in the relevant literature as being one of the greatest frustrations faced by members of small and emerging communities.

Individuals reported that they had been through a rigorous professional ability and skills assessment before they were accepted to come to this country. Many claimed they were not told that they would have difficulties finding employment and were shocked to find that their overseas qualifications were not always recognised.

⁴² Iredale et al, op cit n5 at 64.

Particular problems with current skills recognition procedures included:

- inconsistent standards and requirements between different states;
- competing professional bodies setting different requirements for recognition;
- lengthy delays in processing applications for recognition;
- insufficient information on recognition requirements before assessment; and
- insufficient feedback when qualifications fail to be accepted.

For professional qualifications, it is common for professional associations to have a significant role in the assessment and eventual recognition of overseas qualifications. Individuals reported that they encountered a professional arrogance among some assessors. One community worker gave the following example for the Australian Medical Council's clinical examination:

'Recently a Bulgarian plastic surgeon, who is a pioneer in female to male and male to female gender reassignment as well as a world leader in complex cosmetic surgery was asked how many melanoma procedures she had performed. When she responded that Bulgaria didn't have a high incidence of melanoma but that she had performed approximately 10 procedures the questioner retorted 'Well, I've performed over 40!' (Perth, May 1998)

Members of small and emerging communities felt that they were particularly disadvantaged in the struggle to have their qualifications recognised because most Australians understood very little about education and training in their countries of origin. It was suggested that assessors had difficulty recognising qualifications from countries which Australian assessors had not visited or considered. Participants pointed to the need for greater training in this area.

During consultations, the Ecumenical Migration Action Group provided the example of the recognition of trade skills among migrants from Sierra Leone. Migrants who had arrived in Australia after living and working in the United Kingdom and Europe, have found that training completed in Sierra Leone was not recognised in Australia. Unlike many European countries, Australia does not allocate delegates to West Africa to assess the compatibility of working experiences with those in Australia. As a result, longstanding skills were not recognised in Australia.⁴³

Participants reported that recognition of formal skills and training were only part of the problem. When people sought employment, they reported that employers still did not give equal weight to overseas qualifications and certainly were not prepared to recognise the value of overseas work experience.

[Employers] did not accept my overseas experience. [I am] disadvantaged because I don't have Australian experience. When you do have equivalent experience from overseas you are not given an opportunity to explain. (Perth, May 1998)

Humanitarian arrivals reported the additional difficulty of being unable to demonstrate the qualifications they had completed due to their inability to bring relevant documents from the country of origin.

Recognition of both skills and qualifications are significant barriers preventing many migrants from obtaining labour market outcomes equal to Australians with comparable training and work experience. This has been well documented in the literature and borne out repeatedly in the research in this area.⁴⁴ For members of small and emerging communities the barriers may be more severe. For these communities to enjoy substantive equality and the full power of the right to non-discrimination,

⁴³ HREOC, op cit n12 at 37.

⁴⁴ See for example, Department of Immigration and Ethnic Affairs (1986) *Don't settle for less: Report of the Committee for Stage 1 of the Review of Migrant and Multicultural Programs and Services* AGPS Canberra at 108-111; Jupp et al, op cit n 6 at 58.

additional strategies need to be found to improve the effectiveness of recognition procedures for qualifications and to address the devaluing of overseas work experience by Australian employers.

An individual interviewed by Batrouney summarised the issue as follows:

*In my experience there are many educated Australians who do not like to see overseas skilled people working according to their skills. But we have to realise Australia is for all. Overseas papers compared to Australian equivalent is still nothing. One could ask is Australia different from the world?*⁴⁵

Experiences in the workplace

Consultation participants also reported concerns about workplace experience once they had obtained employment. Individuals reported concerns relevant to their enjoyment of fundamental human rights, the right to non-discrimination and the right to culture. Several individuals also stated that they lacked confidence in either the anti-discrimination or industrial remedies open to them.

The consultations revealed that discrimination and harassment within the workplace was an ongoing issue for some members of small and emerging communities. This discrimination could take many forms ranging from the subtle to the quite overt. As one participant stated:

My experience was that staff are quite discriminatory in hospitals, [they are] not keen to help, and sometimes they make this explicit. (Melbourne, June 1998)

My cousin's boss made a mistake with rostering and blamed it on my cousin because he thinks Pacific Islanders [are] big, brown, fat and stupid. (Melbourne, June 1998)

A strong theme was that black workers face significant workplace discrimination. Members of African communities gave several examples of how they felt that black people were treated as inferior and that employers and other workers devalued their skills. Some felt that black people were expected to work to a higher standard than other employees. Often this situation is exacerbated by the low numbers of black people in a workplace.

[I was] the only black person in Frankston area. I was even told by [a] manager 'You are black'. We experience this not because [we are] migrants but because we are black. (Melbourne, June 1998)

I'm dark, I'm Egyptian, I have higher qualifications than my boss, there is no point [in] making complaint. (Perth, May 1998)

People also reported experiences of discrimination on religious grounds, particularly against Muslims. The consultations suggested that not all employers have made use of flexible work practices to assist Islamic employees to combine their work and religious obligations.

I am a graduate in Food Technology [it is] hard to be a Muslim in these areas because of ham, but the company is big enough for you to avoid ham but still they say 'We can't employ you because you are a Muslim'. (Melbourne, June 1998)

Participants also reported difficulties not directly related to discrimination in the workplace. Individuals stated that they had difficulty obtaining permanent employment and in getting pay rises over time. It is not clear whether this is a situation facing all employees in this workplace or whether this is an issue with a particular impact on members of small and emerging communities. Reports included:

⁴⁵ Batrouney, op cit n2 at 76.

[I have] never been given a permanent position even though [I] had been Acting manager/acting supervisor. [I] became really stressed, [and] wanted to resign. [I was] given a year off. Because [I] need the job I can't put in complaint. (Melbourne, June 1998)

How many years [I] worked without [an] increase [in] pay or promotion. [When I was] introduced I was said to be the best worker. (Melbourne, June 1998)

Generally, consultation participants expressed a low degree of confidence in either anti-discrimination or industrial remedies. People believed that because employers were in a position of power, complaining about either issues of discrimination or about standards and conditions of work would be unlikely to achieve a satisfactory outcome and may well jeopardise the security of their employment. Participants made comments such as:

Hard to pursue any industrial rights/relations stuff, even repetitive strain injury (RSI) because of poverty. (Melbourne, June 1998)

Union doesn't follow through [on our complaints]. Every day I feel very angry. [I know] if I get the job through making a complaint, my life will be hell at work. (Melbourne, June 1998)

The impact on small and emerging communities

When members of small and emerging communities do not equally enjoy rights to appropriate work the impact is varied and serious both for the individuals concerned and for the nation as a whole.

Many individuals resort to marginal and low skilled jobs due to their difficulties in finding other employment. This includes work as unskilled labourers, in factories or as outworkers in low paid employment in the hospitality industry.

In some small and emerging communities a significant number of individuals rely on marginal employment. Unsurprisingly, the employment rights of these communities are at risk and they may experience serious poverty. Concern was raised about whether members of small and emerging communities who could only obtain itinerant jobs such as fruit picking had suitable accommodation and other basic needs. These individuals are also least likely to receive protection from the award system or other legislative measures designed to guarantee the rights of individuals. A member of the East Timorese community stated that:

Many of our community are exploited as outworkers. Because of financial needs they take this casual work and most don't know [about] the awards. (Darwin, August 1997)

Skilled migrants, frustrated at their inability to obtain work for which they are qualified also report that they often apply for jobs at lower grades. Even so, they state that they were not always successful, finding themselves overqualified for lower status jobs.

You apply for a job requiring Year 12 level. You have a B.Sc and a graduate diploma. You apply for the job but you don't get it ... and then you go back to the company and see somebody training [for the same job]. (Melbourne, June 1998)

Some individuals do not reveal their qualifications simply so as to obtain any kind of work. As participants in Melbourne reported:

[I am an] interpreter [but] had to hide [my] qualifications, [I] have a bachelor degree but applied for a job, telling them only that I had year 11 qualification just so I would be considered for the job. (Melbourne, June 1998)

We hide our qualifications when we go for factory type jobs; mostly our people are very highly qualified. (Melbourne, June 1998)

Others reported hiding their religious beliefs in order to get work.

For me the first priority is to get a job, so I hide being a Muslim. (Melbourne, June 1998)

Participants reported that there are high rates of both unemployment and underemployment among these groups. As well as being a significant lost resource for the nation, this has high personal costs for those individuals directly affected.

Several participants reported that finding employment and encountering discrimination in employment placed major pressure on other areas of life. Individuals working in low skilled, marginal employment for long periods faced serious poverty. Others stated that their experiences had a major impact on their personal and family relationships. One individual said:

I know some women who are so stressed they have stopped talking to their kids and their husband. They are scared to make a complaint, [because] people set you up [and] give you a bad name and you lose [the] job in bad circumstances. (Melbourne, June 1998)

There are many examples of upheld complaints of race discrimination made to the Commission under the *Race Discrimination Act 1975* which confirm the high cost of discrimination in the workplace. Examples over the last year include:

A Tongan-born Australian mechanic who was racially abused by co-workers and managers. The constant abuse led to the man suffering a breakdown and attempting suicide.

A black man of South African origin who was subjected to repeated racist abuse, racist gestures and the display of a white supremacist sign in his workplace. He developed a psychological disorder and resigned from his employment.

Summary

Employment is an area in which many members of small and emerging communities find that the human rights recognised by international law are often infringed. Individuals reported experiences and situations in which both fundamental human rights in employment and rights to non-discrimination have not been upheld. This has a serious impact on the social position and health and well-being of individuals and communities.

Many of the experiences raised in relation to employment are not unique to small and emerging communities. Other low paid employees and immigrants would most likely relate to some of the concerns of consultation participants. Members of small and emerging communities do, however, appear to suffer some particular disadvantages in employment in areas such as recognition of qualifications, skills and experience, as well as discrimination on grounds of skin colour and religion.

The size of these communities makes it difficult for the communities themselves to address all of the issues. Further, for many their new arrival status means that communities lack a clear understanding of how to ensure these issues are placed on the national human rights agenda. Education and information programmes, targeted specifically to these groups, are necessary in order to enable them to understand the numerous human rights related issues.

Chapter 6: Addressing the Barriers

The consultations suggested that there are a range of ways in which the human rights of small and emerging communities fail to be protected and promoted. Australia has a long tradition of providing services to address the disadvantage faced by particular groups in society, including migrants, to protect human rights standards. The consultations suggested that these services are not always sufficient to guarantee the enjoyment of human rights by small and emerging communities.

Interpreting and translating services

One of the consistent themes raised throughout the consultations was the difficulty individuals encountered in accessing public services due to language barriers. Members of small and emerging communities are almost entirely from non-English speaking countries. For individuals with little or no English skills this creates a significant barrier to accessing services. Even those individuals who arrive in Australia with some English skills reported that their skill level was not always sufficient for them to be completely confident accessing public services.

Historically, Australia has sought to protect the human rights of people from non-English speaking backgrounds by the provision of interpreting and translating services. This has been particularly so in relation to public services. Public services have had access to interpreting facilities such as the Telephone Interpreting Service and made use of translations to ensure that service information is accessible for people not confident of their English language skills. The quality of the people providing translating and interpreting services is maintained through an accreditation process run by the National Accreditation Authority for Translators and Interpreters.

Consultations confirmed that language barriers were significant issues for members of small and emerging communities not only in relation to government services but also for privately provided essential services such as banking. One participant stated that:

Difficult problem in terms of language barrier, some departments don't provide interpreters and they have to find one themselves and pay. This is very bad when people have to find houses, talk to credit companies and banks for example. (Melbourne, June 1998)

The overall lack of accredited interpreters was also raised on a number of occasions. Small and emerging communities had great difficulty finding people qualified to interpret when they required assistance. The Kurdish community, for example, reported that there are only six people qualified to interpret in their language. The demands on these peoples' time are therefore very significant.

As a result of the shortage of interpreters, participants reported that they were required to turn to more established community members and to people they knew from their communities to assist with at times highly personal matters. Participants reported that:

There are hardly any interpreters for our communities so old residents help to settle the new ones. (Melbourne, June 1998)

Our people cannot get public services, we have no Kurdish support workers, not enough female and male interpreters and we always know the interpreters, which can be a problem sometimes. (Melbourne, June 1998)

Service providers working in multilingual services told of their own difficulties in providing accessible services. The large number of languages spoken at times by very small numbers of people made finding suitable interpreters very difficult. Strategies are required to ensure that members of the smallest communities are able to access public services appropriately.

The consultations revealed similar issues with respect to translations. Although much government information is translated into community languages, participants reported that it is not often translated into the languages of small and emerging communities, usually for reasons of cost effectiveness. Translated material is focussed at larger ethnic communities and not at the needs of small and emerging groups. One worker spoke of receiving significant amounts of translated information, but none of this information was made available in a language used by the communities with which the service worked.

Related to the issue of translations and interpreting services is the lack of data provided to public services on small and emerging communities. Insufficient ethnicity data makes it very difficult for service planners to target materials to the particular communities in a locality.

Experiences of racism

Experiences of racism were raised by a number of communities across the country. Public expressions of prejudice and racial hatred were an all too frequent part of the lived experience of many members of small and emerging communities and they reported this had a serious impact on their participation in Australian society. Participants gave examples of harassment on the street, in the supermarket and in workplaces as well as other situations where they encountered racial discrimination.

In addition to the prohibition on acts of discrimination, human rights standards maintain that people should not be subject to acts of racial hatred. Nations are expected to take active steps to prohibit and prevent racist expression and to promote acceptance of diversity in society. This includes the creation of processes whereby individuals can take action to ensure that acts of racial hatred and discrimination are addressed.

The consultations confirmed that those individuals who were most visibly different were at greatest risk of encountering racism. Given the fact that most Australians are not familiar with the culture and heritage of members of small and emerging communities, it is no surprise that individuals who attended consultations appear to be particularly likely to experience racism.

A number of individuals reported experiences of racial harassment in public places. Burmese, Timorese and Pacific Islander communities all gave examples of both overt harassment and racism. This included instances of verbal abuse from strangers, workmates and others.

Other individuals reported more subtle experiences of racism. For many participants indirect and structural discrimination was clearly seen as racist. Others gave examples of situations in which they were made to feel uncomfortable or that they were being watched because of their race or skin colour. These were often situations where participants had a very strong sense racism was operating, even though it was difficult to prove.

I feel racism but [it's] hard to prove. It's a feeling very difficult to explain. I feel [I] can't change the situation when people treat me bad because I am Asian. I think maybe I do better [than them and] try to make them feel guilty for treating me and others badly. (Melbourne, June 1998)

Some participants felt that young people were particular targets for racial harassment. A young Burmese man told the story that:

I use to ride a bike to and from work late at night but people throw eggs at me all the time . I get scared they will do more. I have to give up [my] night job. Many people [are] like this. (Melbourne, June 1998)

Consultations suggested that communities who rely on itinerant work in rural areas felt particularly at risk of racism. This was especially relevant to Pacific Islanders. They also reported that the effects of encountering racism were worse because they were isolated from their families.

Throughout the consultations the Commission heard a large number of reports of racial harassment and racial discrimination from black communities and from Muslims. For many small and emerging communities, their experiences of being either black or from an Islamic minority had a serious impact on their lives in Australia.

My husband has a beard and moustache. People assume he is a fanatical Muslim. One person abused him when he said he didn't want to go to the mosque. (Melbourne, June 1998)

Experiences of racism clearly had a significant impact on individuals and communities. Some Africans linked their problems with settlement to the ridicule they had experienced due to their skin colour and accent while in Australia.

For some the impact is greater social isolation and lower self-esteem. A participant from the Pacific Islands remarked that individuals in her community experienced racism but were not prepared to discuss it. She considered that people denied the experience of racism to themselves and to their communities. She strongly felt that this was damaging for the individuals concerned.

Complaints mechanisms

Many individuals lacked confidence in any of the official avenues by which individuals may report or seek redress for racism and racial discrimination. Some participants indicated that they felt that they had to tolerate levels of racism and that very little would be done to prevent it through official sources. This confirms findings from the literature. An individual interviewed by Batrouney expressed the view:

There is no open avenue for grievances to be remedied or alleviated since Australia is basically white oriented, especially Anglo-Saxon biased. Being a minority of a minority group, Africans will remain on the bottom rung of the ladder with the Aborigines in Australia⁴⁶

Some participants saw little reason to report public racism to the police. Individuals commented that the police were unhelpful in responding to racism and were sometimes involved in racial harassment themselves. Some individuals felt unable to insist on police assistance either because they did not feel able to exercise their rights or because of residual fears of law enforcement bodies originating from their country of origin. The size of communities meant that many individuals were not in touch with advocacy services to assist them in such situations.

Many individuals were unaware of their rights under anti-discrimination law including the *Racial Discrimination Act 1975*. Others had some knowledge about the anti-discrimination system but did not believe that lodging a complaint would achieve a useful result. One individual stated that:

HREOC is a white organisation. It will serve the interest of the racists before us because they are white too. (Melbourne, June 1998)

More commonly, participants were anxious that their complaints would not be taken seriously, would have too many difficulties proving their case or that communicating with the Commission would be too difficult. One participant said:

You don't have people like us we can talk to. We don't feel comfortable, many of our people do not know about these organisations and if they do they are scared to approach them

⁴⁶ Batrouney, op cit n2 at 77

because it is so hard to prove racism anyway even though we feel it badly. (Melbourne, June 1998)

Similar comments were made in relation to allegations of racism within public services. One participant said:

No one is really monitoring racism in service delivery...[there is] insufficient redress of racial complaints at a local level...[communities are] unable to substantiate sophisticated acts of racial discrimination ...[they suffer the] cumulative effects of racism [resulting in] feeling powerless. Funding should be tied to an equity formula and that diversity/cross cultural training is made mandatory for all bureaucrats...[I think] migrants put up with harassment because they feel relieved to be out of dangerous situations. Racism today is a very sophisticated form of discrimination. (Perth, March 1998)

The consultations also re-emphasised the need for agencies such as anti-discrimination bodies and the police to take steps to build confidence in their services by those communities who need them. This is particularly the case for small and emerging communities. The relatively recent arrival of these communities and lack of access to advocacy services, means that community members are unlikely to fully understand either their legal rights or the services offered by government institutions.

The consultations also emphasised the reality that the police and anti-discrimination institutions do not receive large numbers of potential complaints. Many people do not use these services due to a lack of confidence or because they are faced with more pressing issues of daily life. This means, however, that complaint statistics are not accurate reflections of either the level of racial discrimination or of trends over time. This kind of information can only be accurately gathered through appropriate survey work with affected communities.

Summary

Racism and racial discrimination are experienced by many members of small and emerging communities in a range of areas of life. This is particularly the case for people who are visibly different to the majority group.

There needs to be future research into the nature of people's experience of racism and into effective strategies for the prevention of racism. There is also a need for the ongoing funding of programs to address racism and racial discrimination. These programs need to address public expressions of racism as well as racial discrimination in areas such as employment and housing. State and federal anti-discrimination bodies need themselves to continue to ensure that their recruitment and employment programs encourage a cultural diversity which reflects the communities they serve.

Conclusion

People from small and emerging immigrant and refugee communities face significant pressures in defining a place for themselves in contemporary Australian society. The overall experiences of people from small and emerging communities are such that many individual human rights are at risk. At times these risks are serious.

Many of the factors which threaten the human rights of small and emerging communities are shared with other people in Australian society. The migration experience is recognised to be highly stressful irrespective of cultural background. Other groups of Australians experience discrimination because of their colour, cultural difference or religion. Small and emerging communities suffer the human rights effects of poverty along with a large number of other Australians. All of these factors are well recognised as contributing to a lack of fundamental rights and social inequality.

For small and emerging communities, however, each of these experiences is exacerbated by the small number of people from a common ethnic group in Australia and their relatively recent arrival. Resettlement is more difficult without the support of a large network of community or family members. Discrimination is strongest against individuals who are most unfamiliar in society. The impact of poverty becomes greater when experienced alongside language barriers, the inability to have skills and experience recognised and the absence of financially secure community members or businesses able to provide support.

This report cannot make conclusive findings regarding the human rights situation of Australians in small and emerging ethnic communities. However, it is clear that there are a significant number of issues that deserve further investigation and urgent responses. People from small and emerging communities consider they do not enjoy their human rights to the same standard as other Australians and have every reason to expect Australian society to take seriously their claims to be recognised as equal members of the community. Governments, service providers, employers, researchers, businesses and the communities themselves all have important roles to play in addressing this situation.

In response to this report the Commission has identified a number of key issues that will be considered for its future human rights work. These future actions will be taken up by the Race Discrimination Unit in the context of its ongoing workplan and as resources permit. Key issues include:

- strategies to encourage compliance with anti-discrimination law in the national real estate industry, especially with respect to discrimination on the grounds of religion and/or skin colour, including consideration of the development of a code of practice;
- strategies to provide targeted multi-lingual human rights information to individual small and emerging communities;
- examination of the issue of lack of recognition of overseas employment experience and the inclusion of this issue in future training provided to employers on anti-discrimination compliance;
- promotion among employers' networks of the value of qualifications and experience obtained overseas;
- providing greater profile to the experiences of people from small and emerging communities in general community anti-racism education;
- advocacy with government and other key agencies regarding the human rights issues within small and emerging communities;
- development of a series of briefing notes targeted at lawyers and community advocates on the possible interpretation of key discrimination issues for people from small and emerging communities including discrimination on the grounds of immigrant status, discrimination law and language barriers, and discrimination law and the recognition of overseas skills and experience; and
- ensuring that complaint handling staff within the Commission and other anti-discrimination bodies more closely reflect the cultural diversity of communities that they serve.

Appendix: Community Consultations

Northern Territory

Where	When	Who Was Consulted
Darwin	4 August 1997	CSS worker and others at the Ethnic Communities Council, Northern Territory
Darwin	5 August 1997	Beryl Mulder, Ethnic Communities Council, Northern Territory (ex OMA)
Darwin	6 August 1997	Community Services Settlement Officers Joint Meeting
Darwin	6 August 1997	Dulcie Bourke, worker with African Committee, Darwin
Darwin	8 August 1997	Timorese Association, Northern Territory
Darwin	8 August 1997	Meeting with African community representatives and workers
Alice Springs	9 August 1997	Migrant Resource Centre Community Meeting

Western Australia

Where	When	Who Was Consulted
Perth	19 May 1998	Meet with Office of Multicultural Interest, Western Australia
Perth	21 May 1998	Overseas Qualification Recognition Unit
Perth	21 May 1998	Ethnic Communities Council of Western Australia Inter-agency and Community Meeting
North Perth	21 May 1998	Migrant Resource Centre, Community Services Settlement Workers Meeting
Perth	21 May 1998	Meeting at ASSETS (Mental Health Unit)
Fremantle	22 May 1998	Migrant Resource Centre, meeting with accommodation officer and several community workers and representatives
Perth	22 May 1998	Meet with policy officer, Western Australia Equal Opportunity Commission
Perth	23 May 1998	Home visit, Afghan family
Perth	23 May 1998	Home visit, Filipino women

New South Wales

Where	When	Who Was Consulted
Sydney	9 April 1998	Meeting with CSS and other workers at Careforce (CSS worker key role in development of Ethnic Minorities Action Group (EMAG))
Sydney	13 April 1998	Centre for Peace and Conflict Studies, University of Sydney
Sydney	15 May 1998	Meeting with small and emerging communities intermediaries from Liverpool, St George and Blacktown at Careforce, Summer Hill
Sydney	28 May 1998	Meeting with Professor Silove, University of NSW and STARTTS consultant
Sydney	15 June 1998	Centre for Peace and Conflict Studies, University of Sydney
Sydney	18 June 1998	Macarthur Migrant Resource Centre, Campbelltown Inter-agency and HAAC Project Meeting and meeting with community representatives
Fairfield, Sydney	19 June 1998	Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), met with mental health workers
Sydney	26 June 1998	Centre for Peace and Conflict Studies, University of Sydney
Fairfield, Sydney	2 July 1998	Meeting with inter-cultural psychologist and other workers at STARTTS
Auburn, Sydney	2 July 1998	Migrant Resource Centre, Auburn coordinator and other workers
Mt Druitt, Sydney	3 July 1998	Mt Druitt Ethnic Communities Group and Inter-agency Meeting. Also met with local CSS workers
Mt Druitt, Sydney	3 July 1998	NESB youth health outworker
Auburn, Sydney	9 July 1998	Meet with Somali worker, Auburn Migrant Resource Centre
Rockdale, Sydney	10 July 1998	St George Migrant Resource Centre
Wollongong	14 July 1998	Illawarra Migrant Resource Centre meeting with workers and community groups
Newcastle	18 July 1998	Newcastle Migrant Resource Centre meeting with workers and community groups

Victoria

Where	When	Who Was Consulted
Melbourne	11 May 1998	Ecumenical Migration Centre (EMC) workers
Melbourne	11 May 1998	Muslim women's worker at EMC
Melbourne	12 May 1998	Director, Ethnic Youth Issues Network
Melbourne	1 June 1998	Equal Opportunity Commission Victoria (EOCV), several workers public education
Melbourne	24 June 1998	Iraqi Group Meeting, Preston Migrant Resource Centre (conducted on the Commission's behalf by EOCV and EMC)
Melbourne	25 June 1998	Teleconference, the Commission, EMC and EOCV re consultations
Melbourne	28 June 1998	North Richmond Community Centre meeting with Pacific Islanders, Timorese, Burmese and African community representatives
Broadmeadow, Melbourne	28 June 1998	Migrant Resource Centre meeting with Kurdish community
Melbourne	28 June 1998	Home visit, Kurdish women
Melbourne	29 June 1998	Springvale Community Aid and Advice Bureau – meeting with Afghan, Iranian, Bosnian and African communities
Melbourne	29 June 1998	Home visit African families
Melbourne	29 June 1998	Ethnic Youth Issues Network

Abbreviations and Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRSS	Community Refugee Settlement Scheme
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees

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