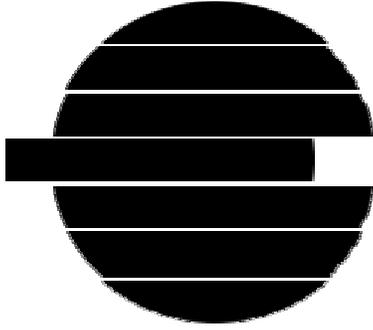


Human Rights and Equal Opportunity Commission



# Annual Report 1999 – 2000

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# Statement from the President

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## Structure of the Commission a changing environment

The year of this report saw several significant changes and developments within the Commission. Some were anticipated; some had been delayed; some were more welcome than others all led to a full and active twelve month period.

For some time now the Commission has been hindered by the slow progress of structural reform. A wide-ranging review of the Commission which began under the former Labor government and concluded under the Coalition government was necessitated and precipitated by the finding of the High Court in the *Brandy v HREOC*, 23 February 1995 case that the Commission did not have the proper power to make binding decisions in its hearing processes. The implications of this finding have been the subject of extensive comment in earlier reports to which the reader is referred for background information.

Legislative changes affecting the Commission have been executed in two separate processes. The vital outcome for the purpose of this report is that legislative amendment required to formally transfer the legislative changes affecting the Commission have been hearing powers of the Commission to a more appropriate body with the powers to make binding orders on matters of discrimination finally passed through the Parliament last year.

In October 1999 the *Human Rights Legislation Amendment Act No 1 (HRLAA1)* received royal assent. The details of this legislation and its impact on the Commission's processes are outlined in the report from our Legal Section. The essential change affecting the hearing processes has been the transfer of the power to hear complaints of unlawful discrimination from the Commission to the Federal Court or to the Federal Magistrates' Court. This change came into effect in April of this year.

Far from stripping the 'teeth' of Commission effectiveness, its loss is freeing the Commission to focus its resources and capacities on to conciliation, education and inquiries for which the Commission is especially well-equipped and ready.

The Commission's management structures have also changed significantly over the years. In the early nineties, the Human Rights Commissioner was also the chief executive of the organisation. From the mid to late nineties, management was conducted on a collegiate basis shared between the President and the Commissioners. With the passage of HRLAA1 through the Parliament, some significant management changes have been put into effect, in particular: the vesting of executive authority of the Commission in the office of the President; the transfer of all complaint-handling powers from the Race, Sex and Disability Discrimination Commissioners to the President and the creation of the role of *amicus curiae* for all Commissioners in court proceedings under the amending legislation that are before the Federal Court.

Further changes are anticipated. *The Human Rights Legislation Amendment Bill No 2 (HRLAA2)* proposes the creation of three Deputy Presidents of the Commission to replace the current five specialist Commissioner functions \_ Race, Sex, Social Justice, Human Rights and Disability. While this change may be met with some public anxiety that areas of concern might take a less prominent place in the Commission's agenda, a significant advantage will be to enable new areas of concern, such as the rights of the child, to acquire greater attention as required by circumstances.

At the time of writing, the conclusion of the term of the Human Rights Commissioner is imminent and the position of Disability Discrimination Commissioner and the Race Discrimination Commissioner are unfilled. These responsibilities have been assumed on an acting basis by the Sex Discrimination Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner respectively.

HRLAA2 has been before Parliament for some time now and it is still uncertain as to when these structural changes may be expected.

## ***Work of the Commission - programs, policy and projects***

As this reports attests, HREOC's work is wide-ranging. In the past twelve months the Commission's activities have ranged from public advocacy through the media to intensive research on policy issues; from the conduct of national inquiries and other specialist inquiries and open consultations to the investigation and conciliation of individual complaints of discrimination; and from the conduct of locally-based and directed information and education programs to the implementation of complex technical assistance cooperation projects in China, South Africa and elsewhere.

With the transfer of the hearing functions to the Federal Court and the new Federal Magistrates' Court, the Commission's Complaints and Legal Sections have worked closely and cooperatively with these Courts to ensure a smooth transition of responsibility and with legal service providers and other complaints-based bodies to ensure the public is as well informed as possible of the new arrangements.

I have been delighted to take up my new statutory role in complaints and I am very impressed with the high levels of conciliated outcomes achieved by the Commission through the efforts of dedicated staff.

One of the core responsibilities of a national human rights institution is the promotion of human rights principles through education and other information programs. The past twelve months have seen a much greater emphasis placed on this area of the Commission's work, through specific information initiatives with peak community sector organisations and a creative, interactive *Youth Challenge* program conducted in schools. They have opened up opportunities for the Commission to work with State Equal Opportunity Commissions in presenting the *Youth Challenge* program to school students. An audit of the Commission's website, praised its excellence in content and as an educational resource. The Commission is taking advantage of new electronic technology with the establishment of listserve communications and other tools.

Both programs are on-going, receiving encouraging, indeed enthusiastic responses. It has also opened up opportunities for the Commission to work with State Equal Opportunity Commissions in presenting the program to state educational institutions. An audit of the Commission's website, indicated the need to make some changes in presentation and navigation. These changes are well underway and they will enable greater accessibility to even more community and education sectors.

Within the portfolio areas, Sex Discrimination Commissioner Susan Halliday has continued her focus on pregnancy discrimination, working with employers, educators, unions and the broader community. HREOC's last annual report provided a detailed review of the Commissioner's national inquiry into pregnancy and work, entitled *Pregnant and Productive: it's a right not a privilege to work while pregnant*. At the time of writing, the Federal Government had still not responded to the inquiry. Debate continues on pay equity issues, in particular those related to industrial frameworks and casualisation. Ms Halliday has worked tirelessly in the area of education and advocacy, making positive use of the many media, conference, speech delivery and other opportunities to promote the messages of anti-discrimination, equity and fairness in the work and other environments.

Ms Halliday is also Acting Disability Discrimination Commissioner. In this role she has been very well supported by Mr Graeme Innes who was appointed Deputy Disability Discrimination Commissioner. A major focus in the last twelve months has been on the public inquiry of complaints lodged under the Disability Discrimination Act. This highly successful process offers, where appropriate, a unique opportunity for cross-industry, government and community interaction and understanding resulting in outcomes that have a significant impact on eliminating systemic discrimination. The other major focus this year has been the conduct of an inquiry, at the request of the Attorney-General, on *The Accessibility of E-commerce and New Technologies to Older People and People with a Disability*. I am delighted to report that a Working Group, made up of representatives from community and industry groups, and assisted by the Australian Bankers' Association, has been established to progress the findings of the inquiry's report.

The 1999-2000 year has once more seen Indigenous human rights issues at the forefront of public debate. The debate has ranged from the meaning that should be given to the document of reconciliation and the walk across the Sydney Harbour Bridge, to international scrutiny of Australia's Indigenous affairs policies, a renewal of the debate on the stolen generations, and mandatory sentencing laws in the Northern Territory and Western Australia. There have also been significant High Court and Federal Court decisions on native title, and the disallowance of the first state/territory native title regime by the Senate. The Commission as a body has been proud to support the work of Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner Dr Bill Jonas as he tackles these extremely complex and sensitive areas. The Social Justice Commissioner has advocated a human rights position on these and other issues throughout the year in performing his statutory obligations.

By the time this report is tabled the five-year term of Human Rights Commissioner Chris Sidoti will have concluded. The last year has possibly been the busiest of Mr Sidoti's years with the Commission as he travelled throughout rural and regional Australia conducting the *National Inquiry into Regional and Remote Education*. This broad-ranging inquiry was thoroughly covered in the media and its findings and processes supported by a detailed publications program, the details of which can be found later in this report. Mr Sidoti was also engaged in research and the provision of advice through reports and other publications on a broad range of human rights issues particularly those concerning the detention of unlawful arrivals. The *Age Matters* report highlighted the need for comprehensive national age

discrimination legislation and made recommendations, among other suggestions, for Commonwealth compliance with ILO 111 and other international standards.

In the Privacy area, this past year saw the formal separation of the Office of the Privacy Commissioner from the Human Rights and Equal Opportunity Commission to become an independent statutory office in its own right. Both offices will continue to share corporate support services and will remain co-located for the foreseeable future. The activities of the Office of the Privacy Commissioner, Malcolm Crompton, are reported on separately later in this report.

Finally, in relation to the Commission's output and productivity, while the public face of the Commission is focused on its statutory appointees, I want to acknowledge the dedication and professionalism of the Commission's staff without whom the important and often difficult work of the organisation would not succeed.

## **International Work of the Commission**

The international work of the Commission is conducted on three levels.

The Commission has long been considered a model internationally for those countries contemplating the establishment of a national institution for the protection and promotion of human rights. It assists institutions set up processes for complaint handling and conciliation proceedings as well as establish formats of inquiries as a means of promoting human rights protection. The Commission is increasingly asked to provide advice and support at regional and international levels. The Australian Commission is the regional representative to the International Coordinating Committee of National Human Rights Institutions which meets annually to assess the standing of applicant agencies.

The Commission has hosted the Asia Pacific Forum of National Human Rights Institutions since its establishment in 1996, providing the staff for its three-person Secretariat, corporate services and extensive in-kind support to this fledgling organisation. Funding for the Secretariat has been made available to the Commission by the Australian Agency for International Development (AusAID). The principal activities of the Forum and, in particular, its regional workshops program have been generously supported by the Office of the High Commissioner for Human Rights. This report contains a detailed account of the work of the Forum and its Secretariat, which, among other things, administers AusAID funded technical assistance programs with regional institutions.

In addition to an active involvement in the work of the regional body, HREOC, as the Australian national human rights institution, conducts bilateral activities generally as part of the Australian Government's development cooperation program developed by AusAID. The most substantial of these is the Australia-China Human Rights Technical Assistance Program which is an integral part of the annual Dialogue on Human Rights with the People's Republic of China, a significant technical assistance cooperation program at a regional and international level.

Projects with other national institutions have also been supported in South Africa and Indonesia.

As a national institution the Commission is privileged to participate in formal UN processes. Dr Jonas attended the meetings of the Committee on the Elimination of Racism (CERD) in Geneva; Ms Halliday attended the Beijing Plus 5 meeting in New York. The President, Human Rights Commissioner and other staff attended the formal sessions of the Commission on Human Rights at which HREOC was granted speaking rights.

The Commission has received numerous overseas delegations and has provided training support to visiting commission staff from Indonesia, the Philippines, China, Bangladesh, Uganda and elsewhere. In my view our Australian Commission has a vitally useful contribution to make to the developing expertise of national institutions at a regional level and, where we are able to add value to these programs without compromising our domestic responsibilities, we will endeavour to share our expertise with those agencies in a less advantageous situation struggling to found human rights bodies in very different environments.

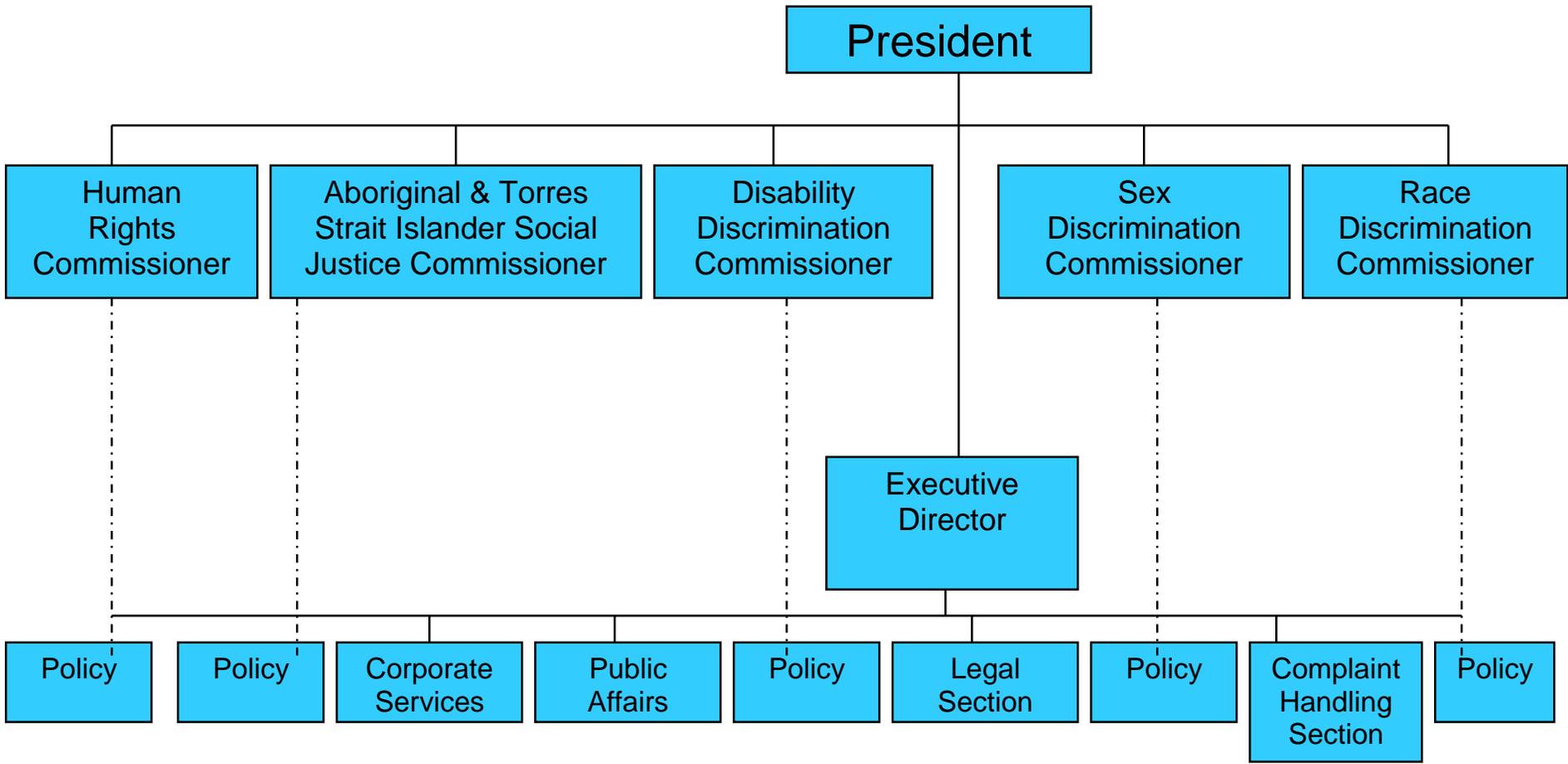
## **The Future**

The often lofty language of human rights, founded as it is in international law, treaties and conventions, can be a source of profound debate and often perceptual difference. The source of human rights lies in the individual and the personal. Its manifestation is in the relations that individuals have with each other, with communities and groups, and with government, where human rights provide the measure of a decent relationship and a recognition of the worth of all humans and the societal. The Commission strives to assist Australians to an appreciation of the commonality of universal human rights standards. We work towards a national understanding of fairness and equality for all

Australians. On occasions, this brings us into conflict with one group or another \_ governments included. That is an unavoidable part of our work, but it is also a challenge. We must acknowledge that while Australia enjoys a standard of living and opportunity more advantageous than many other countries, we cannot pretend that all Australians share these privileges. There is much work still to be done.

The Commission faces further change, and adaptation to that change, at a legislative and structural level. Even a change of name is foreshadowed by legislation before Parliament. New appointments will also be announced in the coming year. These are major challenges for any organisation.

***Change is one of the constants for the Human Rights and Equal Opportunity Commission. Challenge also. I look forward to a year of continuing achievement, engagement with the Australian community and a year of working on behalf of Australians for a better world for***



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# ***The Commission***

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## **Vision**

An Australian society in which the human rights of all are respected and promoted.

## **Mission**

To provide leadership on human rights through:

- building partnerships with others;
- having a constructive relationship with government;
- being responsive to the community; and
- promoting community ownership of human rights.

To ensure that Australians:

- have access to independent human rights complaint handling and public inquiry processes; and
- benefit from human rights education, promotion, monitoring and compliance activities.

As an effective organisation, we are committed to:

- unity of purpose;
- valuing our diversity and creativity; and
- the pursuit of best practice.

## **Structure**

The Commission is an organisation established under the *Human Rights and Equal Opportunity Commission Act 1986*. It has a President and six Commissioners. The six positions are currently held by four persons. Please refer to the organisational chart on page 12 for further information.

## **President, Professor Alice Tay**

Professor Tay is a lawyer and an academic. She is Challis Professor of Jurisprudence with the University of Sydney Faculty of Law. Her work is focused on socialist legal systems and legal culture (including the former Soviet Union, Vietnam and the People's Republic of China); comparative law and macro-sociology of law; legal and social philosophy; jurisprudence; human rights and Asian Pacific legal systems. She speaks Russian and Chinese.

She has lectured in many countries and was Distinguished Visiting Professor of Law, Humanities and Social Sciences, and Visiting Fellow, in the United States, Canada, the People's Republic of China, Italy, Japan and Germany. She is the author and editor, and co-author and co-editor (with the late Eugene Kamenka), of 20 books and over 120 articles.

As Director of the Centre for Asian and Pacific Law in the University of Sydney, she has been very active in organising and conducting intensive legal and human rights training courses for Vietnam and the People's Republic of China. She was a part-time Commissioner with the Australian Law Reform Commission, a member of the Australian Science and

Technology Council, and President of the International Association for Philosophy of Law and Social Philosophy. She is a member of the International Legal Services Advisory Committee of the Attorney-General's Department.

## **Human Rights Commissioner**

Chris Sidoti has held the following positions during his career: National Secretary of the Catholic Commission for Justice and Peace; Deputy President of the Australian Council of Social Services; President of the Youth Affairs Council of Australia; head of the Director General's Unit within the NSW Department of Youth and Community Services; foundation Secretary of the Human Rights and Equal Opportunity Commission; and, immediately before his current appointment, a Commissioner at the Australian Law Reform Commission.

Mr Sidoti is presently a member of the Advisory Council of the Australian Association of Young People in Care, the National Executive of the National Association for the Prevention of Child Abuse and Neglect, the Human Rights Council of Australia, the Advisory Council of the Asia Australia Institute and the Board of the International Bureau for Children's Rights.

## **Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner, Dr Bill Jonas**

Until his appointment as Social Justice Commissioner, Dr Bill Jonas was Director of the National Museum of Australia and from 1991\_96 was Principal of the Australian Institute of Aboriginal and Torres Strait Islander Studies in Canberra. Dr Jonas comes from an academic background. Before becoming Director of Aboriginal Education at Newcastle University in 1990, he was a lecturer in geography at the University of Newcastle and before that at the University of Papua New Guinea.

In the mid\_1980s, Dr Jonas was a Royal Commissioner with the late Justice Jim McClelland on the Royal Commission into British Nuclear Tests in Australia. He has held positions on the Immigration Review Tribunal, the Australian Heritage Commission and the Joint Ministerial Taskforce on Aboriginal Heritage and Culture in NSW.

Dr Jonas holds a Bachelor of Arts degree from the University of NSW, a Master of Arts degree from the University of Newcastle and a PhD from the University of Papua New Guinea.

Dr Jonas has been acting Race Discrimination Commissioner since September 1999.

## **Sex Discrimination Commissioner and Acting Disability Commissioner, Susan Halliday**

Prior to her appointment as the Sex Discrimination Commissioner, Susan Halliday was an Assistant Director with the Business Council of Australia where she was responsible for policy development, advocacy, coordination of research and member company employee relations, employment, human resource management and education and training activity.

Previously Ms Halliday was the Assistant Director with the private sector Council for Equal Opportunity in Employment and also worked for BHP in a range of positions. Over the past decade Ms Halliday has lectured at a number of universities and was originally a secondary school teacher of History and English.

Ms Halliday is currently Chair of the National Centre for Women (Swinburne University) and a board member of Australians Against Child Abuse and the Australian Student Traineeship Foundation.

Ms Halliday has been acting Disability Discrimination Commissioner since 1999.

## **Privacy Commissioner, Malcolm Crompton**

Between 1996 and 1999, Malcolm Crompton was AMP's Manager of Government Affairs in Canberra, representing the organisation in its relations with Government. In partnership with AMP's business units, he helped with the strategic management of major public policy issues for AMP.

Mr Crompton's distinguished career in the Department of Finance includes management roles in: Employment; Expenditure; Social Security; Retirement Benefits; and Transport and Industry.

He was Founder Trustee of the Australian Government Employee Superannuation Trust, served as adviser to the Parliamentary Retiring Allowances Trust and was an Alternate Trustee of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme.

Mr Crompton has also served on various other Government Committees, including the Steering Committee on the Rewrite of the Public Service Act (1995\_1996), the Steering Committee on the Evaluation of Working Nation (1995\_96) and the International Monetary Fund Panel of Fiscal Experts.

From 1st July 2000, the Privacy Commissioner is no longer a member of the Commission.

## Legislation

The Commission is responsible for implementing the following Acts:

- *Human Rights and Equal Opportunity Commission Act 1986*;
- *Racial Discrimination Act 1975*;
- *Sex Discrimination Act 1984*;
- *Disability Discrimination Act 1992*; and
- *Privacy Act 1988*.

Functions performed under these Acts are vested in the Commission as a collegiate body in the President or individual members of the Commission or in the federal Attorney-General.

Other legislation administered through the Commission includes functions under the *Native Title Act 1993* performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner. The Sex Discrimination Commissioner has functions in relation to federal awards and equal pay under the *Workplace Relations Act 1996*.

## Legislative changes to the Commission

The *Human Rights Legislation Amendment Act No. 1 1999* (Cth) ("the Amending Act") received Royal Assent on 13 October 1999. Its substantive provisions commenced on 13 April 2000. The effect of the major amendments contained in the Act is to:

- transfer the power to hear complaints of unlawful discrimination from the Commission to the Federal Court;
- transfer all complaint handling powers from the Race, Sex and Disability Discrimination Commissioners to the President;
- remove the internal Presidential review function from the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act, and provide that where a complaint is declined by the President, the complainant will be able to go directly to the Federal Court;
- remove the function of the President or Commission to grant interim determinations and vest a function to grant interim injunctions in the Federal Court; and
- create the role of amicus curiae for all Commissioners in proceedings under the amending legislation that are before the Federal Court.

## Human Rights and Equal Opportunity Commission Act

The *Human Rights and Equal Opportunity Commission Act 1986* established the Commission. The Act provides for the Commission's administration and gives it responsibility in relation to the following seven international human rights instruments:

- International Covenant on Civil and Political Rights;
- International Labour Organisation Discrimination (Employment and Occupation) Convention (ILO 111);
- Convention on the Rights of the Child;
- Declaration on the Rights of the Child;
- Declaration on the Rights of Disabled Persons;
- Declaration on the Rights of Mentally Retarded Persons; and
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

## Racial Discrimination Act

The *Racial Discrimination Act 1975* gives effect to Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. Its main areas are to:

- promote equality before the law for all persons, regardless of their race, colour or national or ethnic origin; and
- make discrimination on the basis of race, colour, descent or national or ethnic origin, unlawful.

The Act was amended in 1995 to provide protection against racial hatred.

## Sex Discrimination Act

The *Sex Discrimination Act 1984* gives effect to Australia's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women and certain aspects of the International Labour Organisation (ILO) Convention 156.

Its main aims are to:

- promote equality between men and women;
- eliminate discrimination on the basis of sex, marital status or pregnancy and, with respect to dismissals, family responsibilities; and
- eliminate sexual harassment at work, in educational institutions, in the provision of goods and services, accommodation and in the delivery of Commonwealth programs.

## Disability Discrimination Act

The objectives of the *Disability Discrimination Act 1992* are to:

- eliminate discrimination against people with disabilities as far as is possible;
- promote community acceptance of the principle that people with disabilities have the same fundamental rights as all members of the community; and

- ensure as far as practicable that people with disabilities have the same rights to equality before the law as other people in the community.

## Privacy Act

The *Privacy Act 1988* gives effect to OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data and the International Covenant on Civil and Political Rights (Article 17). The Act provides legally binding protection for the collection and use of personal information collected by federal government.

The Act also regulates the use of tax file numbers and the handling of credit information by the credit industry.

## Functions and powers

The Commission's responsibilities fall within four main areas:

- public awareness and education;
- anti-discrimination and human rights complaints;
- human rights compliance; and
- policy and legislative development.

In order to fulfil its obligations, the Commission:

- fosters public discussion, and undertakes and coordinates research and educational programs to promote human rights and eliminate discrimination in relation to all Acts;
- investigates alleged infringements under the anti-discrimination and privacy legislation, and attempts to resolve these matters through conciliation, where this is considered appropriate. The President may terminate a complaint if there is no reasonable prospect of settling the complaint by conciliation. This applies to the Racial, Sex, Disability Discrimination and Privacy Acts;
- See Complaint Handling section for description of processes of termination of a complaint.
- if a complainant wants to have the complaint heard and determined by the Federal Court they must lodge an application to the Federal Court within 28 days of a notice of termination issued by the President.
- inquires into acts or practices that may infringe human rights or that may be discriminatory. If infringements are identified, the Commission formally reports on the case and recommends action to resolve the situation. This applies to the Human Rights and Equal Opportunity Commission Act;
- may advise on legislation relating to human rights and monitor its implementation; may review existing and proposed legislation for any inconsistency with human rights or for any discriminatory provision which impairs equality of opportunity or treatment in employment or occupation; may examine any new international instruments relevant to human rights and advise the Federal Government on their consistency with other international treaties or existing Australian law; and may propose laws or suggest actions the Government may take on matters relating to human rights and discrimination.

In order to carry out these functions the Commission is empowered under all Acts (unless otherwise specified) to:

1. refer individual complaints to the President for investigation and conciliation;
2. require persons to produce information or documents or appear before the Commission to give evidence in public hearings related to individual complaints;
3. report to the Government on any matters arising in the course of its functions;
4. establish advisory committees;

5. formulate guidelines which ensure governments act in conformity with human rights rules;
6. intervene in court proceedings involving human rights matters;
7. grant exemptions under certain conditions (Sex and Disability Discrimination Acts); and
8. conduct national inquiries into issues of major importance - either on its own initiative or at the request of the Attorney-General.

## Specific functions of Commissioners

In addition to the broad functions outlined above, a number of Commissioners have specific responsibilities.

### Aboriginal and Torres Strait Islander Social Justice Commissioner

The Aboriginal and Torres Strait Islander Social Justice Commissioner, under the Human Rights and Equal Opportunity Commission Act, prepares an annual report on the exercise and enjoyment of human rights of Indigenous people, and undertakes social justice education and promotional activities. The Commissioner has no power to receive complaints under this Act.

The Commissioner also performs separate reporting functions under the *Native Title Act 1993*. This includes preparing an annual report on the operation of the Act and its effect on the exercise and enjoyment of human rights of Indigenous people. The Commissioner also reports, when requested by the Minister, on any other matter relating to the rights of Indigenous people under this Act.

### Privacy Commissioner

Under the Privacy Act, the Privacy Commissioner has specific functions in relation to complaint handling and investigation of breaches of the Act, and auditing and monitoring compliance with the Act. There is provision in the Act for the Privacy Commissioner to make public interest determinations, which fulfil a similar role to exemptions under the anti-discrimination legislation. The Commissioner also provides policy advice and promotion of privacy issues to encourage adoption of privacy standards more broadly in the community. The Commissioner also performs functions under the following legislation:

- that the Commissioner administers Part VIIC of the *Crimes Act 1914*, the Commonwealth 'Spent Convictions Scheme'. This law provides protection for individuals with old minor convictions in certain circumstances. The Privacy Commissioner has a role to investigate breaches of the legislation. The Commissioner is also required to provide advice to the Attorney-General in relation to exemptions under the scheme;
- that the *Data-matching Program (Assistance and Tax) Act 1990* regulates data-matching between the Tax Office and four assistance agencies to detect overpayments, ineligibility for assistance and tax evasion. Under the Act, the Commissioner is responsible for issuing guidelines for protecting privacy, investigating complaints and monitoring agency compliance;
- that under the *National Health Amendment Act 1993*, the Commissioner is required to issue guidelines which cover the storage, use, disclosure and retention of individuals' claims information under the Pharmaceutical Benefits Scheme and the Medicare program; and
- that the Commissioner has a range of monitoring and compliance functions under the new *Telecommunications Act 1997*.

From 1st July 2000 the Privacy Commission is no longer a member of the Commission. See Privacy Commissioner's statement.

## Sex Discrimination Commissioner

The *Workplace Relations Act 1996* gives the Sex Discrimination Commissioner the power to initiate and refer equal pay cases and other specific matters to the Industrial Relations Commission.

## The Minister

The Attorney-General, the Honourable Daryl Williams, AM, QC, MP, is the Minister responsible in Parliament for the Commission. He has a number of powers under the *Human Rights and Equal Opportunity Commission Act*.

The most significant are:

- to make, vary or revoke an arrangement with states or territories for the performance of functions relating to human rights or to discrimination in employment or occupation;
- to declare, after consultation with the states, an international instrument to be one relating to human rights and freedoms for the purposes of the Act; and
- to establish an advisory committee (or committees) to advise the Commission in relation to the performance of its functions. The Commission will, at his request, report to him on Australia's compliance with International Labour Organisation Convention 111 and advise him on national policies relating to equality of opportunity and treatment in employment and occupation.

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# Outcomes and Outputs Structure

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The Commission has one outcome:

*An Australian Society in which the human rights of all are respected and promoted.*

There is one output for the Commission's outcome:

*Australians have access to independent human rights complaint handling and public enquired processes and benefit from human rights education, promotion and monitoring, and compliance activities.*

Relationship between Old Program Structure and New Outcome Structure

<b>Program Management Budgeting</b>	<b>Accrual Budgeting</b>
<b>Sub-Program 3.1</b>  To enhance and promote the protection and enjoyment of individual rights and an effective legal structure for relationship between citizens and government.  To reduce discrimination by increasing the understanding, acceptance and observance of human rights and equal opportunity in all sectors of Australian society.  To promote a fairer society for all Australians by protecting basic human rights and ensuring that Australia complies with its human rights obligations under its international law.	<b>Outcome 1</b> An Australian society in which the human rights of all are respected, protected and promoted.
<i>Sub – Programs</i>	<i>Output Groups</i>
<b>Sub – Program 3.1</b>	<b>Output Group 1</b>  Australians have access to independent human rights complaint handling and public inquiries processes and benefit from human rights education, promotion and monitoring and compliance activities.

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## Resources for Outcomes

Outcome 1 - An Australian society in which the human rights of all are respected, protected and promoted.

	Budget 1999 – 2000 \$'000	Actual Expenses 1999 – 2000 \$'000	Budget 2000 – 2001 \$'000
<b>Total Administered Expenses</b>	-	-	-
<b>Prices of Department Outputs</b>			
<i>Output Group 1 – Australians have access to independent human rights complaint handling and public inquiry processes and benefit from human rights education, promotion and monitoring and compliance activities.</i>	16,069	17,725	14,334
<b>Subtotal Output Group 1</b>	16,069	17,725	14,334
Revenue from Government (Appropriation) for Departmental Outputs	14,396	14,396	1,792
Revenue from other sources	1,673	3,329	1,792
<b>Total Price of Outputs</b>	16,069	17,725	16,126
Total for Outcome			
(Total Price of Outputs and Administered Expenses)	16,069	17,725	16,126
	1999 – 2000	1999 – 2000	2000-2001
<b>Staff Years (Number)</b>	130	126	123

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# Human Rights Education

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## Output Group 1 – Sub Program 3.1

Human rights education is one of the core responsibilities of a national human rights institution. HREOC's responsibilities in this area are:

1. to promote an understanding and acceptance of, and compliance with the relevant Act: HREOCA s 11(1)(g); RDA s.20(1) (b) SDA s 48(1) (d) DDA 67(1) (g)
2. to undertake research and education programs for the purpose of promoting the objects of the relevant Act: HREOCA s.11(1) (h) RDA s.20(1)(c) SDA s.48(1) (e) DDA 67(1) (h).

Human rights education is also an international obligation which Australia has consistently supported. In the earliest international articulation of universal human rights, the *Universal Declaration of Human Rights*, the general assembly proclaimed

*every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect of these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance*

Similar obligations are found in the *International Covenant on Economic, Social and Cultural Rights*; *Convention on the Rights of the Child*; *Convention on the Elimination of all Forms of Racial Discrimination* and the *Elimination of all Forms of Discrimination Against Women*.

Human rights education plays a central role in contributing to the maintenance and improvement of a tolerant, just, equitable and democratic society. The Attorney General Daryl Williams has stated: "In Australia it has long been recognised that the most lasting and meaningful way to reduce breaches of human rights is by changing attitudes and encouraging tolerance - the key to this is education."

The President of the Commission, Professor Alice Tay, has stated that the aim of the Commission's human rights education program is to impart information, develop capacities, cultivate habits and imagination, inculcate a critical approach, and teach care and understanding.

It is in this context that the Commission has embarked on a number of educational programs specifically aimed at key sectors of the community.

The programs have been shaped by community and individual feedback and by an examination of the issues brought to the Commission by way of its complaints function.

These programs provide information and strategies to improve the enjoyment of human rights within Australia, the key message being that the elimination of discrimination and harassment are prerequisites for the enjoyment of human rights by all Australians.

Specific information and education initiatives are also complemented by the work of the individual units within the Commission under the direction of the relevant Commissioner. These portfolio-specific programs have continued to focus on human rights education in the areas of race, sex, disability and other areas of discrimination and breaches of human rights. Details of these programs can be found later in this report.

This section details the human rights educational programs undertaken on a whole of Commission basis.

These are:

- Youth Challenge program for secondary school students and teachers,
- Community Information program for peak government non-government and community organisations
- Internet site materials for schools, employers and community groups
- Media engagement, interviews, opinion pieces and press releases.

## Youth Challenge

The Youth Challenge program brings together high school students in different regions of Australia for a one day event which explores how human rights principles and practices impact on social change and upon the students' own lives and the lives of others in the community. The Commission has conducted a series of Youth Challenges since late 1998, commencing with a National Challenge in Sydney for over 100 students from all over Australia as part of the celebrations of the 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights.

The Commission worked with State Equal Opportunity Commissions to conduct three further Challenges in South Australia and one in Townsville during 1999/2000. Further Challenges are booked for South Australia and ACT, NT and Western Australia in 2000.

The Challenges focus on real life issues such as disability discrimination in schools and the respective rights and responsibilities of students, teachers and parents, and the "transition to work" for students related to potential racial and sexual discrimination and harassment that they may experience.

Prior to the event students and teachers receive curriculum linked discussion papers focussing on the topics to be discussed at the Challenge. These papers are developed by HREOC and distributed through *Studies* magazine to all Australian secondary schools.

The Challenges deal with issues in a creative, interactive way and include a video hypothetical; computer-generated decision making programs and the workshopping by students of specific tasks. The students respond through role plays on how they would deal with the hypothetical discrimination/harassment. The report-backs are always highly entertaining and innovative in the ways the students deal with the issues.

Teachers, who play an important role on the day as facilitators, are provided with some basic training and materials to assist them in presenting the Challenge when they go back to their school.

An evaluation of each event is conducted. To date over 350 students and 50 teachers representing over 100 secondary schools have participated in the four state and one national Challenge.

Independent evaluation of *Studies*<sup>1</sup> magazine show that the human rights materials published and distributed via *Studies* magazine has been very well received. 70% of respondents said that the disability discrimination materials has been or will be used by more than 500,000 students.

The 'transition to work' scenarios which looked at sex and race discrimination was or will be used by 88% of respondents with more than 630,000 students. 23% judged the articles as excellent, 51% thought they were very good, and 24% thought they were good.

Evaluations of the Youth Challenge day have shown a substantially increased awareness by students of human rights and discrimination issues. With an average of 98% of participants and 90% of teachers rating the Challenge materials and day as excellent/very good.

## Community Information Program

During the last financial year the Public Affairs and Complaints and Conciliation sections of the Commission initiated an information program targeted towards peak community sector organisations, commonwealth departments, employers and legal and service providers. Where there were insufficient numbers to warrant a presentation, information packs have been dispatched to over 100 organisations.

Commission staff have travelled to various parts Victoria, Tasmania, Queensland, South Australia and in New South Wales to present to a range of federal and local government as well peak legal disability, women and ethnic groups information about human rights and anti-discrimination law, the complaints and conciliation processes and the conduct of public inquiries. Over 500 people representing senior and middle management in government legal and community groups have attended the presentations.

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<sup>1</sup> *Studies* is a privately produced educational resource magazine. It is sent out to all secondary schools throughout Australia three times a year. The Commission produced several articles to go in three editions of the magazine during 1999-2000.

Further presentations have been arranged for Queensland and ACT and all states will be visited during the coming year. Evaluations of the presentations show them to be very useful in providing information about human rights and anti-discrimination law and practices in Australia.

The presentations are backed up by a *Complaints Help Page* on the Commission web site [http://www.hreoc.gov.au/complaint\\_help/](http://www.hreoc.gov.au/complaint_help/)

## **Internet Site - <http://www.humanrights.gov.au>**

The Commission website is a major educative tool by which information is made available to government, legal, community and employer organisations, schools and individuals about human rights and responsibilities and anti-discrimination law and practice.

The site is maintained to ensure that the most up to date information is posted daily, and all reports, submissions, media releases and other Commission publications are available on line. The site also has specific information pages for schools, employers and research purposes. eg *Human Rights Explained*. Other pages include race, sex and disability discrimination issues and a detailed explanation about the complaints and conciliation processes.

The site received a very positive report following an independent audit conducted February 2000. Work is currently being undertaken to improve the navigability of the site to make it easier for people to access the information. A review of the site by the magazine *Internet.au* in June 2000 found the site to be "*a brilliant reference and informative site which introduces visitors to the basics of human rights and intellectual views of the movement's most influential thinkers. Read up on your rights, rehearse the UN charter and learn the stipulation's surrounding disability rights, sex and racial discrimination and the issues facing Australian minorities ... It concludes, The best online human rights resource: four and one half stars out of five.*

Usage of the site has increased over the year with a total of 231,126 hits on the Home Page (<http://www.hreoc.gov.au>). The page which was most accessed by visitors was the Disability Rights Page ([http://www.hreoc.gov.au/disability\\_rights/](http://www.hreoc.gov.au/disability_rights/)) with a total of 29,699 hits. There were 17,000 hits on the News and Information page ([http://www.hreoc.gov.au/news\\_info/index.html](http://www.hreoc.gov.au/news_info/index.html)). The site provides a web feedback facility (<http://www.hreoc.gov.au/feedback/index.html>) and hundreds of messages have been received and replied to.

E-mail based Electronic Mailing Lists have also been developed and provide for regular communications to all constituency groups including community, and government. Instructions on joining the Commission's Electronic Mailing list service are available at <http://www.hreoc.gov.au/listserv/>

## **Publications**

In addition to the wide range of publications available on the internet, the Commission distributed over 101,000 hard copy publications during the last financial year. They were sent or all around Australia as well as overseas. Recipients of the publications were companies, schools (primary & secondary) religious organisations individuals, government departments community organisations universities and students.

The most requested hard copy publications were brochures on Sex Discrimination and Sexual harassment followed by the Bringing Them Home Summary Guide.

## **Media engagement and press releases**

A major and most effective means of communicating about human rights issues to the community is by use of the media. Wherever possible the Commission engages the media by way of interviews with the President and Commissioners, as well as the placing of opinion pieces in major and regional newspapers. All media releases are posted on the website at [www.humanright.gov.au/press](http://www.humanright.gov.au/press), and the reports of the individual Commissioners detail their media obligations.

Some of the wide ranging issues in which the President and the Commissioner's have engaged in media debate are listed below.

*Mandatory Sentencing; "Stolen Children";  
United Nations reporting to the enjoyment or otherwise of human rights of Indigenous peoples;  
Native Title;  
Access to IVF treatment by single women;  
Access to e-commerce and technology by older people and people with a disability;  
Access to education for children living in rural and remote areas of Australia;  
Treatment of illegal immigrants; Rights of Pregnant Women in Employment; Need for federal age discrimination  
legislation.*

These are in addition to the many reports and other publications and submissions prepared and distributed by HREOC and detailed in the entries of the individual Commissioners later in this Report.

**Information in relation to other aspects of the Output Group 1** namely, independent human rights complaint handling and public inquiries processes as well as promotion and monitoring and compliance activities are covered in the following reports of the Human Rights, Disability, Race, Sex, and Aboriginal and Torres Strait Islander Social Justice Commissioners.

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# Promotion of Human Rights

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## 1999 Human Rights Medal and Awards

The Human Rights Medal and Awards were established in 1987 to recognise those individuals and organisations who have made a significant contribution to the promotion and protection of human rights and equal opportunity in Australia.

The 1999 Medal and Awards presentation ceremony was held on Friday 10<sup>th</sup> December at the James Cook Ballroom Hotel Inter-Continental in Sydney from noon to 3pm. The luncheon was attended by 300 people. Special guest was the Attorney-General Hon. Daryl Williams, AM QC, MP and the guest speaker was the filmmaker Mr Paul Cox. The ceremony was hosted by Christina Koutsoukos.

Mr Cox presented a wonderfully moving address to celebrate the International Year of Older People. The Attorney spoke about the findings of the interim report on the *Inquiry into access to e-commerce and information technology for older Australians and people with a disability* which had been presented to him by the Commission.

The Commission is very grateful for the services of the judging panels who give their time and expertise on an honorary basis. The judges were Doug Anderson, Michael Antrum, The Hon Justice Catherine Branson, Linda Burney, Lee Burton, The Rev Tim Costello, Nicholas Cowdery QC, Kate Gilmore, Jacqueline Gillespie, Chris Haywood, Anne Henderson, Tan Le, Sally Loane, Julie McCrossin, Meme McDonald, Alan Matheson, Mick O'Regan, Jan Owen, Brian Pickett, Simon Rice, Adam Spencer, Greg Thompson, James Valentine, Sue Williams, Sir Ronald Wilson and Susan Wyndham.

Thanks to Ansett who once again sponsored the interstate winners to enable them to attend the ceremony.

## Human Rights Medal

The Human Rights Medal was presented to Helen Bayes from Defence of Children International for her work in the protection of the rights of children. The focus of her work recently has been on Indigenous children, particularly the effects of mandatory sentencing laws in Western Australia and in the Northern Territory on those children.

### Highly commended

**Rev Christopher Newell**

## Youth Medal

The Attorney-General presented the Youth Medal to **Prashanth Shanmugan** for investing the traditional role of School Captain with the important message of appreciating diversity in unity, and his drive in promoting multiculturalism.

## Human Rights Awards

The seven Human Rights Awards categories of Community, Corporate, Radio, Arts, Print, Television, and Law were presented by the President and the Commissioners and by the Law Council to the following recipients.

The Law Council was sponsor of the Law Award.

## Law Award

The inaugural Law Award was presented to the **Public Interest Advocacy Centre** by Nicholas Cowdery QC for its work in using law to further the rights of disadvantaged groups in the community. This work included the Stolen Generations project, employment rights for women at the Australian Iron and Steel works asserting the rights of people with disabilities. The Centre has also been engaged in a wide range of other work in public advocacy and the engagement of the media in publicising and promoting issues in the public interest.

## Corporate Award

The winner was **100% IN CONTROL - Croc Eisteddfod, Queensland Health**

The Croc Eisteddfod is an innovative and proactive approach to tackling alcohol, tobacco and other drug issues, which affect youth in remote communities. The festival involved Indigenous and non Indigenous youth performances as well as sports and careers clinics, all within a 100% alcohol and drug free environment.

## Radio Award

The winner was **A Foreign Student's Story: A Cautionary Tale \_ Dai Li and Chris Bullock, Background Briefing ABC Radio.**

This documentary highlighted the problems when fee paying overseas students come to Australia at the invitation of unscrupulous business operators. Judges found the personal approach to the investigative journey into the world of foreign students a compelling and creative use of the radio medium.

### Highly Commended

*White Way* **Brent Clough and Steven Tilley, Radio Eye, ABC Radio**  
*The Top Paddock* - **Justine Lees, Peotica, ABC Radio**

## Arts Award

The winner was **Professor Henry Reynolds** for his book ***Why Weren't We Told? A personal search for the truth about our history.***

The judges found Professor's Reynolds book a timely exploration of how an individual has come to terms with the history of Indigenous Australians.

They also admired his literary skills in communicating his own uncomfortable feelings as an awareness of the past and present injustices emerged. They felt his book would contribute greatly to the Reconciliation debate.

### Highly commended

*Box the Pony* **Leah Purcell and Scott Rankin**  
*Haunted by the Past* **Dr Ruby Langford Ginibi**

## Print Award

The winner was ***Terminal Neglect - a series and special report on young people in nursing homes* by Bill Birbauer and Julie-Anne Davies *The Age Newspaper.***

*Terminal Neglect* examined the state of nursing homes in Victoria. The judges were impressed with the prominent coverage of the story and the commitment of the journalist to their subject exploring it from different angles, going beyond "just doing their job".

### Highly Commended

*Awakenings* **Kate Cole-Adams, *The Age***  
**Janet Hawley and David Lester** \_ various articles written for the *Good Weekend*

## Television Award

The winner was *Solutions for a* **Secret Shame - Helen Dalley and Paul Steindl, Sunday, Channel 9**

This controversial and complex Sunday cover story looked at the abuse of human rights revealing amongst other things that Aboriginal women were 45 times more likely to be victims of domestic violence than non- Indigenous women. The report was a catalyst for change and prompted several funding and policy initiatives.

## **Community Award**

The winner was the ***National and Children's Youth Law Centre***. The Centre has developed a range of programs and resources to assist young people in understanding their rights. Over a long period of time it has worked on empowering young people.

### **Highly Commended**

#### ***Ngaanyajarra Pitantjatjara Yankunytjatjara \_ (NPY) Women's Council***

The Award ceremony was well covered in the media and provided once again an opportunity for a positive portrayal of human rights issues to the Australian community.

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# Complaint Handling and Legal Services

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## Complaints Handling and Legal Services

### Introduction

The 1999-00 reporting year was a very busy year for the Commission's Complaint Handling Section (CHS). Along with the finalisation of over 1400 complaints the CHS prepared for and implemented significant legislative change to the complaint handling practice of the Commission.

The Commission is responsible for the investigation and conciliation of complaints under the *Human Rights and Equal Opportunity Commission Act 1986*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*. Amendment to the *Human Rights and Equal Opportunity Commission Act 1986*, which came into effect on 13 April 2000, vested the President with the complaint handling powers for all alleged acts of discrimination and created a uniform complaint process. The definitions, grounds and areas of discrimination, exemptions and exceptions, and defences remain in the respective anti-discrimination Acts.

The uniform complaint process in the new Part IIB of the *Human Rights and Equal Opportunity Commission Act 1986* remains essentially unchanged from the complaint handling provisions of the anti-discrimination laws. Like the old provisions, the new legislation provides for complaints of discrimination or breaches of human rights to be made to the Commission. Complaints are then referred to the President, who is responsible for inquiring into the complaint. After initial inquiry the President must decide whether to terminate the complaint or to attempt to settle the complaint through conciliation.

Complainants who allege unlawful race, sex or disability discrimination and whose complaint is terminated by the President may apply to have the complaint heard and determined by the Federal Court of Australia. Complaints lodged under the *Human Rights and Equal Opportunity Commission Act 1986* concerning discrimination in employment or a breach of human rights by the Commonwealth, which cannot be conciliated, do not proceed to hearing by the Federal Court but may, after further inquiry by the President, be made the subject of a report to the Attorney-General for presentation to Parliament.

A diagram of the complaint handling process is provided at Appendix 5.

The CHS receives complaints from throughout Australia. Most complaints are made directly to the Commission through the office in Sydney. A number of complaints are also referred from State anti-discrimination and equal opportunity agencies.

### Access to Services

The Commission's mission statement seeks to promote and facilitate community access to services and functions performed by the Commission. In meeting this goal the Complaint Handling Section undertakes a number of strategies.

- **Complaints Infoline** - The Commission provides an Australia-wide 1300 656 419 (local call charge) number which offers telephone enquirers the opportunity to call and discuss alleged acts of discrimination with a complaint information officer. Over 7,000 enquirers throughout Australia utilised the Complaints Infoline this reporting year. The Complaints Information Service is explained in full later in this section.
- **Complaint Handling webpage** - <http://www.hreoc.gov.au/complaint/>  
The complaint webpage has been significantly updated since last reporting and now includes a complaints helppage, complaint guide, complaint form, frequently asked questions and conciliation register. The conciliation register contains de-identified information about the outcomes of conciliated complaints under each Act administered by the Commission. The Commission has informally received positive feedback about this service, particularly from regional and rural advocates.
- **Conciliation circuits** - When required, conciliation officers in the Sydney office travel throughout Australia to conduct conciliation conferences. This reporting year CHS officers conducted 104 conferences outside the greater Sydney region, including 34 in regional NSW, 26 in Victoria, 14 in Queensland, 25 in South Australia, 2 in Western Australia and 3 in the Australian Capital Territory. Officers from State agencies also conducted conciliation

conferences in their respective States when the agency was handling federal complaints on the Commission's behalf.

- **Access working group** - In December 1999 a CHS access working group was established. The objective of the working group is to improve the accessibility of the complaint handling service by identifying issues relating to service accessibility and developing strategies to address these issues. To date the group has focused on improving data collection in relation to use of, and satisfaction with, the service; improving information about the complaint handling process that is available to parties and improving the coordination of conciliation conferences in areas outside of Sydney.

The CHS is also assisting with a project to examine indigenous women's access to discrimination complaint mechanisms in NSW. This project is being undertaken by the Public Interest Advocacy Centre and the Wirringa Baiya Aboriginal Women's Legal Centre. A senior CHS officer is a member of the project reference group.

- **Community Education** - the CHS, in partnership with the Public Affairs Unit has undertaken a number of community education presentations to various community and complaint stakeholder groups. These presentations provide an overview of the Commission and its roles and functions and where CHS staff are involved, provide detailed information on the complaint handling process. The presentations have been rolled out on a State by State basis and for this reporting year included groups in New South Wales, South Australia and the Northern Territory. Evaluations of community education presentations conducted by CHS staff in 1999-00 indicated high satisfaction with the content and presentation of these sessions.<sup>2</sup>

The CHS, along with the Commission's Legal Unit, also participated in the Federal Court of Australia's briefing sessions on its new human rights jurisdiction. The briefing sessions were conducted in all States and Territories and were well attended by legal practitioners and stakeholder groups.

Over the past twelve months staff from the CHS have also provided information sessions on federal law for new officers at the Villawood Detention Centre.

- **Arrangements with State agencies**

During this reporting year the Commission made new arrangements with the State agencies with which it had previously had cooperative complaint handling arrangements.

Victoria - From 1 August 1999 the Equal Opportunity Commission Victoria (EOCV) has acted as a formal referral centre for the Commission. Victorians who elect to lodge a complaint under federal legislation may lodge a complaint through the Victorian Equal Opportunity Commission Referral Centre. Once the complainant has elected federal jurisdiction the complaint is referred to Sydney for handling. 132 complaints have been referred from the EOCV this reporting year. Victorians can also lodge complaints directly with the Commission through the Sydney office.

Tasmania - Following the Tasmanian parliament's introduction of comprehensive anti-discrimination legislation and establishment of the Office of the Anti-Discrimination Commissioner on 10 December 1999 the Commission closed its Hobart office. Tasmanians now have a choice of electing to lodge complaints under new State anti-discrimination law or federal law. Tasmanians choosing federal jurisdiction may lodge a complaint directly with the Commission through the Sydney office.

South Australia and Queensland - The Commission has a formal arrangement with the anti-discrimination agencies of these States whereby the agencies display HREOC publications and allow Commission staff to use their facilities for conciliation conferences, community education or training. Informal referral arrangements are also in place should complainants from those States seek to lodge complaints under federal jurisdiction.

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<sup>2</sup> 84% of participants agreed that the presentation helped them understand the law administered by HREOC and 82% agreed that the presentation helped them to understand the Commission's complaint handling function. 84% of participants agreed that the presenter provided information in a way that was clear and easy to understand and 77% agreed that the information was presented in an interesting manner.

## **International work**

As previously reported, in 1998 the Commission was awarded a tender to provide technical assistance to the Indonesian National Human Rights Commission. The first component of this project, which involved the development of a Complaints Procedure Manual, was completed in early 1999. Additional components of this project were completed in 1999-00. In August and September 1999 senior complaint handling staff provided investigation training for the Indonesian Commission and in March 2000 a senior investigation conciliation officer provided assistance in a scoping project for the development of a complaints database.

In March-April 2000 the section's Senior Training and Policy Officer provided further complaint handling training for staff of the Hong Kong Equal Opportunity Commission and assisted the Hong Kong Commission identify areas for ongoing improvement in service delivery.

Complaint handling staff have also commenced preparatory work on a technical assistance project for the South African Commission for Gender Equality. This project will involve the development of a Complaint Procedure Manual and provision of training in investigation and conciliation of complaints.

During the past twelve months the section has continued to be involved in providing information about the Commission's complaint handling work to visiting delegations from human rights institutions and non-government organisations in China, Nepal, Indonesia, Uganda and New Zealand. The section has also hosted placements for staff from the Hong Kong Equal Opportunity Commission, the New Zealand Race Relations Office and the Uganda Human Rights Commission.

## **CHS training and policy**

The Commission has two specialised training programs which provide knowledge and skills in statutory investigation and conciliation. All complaint handling staff are required to undertake both courses. In 1999-00 the Commission's course in Statutory Investigation was run on two occasions for Commission staff and was also run for staff of the Anti-Discrimination Commission of Queensland in October 1999. The Commission's course in Statutory Conciliation was run in October 1999 for Commission staff and staff from state and territory anti-discrimination agencies.

A specific course was also run for staff of the Anti-Discrimination Commission of Queensland in November 1999. During 1999-00 two senior CHS staff obtained Certificate IV accreditation in Assessment and Workplace Training. Information about the Commission's training programs is available on the Complaints page of the Commission's website.

During 1999-00 the Commission provided a submission to the National Alternative Dispute Resolution Advisory Council (NADRAC) which outlined the Commission's approach to the assessment and referral of disputes for alternative dispute resolution. The Commission's earlier submission on issues of fairness and justice in alternative dispute resolution is available on the NADRAC website. Two senior CHS officers also presented a paper on the alternative dispute resolution work of the Commission at the 5<sup>th</sup> National Mediation Conference which was held on 17-19 May 2000 in Brisbane.

In light of the legislative changes, the Commission undertook a revision of its Complaint Procedures Manual during 1999-00. It is anticipated that the revised manual will be published in the latter half of 2000.

## **National Conference**

In February 2000 the Commission's Complaint Handling Section hosted the fourth National Investigators/Conciliators Conference. The conference, held in Sydney, was attended by delegates from state and territory anti discrimination agencies, the Hong Kong Equal Opportunity Commission, the New Zealand Human Rights Commission and Racial Relations Office and the Indonesian National Human Rights Commission. The Conference was entitled "In principle and in practice" and conference presentations and workshops considered the tension between theory and practice in relation to issues that impact on the work of investigators and conciliators in the field of anti-discrimination and human rights.

Speakers at the conference included Lawrence McNamara, Lecturer at the University of Western Sydney and Professor Hilary Astor, Pro-Dean at the University of Sydney Law School. A highlight of the conference was a debate concerning a bill of rights for Australia which was moderated by ABC National presenter, Richard Fidler. Debate participants included the Sex Discrimination and Acting Disability Discrimination Commissioner, Susan Halliday; the Aboriginal and Torres Strait Islander Social Justice Commissioner, Bill Jonas; Melinda Jones, Director of the Human Rights Centre, University of New South Wales and Lawrence McNamara.

## Key performance indicators and goals

- **Timeliness** - The section's stated performance measure is for 75 percent of complaints to be finalised within twelve months from the date of receipt of the complaint. In 1999-00 the CHS finalised 67 percent of matters within twelve months. A detailed breakdown of timeliness statistics by jurisdiction is provided in Table 1. Two sets of figures have been provided in relation to complaints under the Racial Discrimination Act. The bracketed figure represents the timeliness of the complaint handling process for that portfolio when the 246 same subject matter of complaints that were finalised in the period are excluded. It is important to note that these 246 complaints were caught up in an external administrative process and not subject to the usual complaint handling process. With these complaints excluded, the CHS finalised 81 percent of matters within 12 months.

Table 1: Time from receipt to finalisation for complaints finalised in the Sydney office

	<b>Racial Discrimination Act</b>	<b>Sex Discrimination Act</b>	<b>Disability Discrimination Act</b>	<b>Human Rights &amp; Equal Opportunity Commission Act</b>
<b>0-3m</b>	<b>11% (22%)</b>	<b>18%</b>	<b>17%</b>	<b>51%</b>
<b>3-6m</b>	<b>16% (30%)</b>	<b>23%</b>	<b>26%</b>	<b>24%</b>
<b>6-9m</b>	<b>9% (17%)</b>	<b>18%</b>	<b>21%</b>	<b>11%</b>
<b>9-12m</b>	<b>8% (16%)</b>	<b>18%</b>	<b>13%</b>	<b>5%</b>
<b>&gt; 12m</b>	<b>55% (14%)</b>	<b>20%</b>	<b>21%</b>	<b>7%</b>
<b>&gt; 24m</b>	<b>1% (1%)</b>	<b>3%</b>	<b>2%</b>	<b>2%</b>

**Conciliation rate** - The section's stated performance measure is for 30 percent of finalised complaints to be conciliated. In 1999-00 the section exceeded this goal with a 37 percent conciliation rate.

**Customer satisfaction survey** - The section's stated performance measure is for 60 percent of parties to be satisfied with the complaint handling process. In the 1999-00 reporting year 65 percent of survey respondents indicated that they were satisfied with the overall complaint handling process. Further details of survey results for this reporting year are provided below.

## Customer satisfaction survey

The Complaint Handling Section's customer satisfaction survey has now been in operation since December 1997. The survey is used to obtain feedback from complainants and respondents (or their advocates) involved in the complaint handling process. Survey results for the period 1 July 1999 to 30 June 2000 indicate that:

- 80% of complainants and 91% of respondents found Commission staff courteous and helpful.
- 60% of complainants and 70% of respondents were satisfied with the timeliness of the complaint handling process.
- 75% of complainants and 89% of respondents felt that staff provided information in a way that was easy for them to understand.
- 83% of complainants and 92% of respondents described complaint handling staff as unbiased.
- 81% of complainants and 94% of respondents felt that forms and correspondence from the Commission were easy to understand.

Survey results for 1999 - 00 are generally similar to survey results for the past two years.

The 199900 figures do, however, indicate increased satisfaction with the timeliness and perceived fairness of the complaint handling process.

## Service charter

The Complaint Handling Section's Service Charter has now been in operation for three years. The charter provides a clear and accountable commitment to service and provides an avenue through which users can understand the nature and standard of service they can expect and contribute to service improvement. All complainants are provided with a copy of the Charter and respondents receive a copy when they are notified of a complaint against them.

In the 1999 - 00 reporting year the Commission received two complaints about its services through this mechanism. The Commission has only received four complaints through this mechanism since the introduction of the Service Charter in 1997-98.

## Complaint handling statistics

This year the complaint handling statistics are presented in a slightly different format to previous reporting years. This change is necessitated by the amendments to the Commission's legislation and changes in complaint handling arrangements between the Commission and State anti-discrimination agencies. For example, national statistics do not detail which state agency handled the complaint. However, separate reporting on central office statistics has been retained for this reporting year. A new table which identifies the state of origin of complainants at the time of lodgement at Sydney office has been introduced.

Outcome statistics have also been slightly amended to enable dual reporting of the 'old' statutory reasons for decline and referral of complaints along with the 'new' statutory reasons for termination of a complaint.

### A. Central office (Sydney) complaint statistics

The overall number of complaints received by the Sydney office in 1999-00 is equal to the average of approximately 1,200 received per year, based on complaints received over the past five years. Compared to the previous reporting year the number of complaints received this year has decreased by 13 percent. It is noted, however, that in the previous reporting year 467 complaints relating to the same subject matter and same respondent were lodged with the Commission.

The number of complaints finalised during the year was 11 percent higher than the office's average of approximately 1,300 complaints finalised per year, based on complaints finalised over the last five years. Compared to the previous reporting year the number finalised has increased by 47 percent. Again it should be noted that around half of the 467 complaints referred to above were finalised through conciliation.

An upward trend continued in relation to the percentage of complaints conciliated. This year 37 percent of finalised complaints were conciliated. Under the Sex Discrimination Act 39 percent were conciliated, 26 percent under the Disability Discrimination Act, 57 percent under the Racial Discrimination Act and 10 percent under the Human Rights and Equal Opportunity Commission Act.

The percentage of complaints that were either declined or terminated has increased slightly (43 percent) compared to the previous year (38 percent). Only 12 percent of complaints were withdrawn compared to 25 percent and 19 percent in the previous two years.

*Table 2: Complaints received and finalised in the Sydney office over the past three years*

	1997 – 1998	1998 – 99	1999 – 00
Received	855	1421	1239
Finalised	1410	988	1448

Table 3: State of origin of complainant at time of lodgement at Sydney office

State of origin	Total	Percentage
New South Wales	492	40%
Victoria	296	24%
South Australia	109	9%
Queensland	178	14%
Australian Capital Territory	40	3%
Tasmania	22	2%
Northern Territory	24	2%
Other (overseas)	1	-
<b>Total</b>	<b>1239</b>	<b>100%</b>

Table 4: Outcomes of complaints finalised in the Sydney office over the past three years

	1997 – 1998	1998 – 99	1999 – 00
Referred	7%	12%	8%
Conciliated	22%	31%	37%
Withdrawn	25%	19%	12%
Declined	46%	38%	43%

## B. National complaint statistics

The overall number of complaints received this year reflected changes to the Commission's arrangements with state anti-discrimination agencies during the reporting year, whereby State agencies no longer directly handle complaints lodged under federal law. The number of complaints received from all offices decreased by 26 percent compared to the previous year. The state agencies ceased receiving federal complaints on behalf of the Commission in the first half of the reporting year.

In the 1999-00 reporting year 23 percent of complaints were lodged under the Racial Discrimination Act, 34 percent under the Disability Discrimination Act, 24 percent under the Sex Discrimination Act and 19 percent under the Human Rights and Equal Opportunity Commission Act. The change in percentages compared to the previous year is generally explained by the 467 same subject complaints lodged under the Racial Discrimination Act in 1998/99. The current percentages are consistent with the usual jurisdictional breakdown of complaints received except for an increase in complaints received under the Human Rights and Equal Opportunity Commission Act. This increase can be attributed to an additional number of complaints related to immigration detention.

The number of complaints finalised nationally in 1999-00 (1,752) was similar to the number finalised in the previous year (1728). It is noted that the State agencies with whom the Commission had complaint handling arrangements, continued finalising federal complaints up until the end of the third quarter of the reporting year.

The overall number of complaints finalised through conciliation was 35 percent. The overall conciliation rate has increased by 8 percent compared to the previous year.

Table 5: Complaints received

Legislation	Total
<i>Disability Discrimination Act (1992)</i>	445
<i>Human Rights and Equal Opportunity Commission Act (1986)</i>	248
<i>Racial Discrimination Act (1975)</i>	299
<i>Sex Discrimination Act (1984)</i>	325
<b>Total</b>	<b>1317</b>

Table 6: Complaints finalised

Legislation	Total
<i>Disability Discrimination Act (1992)</i>	581
<i>Human Rights and Equal Opportunity Commission Act (1986)</i>	214
<i>Racial Discrimination Act (1975)</i>	599
<i>Sex Discrimination Act (1984)</i>	358
<b>Total</b>	<b>1752</b>

### Chart 1: Complaints Received by Act

Disability Discrimination Act – 34%  
 Sex Discrimination Act – 24%  
 Racial Discrimination Act 23%  
 Human Rights and Equal Opportunity Commission Act 19%

## Racial Discrimination Act

Under the *Racial Discrimination Act (1975)* it is unlawful to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life. The Act also prohibits offensive behaviour based on racial hatred.

As explained earlier in this report the number of complaints received under the Act for the year 1998/99 increased significantly when 467 same subject complaints were lodged. The 62 percent decrease in complaints received under the Act this year is explained by the large number of complaints received the previous year. The overall number of complaints received this year is however not dissimilar to previous years.

Employment related complaints represented the largest area of complaint under the Act (34 percent), followed equally by racial hatred (19 percent) and the provision of goods and services (19 percent) complaints.

The number of complaints finalised under the Act for the year increased by 49 percent compared to the previous year. Around half of the 467 complaints noted above were finalised this year. Over half of the complaints finalised under the Act were settled through conciliation (52 percent). The withdrawal rate decreased by 9 percent.

*Table 7: Complaints received and finalised*

<b>Racial Discrimination Act*</b>	<b>Total</b>
Received	299
Finalised	599

\*Includes complaints lodged under the racial hatred provisions

*Table 8: Outcomes of finalised complaints*

<b>Racial Discrimination Act*</b>	<b>Total</b>
<b>Declined/Terminated+</b>	<b>244</b>
Not unlawful	13
More than 12 months old	10
Trivial, vexatious, frivolous, misconceived, lacking in substance*	155
Adequately dealt with already*	1
More appropriately remedy available*	-
Withdrawn, does not wish to pursue, advised Commission	48
Withdrawn, does not wish to pursue, settled outside Commission	3
Withdrawn or lost contact	14
<b>Conciliated</b>	<b>304</b>
<b>Referred for hearing++</b>	<b>35</b>
Subject matter of public importance*	-
No reasonable prospect of conciliation*	13
<b>Administrative closure**</b>	<b>16</b>
<b>Transferred***</b>	<b>-</b>
<b>Total</b>	<b>599</b>

- + Includes complaints declined prior to 13 April 2000 and complaints terminated under new legislative process which commenced on 13 April 2000.
- ++ Includes complaints terminated after 13 April 2000 on grounds 'subject matter of public importance' and 'no reasonable prospect of conciliation'.
- \* Termination ground varied or added as of 13 April 2000.
- \*\* Not an aggrieved party, state complaint previously lodged.
- \*\*\* Complaint transferred to another anti-discrimination or equal opportunity commission for handling.

**Chart 2: Racial Discrimination Act outcomes of complaints finalized**

Declined/ Terminated – 52%

Withdrawn – 31%

Referred/ Terminated\*

Conciliated – 6%

\* Complaints terminated on grounds of 'no reasonable prospect of conciliation' and 'subject matter of public importance' are included in calculation of percentage of matters referred to public hearing.

Table 9: Complaints received by area

<b>Racial Discrimination Act*</b>	<b>Total</b>
Rights to equality before the law	15
Access to places and facilities	11
Land, housing, other accommodation	13
Provision of goods and services	74
Right to join trade unions	-
Employment	143
Advertisements	1
Education	5
Incitement to unlawful acts	4
Other – section 9	45
Racial hatred	75
<b>Total</b>	<b>386</b>

\* One complaint may have multiple areas.

**Chart 3: Racial Discrimination Act complaint areas**

Employment – 37%

Provision of goods and services – 19%

Racial hatred – 19%

Other - 25%

Table 10: Complaints received by ethnicity of complainant

<b>Racial Discrimination Act</b>	<b>Total</b>
Non-English speaking background	164
Aboriginal and Torres Strait Islander	63
English speaking background	57
Unknown	15
<b>Total</b>	<b>299</b>

### **Racial hatred**

The number of racial hatred complaints received for this reporting year decreased by 8 percent compared to the previous year. The percentage of racial hatred complaints finalised through conciliation increased by 6 percent compared to the previous year. Disputes between neighbours and media represent the most common area of dispute under the racial hatred provisions. It is noted that in comparison with the previous reporting year there has been an increase in the number of complaints of racial hatred in sport.

Table 11: Racial hatred complaints received and finalised

<b>Racial Discrimination Act</b>	<b>Total</b>
Received	75
Finalised	95

Table 12: Outcomes of finalised racial hatred complaints

<b>Racial Discrimination Act</b>	<b>Total</b>
<b>Declined/Terminated+</b>	<b>48</b>
Finalised	95
Not unlawful	–
More than 12 months old	1
Trivial, vexatious, frivolous, misconceived, lacking in substance*	29
Adequately dealt with already*	–
More appropriately remedy available*	–
Withdrawn, does not wish to pursue, advised Commission	16
Withdrawn, does not wish to pursue, settled outside Commission	–
Withdrawn or lost contact	2
<b>Conciliated</b>	<b>30</b>
<b>Referred for hearing++</b>	<b>15</b>

Subject matter of public importance*	-
No reasonable prospect of conciliation*	6
<b>Administrative closure**</b>	<b>2</b>
<b>Transferred***</b>	<b>-</b>
<b>Total</b>	<b>95</b>

- + Includes complaints declined prior to 13 April 2000 and complaints terminated under new legislative process which commenced on 13 April 2000.
- ++ Includes complaints terminated after 13 April 2000 on grounds 'subject matter of public importance' and 'no reasonable prospect of conciliation'.
- \* Termination ground varied or added as of 13 April 2000.
- \*\* Not an aggrieved party, state complaint previously lodged.
- \*\*\* Complaint transferred to another anti-discrimination or equal opportunity commission for handling.

#### **Chart 4: Outcomes of finalised racial hatred complaints**

Conciliated – 32%  
 Declined/ Terminated – 32%  
 Referred/ Terminated\* – 16%  
 Withdrawn – 20%

\* Complaints terminated on grounds of 'no reasonable prospect of conciliation' and 'subject matter of public importance' are included in calculation of percentage of matters referred to public hearing.

*Table 13: Racial hatred complaints received by area*

<b>Racial Discrimination Act</b>	<b>Total</b>
Media	11
Disputes between neighbours	19
Personal conflict	2
Employment	7
Racist propaganda	-
Entertainment	4
Sport	10
Public debate	3
Other *	19
<b>Total</b>	<b>75</b>

\* This category includes complaints regarding comments made by people in the street and in passing vehicles.

## **Chart 5: Racial hatred complaints received by area**

Dispute between neighbours – 25%

Media – 15%

Sport – 13%

Employment – 9%

Entertainment – 5%

Public Debate – 4%

Personal Conflict – 3%

Other - 26%

## **Conciliation Case Studies**

### **Racial vilification in radio broadcast**

The complainant who is Aboriginal, lodged a complaint against a local radio station. The complainant alleged that the reading out of an anonymous facsimile titled "Australian Apology to the Aborigines" was racially offensive to her, her family and the Indigenous community generally.

The management of the radio station acknowledged that the content of the facsimile was inappropriate and offensive to Indigenous Australians and that they had made a mistake in reading it on air. The radio station advised that it had taken action against the radio announcer and had aired an apology on four separate occasions. The complainant indicated that she was satisfied with this action taken by the radio station. As part of the resolution of the complaint the respondent also agreed to provide the complainant with a written apology, to train their on-air staff regarding racial vilification and to meet with Indigenous community leaders.

### **Complaint of race discrimination by retail store**

Three complainants who are Aboriginal, alleged that a salesperson refused to sell them a bottle of alcohol and other goods. The complainants claimed that the salesperson said she was complying with an instruction by Police not to serve Aboriginal people due to past trouble involving Aboriginal patrons.

The respondent did not dispute that the complainants had been refused service and also acknowledged that no such instruction had been issued by Police. The respondent claimed there had been a misunderstanding in passing information on to staff about an earlier customer incident.

The complaint was resolved through the conciliation process with the respondent agreeing to provide the complainants with private and public written apologies. Other settlement terms were not disclosed.

### **Alleged racial vilification in provision of goods and services**

The complainant claimed that she stopped at the respondent service station and asked to borrow some tools to fix her car. The complainant claimed she was told the company did not lend tools to the general public. The complainant stated that when she made enquires of another staff member within the office, an argument ensued. The complainant alleged she was called a "black bitch, f..... mole", told to go back to her own country and was chased out of the shop. The respondent denied that the staff member had made any racial comments. The respondent claimed that the complainant had called the staff member a racist name and had caused damage to property within the shop.

The matter was resolved with the complainant and respondent providing apologies to each other.

### **Complaint of race discrimination by real estate agency**

The complainant, who is of Aboriginal descent, alleged that he and his family had been discriminated against because of his race. The complainant stated that his family were renting a house from the respondent real estate agency. The complainant alleged that the proprietor of the real estate agency said, with reference to his partner who is non-Aboriginal, "Do you prefer white women?". The complainant also alleged that the proprietor referred to the complainant's relationship as a "mixed relationship" and in conversations with his partner called him 'black' and 'coloured man'. The complainant also claimed that the proprietor said she would have to notify the landlord of the complainant's Aboriginality. The complainant alleged that his race was a reason why his family was later evicted from the property.

The proprietor denied that she had made comments regarding the complainant's skin colour, Aboriginality and relationship. The proprietor also denied that the complainant's race was a reason why the lease had not been renewed. The proprietor stated that the property was always only going to be leased for a six month period prior to being offered for sale.

The matter was settled through conciliation for an amount of \$1000.

### **Alleged racial vilification in provision of goods and services**

The complainant, who is of German descent, alleged that he was racially vilified by an employee of a communication company who was working outside his home.

The complainant alleged that the respondent made a 'Nazi' salute to him after he asked the respondent to move the company vehicle from his driveway.

In conciliation the respondent company advised that it had reprimanded the employee.

The respondent company also provided the complainant with a written apology.

### **Complaint of racial vilification and discrimination in employment**

The complainant, who is of Indian descent, alleged that since commencing employment with the respondent state department he had been subjected to racial abuse including racially offensive and threatening mail. The complainant alleged that he suffered harassment through persistent allegations about, and investigations of, impropriety in his work practices. He alleged that in comparison with other staff he had greater difficulty obtaining staff benefits and had been given fewer promotional opportunities. The complainant also alleged that he had been unreasonably prevented from resuming his normal duties after a period of absence from work.

The respondent department did not dispute that some incidents of racial abuse had occurred in the past. However, the respondent claimed that management had appropriately dealt with these incidents at the time. The respondent denied more recent incidents and claimed that any animosity towards the complainant was not because of his colour or race but because he was a new staff member. The respondent denied that the complainant had been treated less favourably than other employees in relation to access to staff benefits and promotional opportunities.

The complaint was settled at a conciliation conference with the department agreeing to pay the complainant \$8,000 compensation, issue the complainant with a letter of regret and provide ongoing Equal Employment Opportunity training for staff.

### **Alleged racial vilification and harassment in employment**

The complainant alleged that the sales manager in the small business where he worked displayed aggressive behaviour and made personal threats towards him because of his race. The complainant alleged that the sales manager called him "*Slimy Pommie Git*" and "*English Slimy Prick*" and said "*You think this is harassment? I'll follow you around and be in your face all the time and make your life hell*".

The complainant claimed that he met with the manager of the office to discuss the problem but felt the manager had ignored the racial discrimination issue. The complainant also stated that he complained to the managing director of the company but received no response.

The complaint was resolved through conciliation with the company agreeing to pay the complainant his outstanding staff entitlements and to acknowledge the complainant's hurt feelings.

### **Alleged racial vilification and discrimination by school teacher**

Several Aboriginal students alleged that they had been racially vilified by their teacher. The complainant's claimed that during an Aboriginal Studies lesson, the teacher asked the class to provide a list of words which describe Aboriginal people. The complainants claimed that when a student said 'dirty' 'smelly' the teacher said that these were good words and wrote them on the blackboard. However when someone suggested 'beautiful' the teacher did not write this word on the board.

The teacher denied that any offensive words were used apart from 'dirty' which he claims was a word suggested by an intellectually disabled student. The teacher claimed that if he had said "that is a good word" it would have been only to acknowledge that the word "dirty" could be linked with perceptions of Aboriginal people. The teacher's employer denied that the teacher's behaviour was inappropriate.

The complaints were settled at conciliation with the employer agreeing to provide:

- private tutoring to the students;
- community room at the school for Aboriginal families which would be used to provide a meeting place for the principal, teachers and families;
- each student with a schoolbook and clothing allowance;
- each student with access to career guide programs; and
- cultural awareness training for staff.

The employer also agreed to review school policy and practice relating to Aboriginal students and to undertake a review of policies relating to race discrimination.

### **Alleged racial vilification at holiday resort**

The complainant claimed that he was racially vilified during an argument with the owner of a shop within the resort. The complainant stated that he was waiting for assistance with his car which was parked outside the shop. The complainant claimed that an argument eventuated when the shop owner yelled at him to move his vehicle. The complainant alleged that on hearing the complainant speak German to his companions the owner said "f.... off you German bastards".

The complaint was resolved by an apology from the shop owner.

## **Sex Discrimination Act**

Under the *Sex Discrimination Act* (1984) it is unlawful to discriminate against a person on the ground of their sex, marital status, pregnancy or potential pregnancy in many areas of public life including employment, education, provision of goods, services and facilities, accommodation, clubs and in the administration of Commonwealth laws and programs. It is also unlawful to dismiss a person from their employment on the ground of their family responsibilities. Further, sexual harassment is unlawful in a variety of areas of public life including, employment, educational institutions, in the provision of goods, services and facilities, in registered organisations, in the provision of accommodation, in clubs and in dealings concerning land.

There has been a slight decrease (3 percent) in the number of complaints received under the Act in 1999-2000 in comparison with the previous year.

The number of complaints finalised under the Act decreased by 18 percent compared to the previous year and 40 percent of these were settled through conciliation.

Sexual harassment remains the primary ground of complaint. Just under half of the complaints received involved an allegation of sexual harassment. These complaints will often be coupled with an element of sex discrimination. Another large group of complaints involved multiple grounds, particularly those surrounding the renegotiation of work hours following the return to work from pregnancy/maternity leave and the advent of new family responsibilities. These issues are often enmeshed with allegations of indirect sex discrimination in connection with part time work.

The large majority of complaints relate to employment (79 percent) and are lodged by women (83 percent).

Table 14: Complaints received and finalised

<b>Sex Discrimination Act</b>	<b>Total</b>
Received	325
Finalised	358

Table 15: Outcomes of finalised complaints

<b>Sex Discrimination Act</b>	<b>Total</b>
<b>Declined/Terminated+</b>	<b>144</b>
Not unlawful	16
More than 12 months old	13
Trivial, vexatious, frivolous, misconceived, lacking in substance*	52
Adequately dealt with already*	-
More appropriately remedy available*	-
Withdrawn, does not wish to pursue, advised Commission	42
Withdrawn, does not wish to pursue, settled outside Commission	1
Withdrawn or lost contact	20
<b>Conciliated</b>	<b>131</b>
<b>Referred for hearing++</b>	<b>57</b>
Subject matter of public importance*	-
No reasonable prospect of conciliation*	18
<b>Administrative closure**</b>	<b>26</b>
<b>Transferred***</b>	<b>-</b>
<b>Total</b>	<b>358</b>

+ Includes complaints declined prior to 13 April 2000 and complaints terminated under new legislative process which commenced on 13 April 2000.

++ Includes complaints terminated after 13 April 2000 on grounds \_ subject matter of public importance and no reasonable prospect of conciliation.

\* Termination grounds added as of 13 April 2000.

\*\* Not an aggrieved party, state complaint previously lodged.

\*\*\* Complaint transferred to another anti-discrimination or equal opportunity commission for handling.

#### **Chart 6: Sex Discrimination Act outcomes of complaints finalised**

Conciliated – 40%

Declined/ Terminated – 24%

Withdrawn – 19%

Referred/ Terminated\* - 17%

\* Complaints terminated on grounds of 'no reasonable prospect of conciliation' and 'subject matter of public importance' are included in calculation of percentage of matters referred to public hearing.

Table 16: Complaints received by ground

<b>Sex Discrimination Act</b>	<b>Total</b>	<b>Percentages</b>
Sex discrimination	161	38%
Marital status	20	5%
Pregnancy	75	18%
Sexual harassment	142	34%
Parental status, family responsibility	12	3%
Victimisation	10	2%
<b>Total*</b>	<b>420</b>	<b>100%</b>

\*One complaint may have multiple grounds.

Table 17: Complaints received by area

<b>Sex Discrimination Act</b>	<b>Total</b>
Employment	325
Goods, services and facilities	41
Land	-
Accommodation	4
Superannuation, insurance	3
Education	8
Clubs	5
Administration of federal laws and programs	26
Application forms etc	-
Trade unions, accrediting bodies	-
<b>Total*</b>	<b>412</b>

\*One complaint may have multiple areas.

**Chart 7: Sex Discrimination Act complaints received by area**

Employment – 79%  
 Provision of goods and services – 10%  
 Administration of Federal Laws and Programs – 6%  
 Other – 5%

## **Conciliation Case Studies**

### **Alleged discrimination in employment because of sex and pregnancy**

The complainant alleged she was discriminated against on the grounds of her sex and pregnancy during her four years of employment with the respondent federal government department. The complainant was the first female Field Officer in her section and claimed that her male co-workers and supervisors regularly made sexist and harassing comments, for example calling her "useless female" and "dumb broad" and telling her she should be "back in the kitchen". The complainant alleged that when she became pregnant her supervisor suggested she have an abortion. The complainant also claimed that in comparison with male colleagues she was given fewer opportunities for training and promotion.

The respondent advised that an internal investigation into the complainant's allegations had been conducted but was inconclusive. The respondent did however acknowledge that the complainant's work environment was unsatisfactory.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant the sum of \$23,000.

### **Complaint of pregnancy discrimination**

The complainant claimed that on the day after she commenced employment with the respondent retail firm, the Manager asked her if she was pregnant. The complainant claimed that when she replied in the affirmative she was told that she could not continue her employment.

The respondent agreed that the complainant was asked if she was pregnant, but stated that this was only out of concern for her safety as the work involved climbing ladders and some lifting. The respondent claimed that the complainant became very upset when questioned about her pregnancy and left the workplace of her own accord.

The complaint was resolved by conciliation with the respondent providing the complainant with a written apology and payment of lost wages amounting to \$3,617.55.

### **Alleged sexual harassment by work colleague**

The complainant alleged that she had been sexually harassed by a male co-worker in the course of her employment at a local club. The complainant claimed that the co-worker placed his hand up her skirt and on her inner thigh. The complainant alleged that her employer was vicariously liable for the actions of the co-worker as the company did not have any policies and procedures regarding sexual harassment. The complainant also claimed that when she complained to management she was made to feel as if she had done something wrong. The complainant also complained to the police and the co-worker was charged with sexual assault.

The individual respondent pleaded guilty to a charge of common assault and was given a nine-month good behaviour bond. The complainant was satisfied with this outcome in relation to the individual respondent.

While the respondent company denied that it was vicariously liable for the actions of its employee, it agreed to attend a conciliation conference to resolve the matter.

The complaint against the respondent company was resolved with the company:

- stating regret for any harm and ill-feeling experienced by the complainant
- agreeing to implement sexual harassment and equal opportunity training for staff and management and implement any policies and/or procedures that arise out of the training
- agreeing to provide the complainant with a satisfactory reference and \$5,000 in general damages.

### **Complaint of pregnancy discrimination by employer**

The complainant was employed with a small retail company. The complainant claimed that when she advised her manager that she was pregnant, the manager said to her "Do you want some free advice... I suggest you have an abortion." The complainant claims when she told the manager she would not be having an abortion the manager said "You know you will have to resign". The complainant alleged that she was subsequently dismissed from her employment.

The respondent denied that the complainant was dismissed because of her pregnancy. The respondent claimed that the complainant's employment was terminated at her request to assist her obtain employment closer to home. The respondent agreed that the option of abortion was discussed with the complainant.

The complaint was resolved by conciliation with the respondent providing the complainant with a written apology, a work reference, the promise of future employment and in \$2,250 compensation.

### **Complaint regarding a sexually hostile work environment**

Three complainants alleged that they had been subjected to a sexually hostile work environment while working with the respondent federal government department. The complainants alleged they were treated less favourably than male employees in that they were subject to taunts and comments about their sex and harassed to the extent that they felt they had no choice but to resign or apply for redundancy. The complainants also alleged that they were reprimanded for taking time off work when their children were ill.

The respondent denied the complainants' allegations and stated that there were personality conflicts between the women and management.

The complaint was resolved by conciliation with the department providing each complainant with \$5,000 in compensation.

### **Treatment during, and on return from, maternity leave**

The complainant claimed that while she was on maternity leave her section was relocated to another area and she was not informed about this or given the same opportunity as other affected staff to lodge a hardship claim. The complainant also alleged that when, on her return to work, she requested part-time hours she was told to look for a position elsewhere and was not allocated work.

The respondent federal government department confirmed that it had conducted an internal investigation into the complainant's allegations. The respondent agreed that it had erred in not providing the complainant with the opportunity to lodge a hardship claim and acknowledged that there were problems in the way the complainant's request for part time work had been managed.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant a voluntary redundancy package and \$20,000 in general damages.

### **Six complaints of sexual harassment in employment**

Six women lodged separate complaints of sexual harassment against their male employer. Five of the complainants alleged that during the course of their employment at the small retail business the respondent had exposed his genitals to them. Two complainants alleged that the respondent would masturbate in their presence. Four of the six complainants also alleged that the respondent would loiter outside the toilet and attempt to look at them through a gap in the door. Three of the complainants claimed that the respondent would stare at them in an uncomfortable way. All but two complainants resigned from their employment.

The respondent admitted that most of the allegations were substantially true. He claimed that he was suffering from a medical condition at the time.

All of the complaints were resolved by conciliation with the respondent agreeing to pay each complainant financial compensation according to their specific circumstances. Financial compensation ranged between \$4,300 and \$12,200.

### **Complaint of discrimination on grounds of pregnancy and family responsibilities**

The complainant was employed with a small retail company on a permanent part-time basis. The complainant advised that she worked part-time in order to accommodate her family responsibilities.

The complainant stated that approximately two years after commencing employment with the company she became pregnant. The complainant claimed that while she did not inform her supervisor that she was pregnant, she believed that her supervisor had been advised of her pregnancy by a mutual friend. The complainant alleged that during her pregnancy her supervisor made comments which indicated that he disliked the fact that she was pregnant.

During the complainant's pregnancy the company underwent restructure. As part of the restructure, the complainant's position was merged with another part-time position to create one full-time position. Another staff member was appointed to this position. The complainant was informed that one of the reasons she was not considered for the position was the limited hours that she could work. The complainant alleged that the company had discriminated against her because of her pregnancy and family responsibilities.

The company stated that the complainant's contract required her to work any hours requested by the company. The company claimed that the complainant's refusal to work longer hours constituted a breach of her employment contract. The company denied knowledge of the complainant's pregnancy and denied that her supervisor had made any negative remarks regarding her pregnancy.

The complaint was resolved by conciliation with the company agreeing to pay the complainant \$3,000 compensation for pain, suffering and humiliation.

### **Allegation of sexual harassment**

The complainant stated that she had resigned from her employment as an engineer with the respondent company. The complainant claimed that sexually explicit posters of semi-naked and naked women were displayed in the staff room and in offices, including the foreman's office. The complainant stated that most male employees had pictures of naked women on their toolboxes and that she had found pornographic magazines in the female toilets. The complainant also alleged that she had been treated less favourably than male colleagues in that she had been denied the opportunity to attend courses which would have furthered her career.

The complaint was resolved by conciliation. The respondent, which was a large company, offered the complainant a position interstate at the same level as when she resigned and agreed to wave waiting periods for work related benefits. Additionally, the respondent agreed to assist the complainant with further education and training and agreed that her previous service would be counted in relation to long service leave.

### **Complaint of sexual harassment in employment**

The complainant was employed as a clerk with the respondent small business for six and a half years until she resigned due to alleged sexual harassment. The complainant claimed that a co-worker sexually assaulted her, pinning her to the desk and forcing himself on her. The complainant alleged that the next day the co-worker pushed her against the wall and said "I want to f..k you again". She claims that he then unzipped his pants and tried to force her to perform oral sex on him. The complainant states that when she returned to work two to three weeks after these events the co-worker called her into his office and sought confirmation from her that she would not tell any one about what had occurred. The complainant also claimed that the co-worker criticised her work performance.

The individual respondent denied sexually harassing the complainant. He claimed that he had two consensual sexual encounters with the complainant. The respondent company stated that the complainant had made a complaint after she resigned but requested that the matter remain confidential.

The complaint was resolved by conciliation with the company and individual respondents agreeing to pay the complainant \$12,000. The company also agreed to implement an anti-sexual harassment policy.

## **Disability Discrimination Act**

Under the *Disability Discrimination Act* (1992) it is unlawful to discriminate against a person on the ground of their disability in many areas of public life including employment, education, provision of goods services and facilities, access to premises, accommodation, clubs and incorporated associations, dealing with land, sport and in the administration of Commonwealth laws and programs. It is also unlawful to discriminate against a person on the ground they are an associate of a person with a disability and it is unlawful to harass a person because of their disability.

The overall number of complaints received under the Act for the year decreased by 13 percent compared to the previous year. The most common areas of complaint were employment (44 percent) and the provision of goods, services and facilities (32 percent).

The overall number of complaints finalised for the year decreased by 21 percent compared to the previous year. Of those finalised, 25 percent were settled through conciliation.

Table 18: Complaints received and finalised

<b>Disability Discrimination Act</b>	<b>Total</b>
Received	445
Finalised	581

**Chart 8: Disability Discrimination Act outcomes of complaints finalised**

Declined/ Terminated – 49%

Withdrawn – 16%

Conciliated – 25%

Referred/ Terminated\* - 10%

\* Complaints terminated on grounds of 'no reasonable prospect of conciliation' and 'subject matter of public importance' are included in calculation of percentage of matters referred to public hearing.

Table 19: Outcomes of finalised complaints

<b>Disability Discrimination Act</b>	<b>Total</b>
<b>Declined/Terminated+</b>	<b>371</b>
Not unlawful	41
More than 12 months old	19
Trivial, vexatious, frivolous, misconceived, lacking in substance*	166
Adequately dealt with already*	21
More appropriately remedy available*	34
Withdrawn, does not wish to pursue, advised Commission	52
Withdrawn, does not wish to pursue, settled outside Commission	18
Withdrawn or lost contact	20
<b>Conciliated</b>	<b>144</b>
<b>Referred for hearing++</b>	<b>55</b>
Subject matter of public importance*	-
No reasonable prospect of conciliation*	22
<b>Administrative closure**</b>	<b>9</b>
<b>Transferred***</b>	<b>2</b>
<b>Total</b>	<b>581</b>

+ Includes complaints declined prior to 13 April 2000 and complaints terminated under new legislative process which commenced on 13 April 2000.

++ Includes complaints terminated after 13 April 2000 on grounds \_ subject matter of public importance and no reasonable prospect of conciliation.

\* Termination grounds varies or added of 13 April 2000.

\*\* Not an aggrieved party, state complaint previously lodged.

\*\*\* Complaint transferred to another anti-discrimination or equal opportunity commission for handling.

*Table 20: Complainant's type of disability*

<b>Disability Discrimination Act</b>	<b>Total</b>
Physical disability	114
A mobility aid is used (walking frame or wheelchair)	36
Physical disfigurement	11
Presence in the body of organisms causing disease (HIV/AIDS)	2
Presence in the body of organisms causing disease (other)	5
Psychiatric disability	37
Neurological disability (epilepsy)	24
Intellectual disability	12
Learning disability	14
Sensory disability (hearing impaired)	24
Sensory disability (deaf)	13
Sensory disability (vision impaired)	25
Sensory disability (blind)	6
Work related injury	42
Medical condition (diabetes)	27
Other	29
<b>Total*</b>	<b>421</b>

\* This data is obtained from the Commission's intake survey. In 1999-00 77 percent of disability discrimination complainants returned the survey. It is noted that one complainant may have multiple disabilities.

Table 21: Complaints received by area

<b>Disability Discrimination Act</b>	<b>Total</b>
Employment	255
Goods, services and facilities	187
Access to premises	34
Land	-
Accommodation	12
Incitement to unlawful acts or offences _	-
Advertisements	-
Superannuation, insurance	10
Education	51
Clubs, incorporated associations	17
Administration of federal programs	14
Sport	3
Application forms, requests for information	-
Trade unions, registered organisations	-
Unlawful to contravene disability standards	-
<b>Total*</b>	<b>583</b>

- One complaint may have multiple areas.

#### **Chart 9: Disability Discrimination Act complaints received by area**

Employment – 44%  
 Provision of goods and services – 32%  
 Education – 9%  
 Access – 6%  
 Other – 9%

## **Conciliation Case Studies**

### **Alleged disability discrimination in employment**

The complainant had been employed by the respondent state government department for a number of years. During that time the complainant had developed a heart problem that required him to undergo surgery and be fitted with a pacemaker. When his partner's employment was transferred interstate, the complainant applied for the same position with a similar department in that state. In his application for the position, the complainant provided medical evidence that indicated he was fit to perform the duties of the position. The medical advice also confirmed that the complainant had performed his duties without incident for a number of years after his initial surgery. The complainant's application was rejected because of concerns about the effects of the pacemaker on his ability to perform the inherent requirements of the position. The complainant alleged that he had been discriminated against on the grounds of his disability.

The complaint was settled at conciliation without admission of liability with the respondent agreeing to provide the complainant with a statement of regret and \$20,000 in compensation.

### **Accommodation of visual disability by education institution**

The complainant, who has a visual impairment, claimed that he was discriminated against by the respondent educational institution. The complainant stated that despite advising the institution of his disability at enrolment and being given assurances that his disability would be accommodated, the institution did not provide sufficient assistance to enable him to undertake his studies. The complainant claimed he was required to answer questions written on the blackboard in class and during weekly examinations even though he had previously advised the teacher that he could not read from the board. The complainant stated that his teacher made comments about his abilities in front of other students. The complainant also claimed that his request for an oral examination was rejected. The complainant discontinued his enrolment two weeks after commencement.

The respondent denied the complainant had requested accommodation for his disability and claimed that the complainant had not advised his teacher that he could not do the in-class examinations.

The matter was resolved by conciliation with the respondent agreeing to provide the complainant with an apology and \$5,000 in compensation. The respondent institution also agreed to implement disability awareness training for staff and review procedures for the enrolment of people with disabilities.

### **Access to theatre**

The complainant lodged the complaint on behalf of her daughter who has quadriplegia. The complaint alleged that her daughter went to see a play at a local theatre but on arrival was told that it was not possible to accommodate her wheelchair in the theatre. The complainant's daughter was informed that this was because the space normally allocated for people in wheelchairs was required as part of the stage set for this particular show.

The respondent confirmed that for the performance in question, the area of the theatre usually set aside for people in wheelchairs was required as part of the stage set. The respondent advised that the issue of wheelchair access had been addressed and incorporated in a draft master plan to implement physical improvements to the theatre, as funds become available. The respondent also advised that additional access improvements had already been incorporated in the theatre's 'Access Strategic Plan' & 'Project Plan'.

The complaint was resolved by telephone negotiations between the parties. The respondent agreed to arrange a meeting between the complainant, her mother and the Chief Executive Officer of the Theatre Trust to discuss the 'Access Strategic Plan' and proposed future improvements to the theatre. The respondent also offered the complainant's daughter two complimentary tickets to a performance of her choice at the theatre with a pre-show dinner at an associated restaurant.

### **Access to local bus service**

The complainant has a mobility disability and uses a wheelchair. The complainant uses the local bus service and his wife assists him to get on and off the bus. The complainant and his wife alleged that they had been harassed and discriminated against when trying to use the bus service. The complainants claimed that on three separate occasions a driver was abusive toward them and refused to let them board the bus. They also alleged that on one occasion the driver closed the door on the complainant's wife's hands, damaging her ring. The complainants claimed that bus company management refused to assist with their complaint against the driver.

The respondent advised that it had interviewed drivers on the bus route and obtained statements but could not identify the driver in question.

The complaint was resolved by conciliation. The respondent company wrote a letter, to be carried by the complainants, which confirmed that the complainants were to be provided with access to the bus service. The respondent company also issued a directive to all staff regarding provision of services for people with disabilities. The respondent provided the complainants with a statement of regret and \$700 in compensation which included costs for repair of the complainant's ring.

### **Access to educational institution**

The complainant has a mobility impairment requiring him to use a mobility aid. The complainant is unable to use stairs and alleged that he could not attend classes held on the first floor of the educational institution as this floor could only

be accessed by stairs. The complainant also claimed that he had difficulty accessing the educational institution because designated parking spaces for people with disabilities were not policed and accordingly, were often used by students without disabilities.

The respondent advised that it had attempted to address the complainant's concerns by moving some of the complainant's classes to the ground floor. The respondent stated that all of the complainant's classes could not be moved to the ground floor as some class required specialist equipment which was kept in class rooms on the first floor.

The complaint was resolved by conciliation with the respondent agreeing to install a lift which would provide access to the first floor of the building and other areas of the campus. The respondent also agreed to make efforts to ensure that the accessible parking spaces were available for people with disabilities.

### **Alleged dismissal on the ground of mental illness**

The complainant was employed as a senior chef at a holiday resort. The complainant had worked there for a number of years achieving awards and citations for excellence as a chef. The complainant alleged that his employer terminated his employment after he suffered an anxiety attack and was hospitalised for a short period. The complainant stated that this anxiety attack occurred at the end of the busiest period of the year when the manager had unexpectedly taken leave, kitchen equipment had broken down and new staff were on duty in the kitchen and restaurant.

The respondent company denied that it had discriminated against the complainant because of his mental illness and claimed that the complainant's employment had been terminated because of concerns about his performance.

Without any admission of liability, the respondent agreed to provide the complainant with a written apology and a reference and to pay the complainant \$55,000 in compensation.

### **Alleged failure to accommodate back injury**

The complainant was employed by a large retail corporation and her duties included customer service and other administrative tasks. The complainant claimed that she had worked in the retail position for nine years and for four of these years had used a stool at the counter to alleviate her back pain. The complainant stated that the respondent had advised that for occupational health and safety reasons, stools were not to be used by staff in customer service roles. The complainant was informed that on expiry of her leave credits her employment would be terminated. The complainant stated that she therefore reluctantly agreed to accept retirement on medical grounds.

The respondent denied discriminating against the complainant and stated that standing to attend to customers was an inherent requirement of the job. Both parties agreed that the complainant's performance and attendance had been exemplary and that no other employee had objected to her using the stool.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant \$15,000 to compensate her for the loss of her job. This included an amount for retraining and an amount for the entitlements she had lost by retiring before her leave credits expired.

### **Provision of Auslan interpreter by health service**

The complainant and her husband are profoundly deaf. The complainant's husband accompanied her when she was admitted to hospital for the birth of their second child. The complainant requested that an Auslan interpreter be available for her but no interpreter was provided. The baby was delivered by emergency caesarean section. The baby sustained an injury during the surgery and was taken away to be assessed for surgery. The complainant stated that she and her husband had no idea what was happening and the process was terrifying for them. Eventually, a doctor wrote a note which explained why the baby had been taken away. On another occasion the complainant attended the outpatient department of the same hospital and no interpreter was provided. The complainant alleged that the hospital had discriminated against her on the ground of her disability.

In responding to the complaint, the hospital stated that staff were of the understanding that the complainant had sufficient lip-reading skills to ensure effective communication. The respondent claimed that staff did not rule out getting an interpreter but due to the emergency circumstances surrounding the birth there was insufficient time to make such arrangements. The hospital acknowledged that the process would have been frightening but said that had an interpreter been present there would have been minimal communication between staff and the complainant as staff were focused on the surgery.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant \$7,500 in compensation and to introduce a policy whereby interpreters would be provided at every consultation with deaf patients.

### **Access to government department website**

The complainant, who is blind, complained that he could not access the website of a government department because the website did not have a text only version with appropriate links for blind and visually impaired people. The complainant stated that as the operator of a small business, he had reason to access this particular website on a regular basis.

After discussions with the complainant and his advocate the respondent department agreed to upgrade its website in accordance with the W3C Web content Accessibility Guidelines. The department expressed gratitude to the complainant for drawing its attention to the existence of these guidelines and for outlining in detail the difficulties he had experienced.

### **Complaint of discrimination on the ground of imputed disability**

The complainant has haemochromatosis, a condition which requires regular removal of blood to reduce her iron levels. The complainant alleged that on advising the respondent that she had previously used intravenous needles the respondent refused to take her blood as he claimed she was a person in a risk category for HIV. Blood tests revealed that the complainant did not have Hepatitis B, Hepatitis C or HIV. The complainant alleged that the respondent discriminated against her on the basis of an imputed disability in refusing to provide her with treatment. The complaint was settled by conciliation with the respondent agreeing to provide the complainant with treatment and undertaking to change its policy in relation to patients with haemochromatosis.

### **Access to Taxi Service**

The complainant has a mobility disability and uses a motorised scooter. The complainant claimed that the taxi service in his area did not have a vehicle that could appropriately accommodate his motorised scooter.

The complaint was resolved by conciliation with the respondent agreeing to purchase a van that could be modified to accommodate the complainant's mobility aid.

### **Alleged discrimination in terms and conditions of employment**

The complainant worked for a large financial institution that provided employees with benefits such as reduced mortgage rates, low interest loans and discounted insurance products. The employer decided to outsource some of its functions, including the employment area in which the complainant worked, to an external service provider. All staff who wished to, were able to transfer employment to the external service provider and maintain similar terms and conditions of employment. Due to the different nature of its business the external service provider was unable to provide the same employment benefits in the same way and instead offered to pay for those benefits to be provided through standard policies and products available from other financial institutions. In order to access those benefits the complainant was required to undergo medical assessments as a pre-condition to provision of insurance.

The complainant alleged he could not comply with this requirement or condition because of a medical condition he had not disclosed, and had not been required to disclose, to the original employer. The complainant alleged he was unable to access the benefits of employment in the same way due to his disability and would be disadvantaged by the transfer of functions to the external service provider.

The matter was resolved at conciliation with an agreement that the complainant would be provided with an alternative position with the original employer on the same terms and conditions. The second respondent and potential employer also agreed to provide the complainant with \$20,000 in compensation.

## Human Rights and Equal Opportunity Commission Act

Complaints under the *Human Rights and Equal Opportunity Commission Act* are not subject to the same process as complaints under the Racial, Sex and Disability Discrimination Acts.

Under the Act the President can inquire into and attempt to conciliate complaints that concern alleged breaches of human rights by, or on behalf, of the Commonwealth. Human rights are defined in the Act as rights and freedoms contained in any relevant international instrument which is scheduled to or declared under the Act. They are the:

- International Covenant on Civil and Political Rights;
- Declaration on the Rights of the Child;
- Declaration on the Rights of Mentally Retarded Persons;
- Declaration on the Rights of Disabled Persons;
- Convention on the Rights of the Child; and
- Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.

Under the Act the President can also inquire into and endeavour to conciliate complaints of discrimination in employment on specific grounds. These grounds include race; colour; sex; religion; political opinion; national extraction; social origin; age; medical or criminal record; impairment; marital status; mental, intellectual or psychiatric disability; nationality; physical disability; sexual preference; or trade union activity.

If a complaint of alleged discrimination or alleged breach of a human right is neither conciliated nor declined the President can undertake further inquiry. If the President is satisfied that the subject matter of the complaint constitutes discrimination in employment or is a breach of a human right, the President must report her findings to the Attorney-General for tabling in Parliament. The Commission's Legal Unit assists the President in this part of the process.

This year saw a significant increase in complaints received under the Act. The majority of the complaints alleging a breach of human rights were from people in immigration detention (34 percent) or prisoners (18 percent).<sup>3</sup> Complaints alleging discrimination in employment were predominantly on the grounds of age, criminal record and trade union activity. Each year a significant proportion of all complaints received under the Act do not relate to discrimination in employment or acts or practices of the Commonwealth and therefore the Commission does not have the authority to inquire into these complaints (17 percent).

The number of complaints finalised under the Act this year increased by 36 percent compared to the previous year. Eleven percent of finalised complaints were conciliated. The majority of complaints that were conciliated related to alleged discrimination in employment.

Only 1 percent of finalised complaints were referred to the Legal Unit for further inquiry and possible reporting to the Attorney-General.

*Table 22: Complaints received and finalised*

<b>Human Rights &amp; Equal Opportunity Commission Act</b>	<b>Total</b>
Received	248
Finalised	214

<sup>3</sup> It is noted that the Commission does not have the jurisdiction to inquire into complaints by prisoners unless they are federal prisoners.

Table 23: Outcomes of finalised complaints

<b>Human Rights &amp; Equal Opportunity Commission Act</b>	<b>Total</b>
<b>Declined</b>	<b>186</b>
Does not constitute discrimination	24
Human rights breach, not inconsistent or contrary to any human right	56
More than 12 months old	8
Trivial, vexatious, frivolous, misconceived, lacking in substance	30
Adequately dealt with already	16
More appropriately remedy available	26
Withdrawn, does not wish to pursue, advised Commission	20
Withdrawn, does not wish to pursue, settled outside Commission	3
Withdrawn or lost contact	3
<b>Conciliated</b>	<b>22</b>
<b>Referred for reporting*</b>	<b>2</b>
<b>Administrative closure**</b>	<b>4</b>
<b>Transferred***</b>	<b>-</b>
<b>Total</b>	<b>214</b>

\* Complaints in this category were not conciliable and therefore transferred from the Commission's Complaints Handling Section to Legal Services for further inquiry and possible reporting.

\*\* Not an aggrieved party, state complaint previously lodged.

\*\*\* Complaint transferred to another anti-discrimination or equal opportunity commission for handling.

#### **Chart 10: Human Rights and Equal Opportunity Commission Act outcomes of complaints finalised**

Declined – 76%

Withdrawn – 12%

Conciliated – 11%

Referred – 1%

*Table 24: Complaints received by ground*

<b>Human Rights &amp; Equal Opportunity Commission Act</b>	<b>Total</b>	<b>Percentage</b>
Race (ILO 111)	-	-
Colour (ILO 111)	-	-
Sex (ILO 111)	-	-
Religion (ILO 111)	13	5%
Political opinion (ILO 111)	4	2%
National extraction (ILO 111)	-	-

Social origin (ILO 111)	1	0.5%
Age (ILO 111)	24	10%
Medical record (ILO 111)	1	0.5%
Criminal record (ILO 111)	26	10%
Impairment (including HIV/AIDS status) (ILO 111)	-	-
Marital status (ILO 111)	-	-
Disability (ILO 111)	2	1%
Nationality (ILO 111)	-	-
Sexual preference (ILO 111)	8	3%
Trade union activity (ILO 111)	26	10%
International Covenant on Civil and Political Rights	97	39%
Declaration on the Rights of the Child	-	-
Declaration on the Rights of Mentally Retarded Persons	-	-
Declaration on the Rights of Disabled Persons	-	-
Convention on the Rights of the Child	10	4%
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	2	1%
Not a ground within jurisdiction	6	2%
Not a human right as defined by the Act	31	12%
<b>Total*</b>	<b>251</b>	<b>100%</b>

\* One complaint may have multiple grounds.

Table 25: Complaints received by area

<b>Human Rights and Equal Opportunity Commission Act</b>	<b>Total</b>
Acts or practices of the Commonwealth	107
Employment	98
Not act or practice of the Commonwealth (not employment cases)	43
<b>Total</b>	<b>248</b>

**Chart 11: Human Rights and Equal Opportunity Commission Act complaints received by areas**

Employment – 40%

Commonwealth – 43%

Other – 17%

Table 26: Non-employment complaints received by area

<b>Human Rights &amp; Equal Opportunity Commission Act</b>	<b>Total</b>
Prisons, prisoner	32
Religious institutions	6
Family court matters	4
Other law court matters	3
Immigration	61
Law enforcement agency	3
State agency	3
Other service provider (private sector)	2
Local government	6
Education systems	6
Welfare systems	2
Health systems	9
Other	41
<b>Total*</b>	<b>178</b>

\* One complaint may have multiple areas.

#### **Chart 12: Human Rights and Equal Opportunity Commission Act non-employment complaints**

Immigration – 34%

Prisons – 18%

Other – 48%

**Table 26** and **Chart 12** show the nature of complaints lodged at Sydney office alleging breaches of human rights under the various international instruments, excluding the ILO 111 Convention dealing with discrimination in employment.

## **Conciliation Case Studies**

### **Alleged discrimination on ground of criminal record**

The complainant applied for a casual position with a non-government agency as a Client Support Officer. The complainant claimed he received favourable feedback at a preliminary interview and then completed an authorisation for the respondent to undertake a 'police check'. The police check disclosed that the complainant had been charged with possession of marijuana some years earlier but not convicted. The complainant claimed that the company then terminated his application. The complainant alleged that the respondent discriminated against him on the ground of his criminal record.

On notification of the complaint the respondent company reassessed its position and decided to offer the complainant an interview for employment. The complainant was successful in gaining employment with the respondent and the complaint was resolved on this basis.

## **Complaint of age discrimination in employment**

The complainant alleged that her employer, a statutory authority, had discriminated against her on the basis of her age in that it had refused to offer her a redundancy because she was over 65 years of age.

The matter was resolved by conciliation with the respondent agreeing to pay the complainant \$32,250 which represented the full redundancy package.

## **Alleged discrimination on ground of trade union activity**

The complainant was employed on a casual basis with a statutory authority. The complainant alleged that in mid-1999 the respondent told her that her employment contract would not be renewed because her work performance was not satisfactory. The complainant claimed that the real reason her contract was not renewed was because she had sought to involve the union in a dispute over a change to her working hours.

The respondent denied the complainant's claim of discrimination. The respondent advised that the reasons for termination of the complainant's employment included the complainant's unsatisfactory work performance and the fact that the complainant was temporarily filling in for a full-time employee who was due to return to work.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant \$2,000 in compensation and to offer the complainant casual employment when opportunities arose.

## **Allegation regarding treatment of detainees**

The complainant is employed as a custodial officer at a detention centre. The complainant wrote to the Commission to express concern that a fellow officer had assaulted some detainees who were protesting about their treatment. The complainant was of the view that the officer in question was constantly acting inappropriately with the detainees and treating them in ways that may constitute breaches of their human rights.

The Commission contacted the superintendent of the facility and informed him of the allegations. The superintendent inquired into the matter and found that while the officer in question had not assaulted the detainees, he had been overzealous in performance of his duties. The superintendent undertook to formally warn and counsel the officer and ensure he received appropriate training.

The complainant stated that he was satisfied with this action and considered his complaint resolved.

## **Alleged discrimination on the ground of religious belief**

The complainant is an elected representative in a community which includes many non-Christian residents. The complainant alleged that the respondent organisation which has a Christian charter, had employment selection criteria which favoured applicants of Christian background.

The respondent organisation claimed that employees were selected on merit, regardless of the applicants' religious background and that this was reflected in the diverse backgrounds of its employees. The respondent further advised that it had amended its job advertisements to remove any perceived bias.

In conciliation the respondent agreed to review and amend its recruitment documentation and charter to ensure religious criteria were not inadvertently applied in assessing applicants.

### **Complaint information service**

Along with its complaint handling function, the Commission receives a large number of enquiries from people seeking advice and assistance in relation to possible breaches of federal anti-discrimination legislation. These enquiries may be made by telephone, in person, in writing or by e-mail. Where it appears that a complaint can be made, enquirers are provided with information about the legislation, the complaint handling process and a complaint form. Where it appears that the Commission cannot assist, every effort is made to refer the caller to another appropriate avenue of redress.

Complaints Infoline 1300 656 419 or e-mail [complaintsinfo@hreoc.gov.au](mailto:complaintsinfo@hreoc.gov.au)

The telephone enquiries line is open Monday to Friday between 9.00am and 5.00pm.

The cost of the call is equivalent to the costs of a local phone call.

In 1999-00 the Complaints Information Service received 7,442 telephone and TTY enquiries. Staff also attended to 63 in-person enquiries and responded to 147 e-mail enquiries.

#### Written enquiries

Over 500 written enquiries were received by the Complaint Information Service. Enquirers often write to the Commission with a grievance but are unsure whether it is covered by federal anti-discrimination legislation or the correspondence may not specify the grievance in terms which attract the coverage of an Act. Enquirers also request general information about the complaints process. The Commission provides enquirers with advice about the coverage of the legislation and where it appears that the issue raised is not covered by the federal legislation, information is provided about other possible methods to address the complaint.

*Table 27: Written enquiries received and finalised*

<b>Written enquiries</b>	<b>Total</b>
Received	531
Finalised	556

*Table 28: Written enquiries received by issue*

<b>Issue</b>	<b>Total</b>
Race	37
Race (racial hatred)	15
Race (social origin)	3
Sex	16
Sexual harassment	9
Sexual preference, transgender, homosexuality, lawful sexual activity	8
Sex (marital status, family responsibilities or status, parental status)	12
Sex (pregnancy)	4
Disability (impairment)	52
Disability (medical condition, record, HIV/AIDS)	5
Disability (mental health)	16
Disability (other medical issues for example maltreatment)	16
Age	30
Privacy, data protection	-
Neighbourhood issues	2
Personality conflicts, favouritism	5
Victimisation	3
Union, industrial activity	2
	56

Unfair dismissal, other industrial issues	30
Advertising	4
Religion, religious organisations	9
Criminal record, conviction	8
Prisons, prisoners	31
Police	12
Court (family matters)	20
Court (other law matters)	31
Immigration	20
Political opinion	1
Local government (administration)	6
State government (administration)	11
Federal government (administration)	26
International Covenant on Civil and Political Rights	2
Declaration on the Rights of the Child	-
Declaration on the Rights of Disabled Persons	-
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	1
Convention on the Rights of the Child	-
Other human, civil rights	56
Human rights, other equal opportunity issues	12
Career status	-
Other	75
<b>Total*</b>	<b>590</b>

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\*Enquiries may have multiple issues.

Table 29: Written enquiries received by area

<b>Area</b>	<b>Total</b>
Employment or business	113
Education	16
Goods, services and facilities	82
Access to premises, place, facilities or vehicles	7
Land, housing or accommodation	17
Superannuation and insurance	3
Finance and credit	-
Equality before the law	3
Incitement to unlawful	2
Acts or practices of the Commonwealth	9
Federal laws and programs	52
State laws and programs	55
Local government	14
Law enforcement agency	18
Clubs, incorporated associations	5
Sport	-
Trade unions, accrediting bodies, industrial organisations	-
Advertisements	5
Application forms, discriminatory requests for information or questions	-
Racial hatred (neighbourhood)	1
Racial hatred (personal conflict)	-
Racial hatred (public debate)	3
Racial hatred (media)	2
Racial hatred (entertainment)	2
Racial hatred (racist propaganda)	-
Immigration	14
Religious institutions	2
Family court matters	19

Court matters (other)	33
Welfare	3
Other	110
<b>Total*</b>	<b>590</b>

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\*Enquiries may have multiple issues.

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# Legal Services

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## Introduction

The primary responsibilities of the Legal Section for most of the 1999-2000 financial year were to:

- schedule and facilitate the Commission's Inquiry into irreconcilable complaints of unlawful discrimination under the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*, and for its legal officers to provide associate and/or counsel assistance to Hearing Commissioners;
- assist the President (or her delegate) in the handling of her statutory duties in reviewing decisions by the Race, Sex or Disability Commissioners to decline complaints and in her consideration of applications for interim determinations under the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act;
- assist the Human Rights Commissioner in the preparation of notices and reports under the *Human Rights and Equal Opportunity Commission Act 1986*;
- act as Counsel or instructing solicitor for the Commission in Commission interventions in legal proceedings and in external litigation, such as applications for review of Commission decisions under the *Administrative Decisions (Judicial Review) Act 1977* (Cth);
- provide legal advice to the Commission;
- liaise with the Attorney-General's Department and Federal Court of Australia in relation to the drafting and implementation of the *Human Rights Legislation Amendment Act No. 1 1999* (Cth) and the *Human Rights Legislation Amendment Bill No.2 1998* (Cth); and
- respond to applications under the *Freedom of Information Act 1982* (Cth) on behalf of the Commission.

## Commencement of Amending legislation

The *Human Rights Legislation Amendment Act No. 1 1999* (Cth) ("the Amending Act") received Royal Assent on 13 October 1999. Its substantive provisions commenced on 13 April 2000. The effect of the major amendments contained in the Act is to:

- transfer the power to hear complaints of unlawful discrimination from the Commission to the Federal Court;
- transfer all complaint handling powers from the Race, Sex and Disability Discrimination Commissioners to the President;
- remove the internal Presidential review function from the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act, and provide that where a complaint is declined by the President, the complainant will be able to go directly to the Federal Court;
- remove the function of the President or Commission to grant interim determinations and vest a function to grant interim injunctions in the Federal Court; and
- create the role of amicus curiae for all Commissioners in proceedings under the Amending Act that are before the Federal Court.

These changes will impact upon the functions and duties of the Legal Section that relate to the Commission's hearing function, the conduct of Presidential reviews and the function to provide interim determinations.

The complaint handling process in relation to complaints under the Amending Act is that the President (rather than the Race, Sex or Disability Discrimination Commissioner) investigates the complaint and endeavours to conciliate it. In the event that it does not conciliate or is not withdrawn, the President "terminates" the complaint on one or more of the following grounds:

- the President is satisfied that the alleged unlawful discrimination is not unlawful discrimination;
- the complaint was lodged more than 12 months after the alleged unlawful discrimination took place;
- the President is satisfied that the complaint was trivial, vexatious, misconceived or lacking in substance;
- in a case where some other remedy has been sought in relation to the subject matter of the complaint—the President is satisfied that the subject matter of the complaint has been adequately dealt with;
- the President is satisfied that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to each affected person;
- in a case where the subject matter of the complaint has already been dealt with by HREOC or by another statutory authority—the President is satisfied that the subject matter of the complaint has been adequately dealt with;
- the President is satisfied that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority;
- the President is satisfied that the subject matter of the complaint involves an issue of public importance that should be considered by the Federal Court or the Federal Magistrates Court;
- the President is satisfied that there is no reasonable prospect of the matter being settled by conciliation.

The President is required to issue a notice in writing that the matter has been terminated and the reason for doing so. The "affected person" in the complaint (who is usually the complainant or may be a different person than the complainant where a person has complained on behalf of an affected person) may use this notice to commence proceedings in the Federal Court in relation to the subject matter of the complaint.

The commencement of the relevant provisions on 13 April 2000 affected complaints that were at various stages in the Commission's process, in particular:

- complaints that a Commissioner had declined to inquire or continue to inquire into and the complainant had either 21 days to request a Presidential review of that decision or had requested a Presidential review but the review was not completed by 13 April 2000, were terminated and a termination notice issued in relation to them (see **Table 30** below for a breakdown of these matters);
- complaints that had been referred for public inquiry by HREOC but that had not commenced their first day of public inquiry by 13 April 2000, were terminated and a termination notice issued in relation to them (see **Table 28** for a breakdown of these matters); and
- complaints that had been referred for public inquiry and the public inquiry had commenced by 13 April 2000, remain with HREOC and the provisions of the Amendment Act do not apply to them.

### **Hearings and determinations by the Commission**

The Commission's hearing process operated as usual from 1 July 1999 to 12 April 2000. As stated above, from 13 April 2000, the Commission only had jurisdiction to hear those matters that had commenced their first day of public hearing prior to that date.

Under the old process, the Commissioner responsible referred for public hearing by the Commission complaints which were unable to be settled by conciliation, in accordance with the requirements of the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act.

In conducting hearings and making determinations, the Commission acts in a way that is analogous to a tribunal, even though its decisions are not binding and conclusive and can only be enforced by a fresh hearing and judgement in the Federal Court.

Complaints made under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) relating to breaches of human rights and discrimination in employment have not been affected by the Amending Act. There is no provision in the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) for referral to public hearing of unconciliated complaints. The Commissioner may report to the Attorney-General where conciliation cannot resolve the matter and an

inquiry has satisfied the Commission that there has been a breach of human rights or discrimination in employment. In such complaints Legal Services assists the Human Rights Commissioner to inquire fully into the complaints. The number of inquiries is reported in the statistics below, in the same way as public hearings under the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act, as they are relatively small in number and similar in process.

### **Hearing Commissioners:**

In the 1999-2000 reporting period, public hearings were conducted by part-time Hearing Commissioners as well as by the statutory members of the Commission. The legislation requires that a Hearing Commissioner sitting alone must be legally qualified, although the Commission may also sit as more than one Commissioner, provided that at least one is legally qualified. Part-time Hearing Commissioners for the period of 1999-2000 were:

New South Wales  
The Hon. John Brownie QC  
Mr Graeme Innes, AM  
The Hon. Dennis Mahoney QC  
Mr Sandy Street  
Ms Annabelle Bennett SC  
The Hon. John Nader QC

Queensland  
The Hon. William Carter QC

South Australia  
Ms Kathleen McEvoy  
Mr Christopher Kourakis QC  
Ms Marie Shaw QC

Tasmania  
The Hon. Robert Nettlefold

Victoria  
Mr Anthony Cavanough QC  
Mr Richard Tracey QC

Western Australia  
Mr Andrew Beech  
Mr Peter W. Johnston  
Mr Peter Martino  
Ms Elizabeth Vardon

### **Referrals to public hearings**

During 1998-1999, 182 complaints were referred for hearing and 108 were finalised. During 1999-2000, 89 complaints were referred for hearing prior to the introduction of the Amending Act and 115 complaints that had been referred to hearing were finalised (including Human Rights and Equal Opportunity Commission Act matters).

Of the hearing matters finalised during 1999\_00:

- 73 were conciliated prior to or during hearing (73 in 1998-1999);
- 16 were substantiated after a hearing and formal decision (15 in 1998-1999);
- 24 were dismissed after a hearing and formal decision (21 in 1998-1999); and
- 6 were finalised in other ways including complaints terminated by the Commission at the complainant's own request and complaints adjourned *sine die* by the Commission, for example where a party could not be located (3 in 1998-1999).

The following summaries are of two matters that were determined at hearing in 1999-2000.

**Scott and Bernadette Finney on behalf of  
Scarlett Finney v The Hills Grammar School**

*Disability Discrimination Act 1992 (Cth)*

Commissioner Graeme Innes

Date of Decision: 20 July 1999 (liability) and 13 June 2000 (relief)

Scarlett Finney has a condition known as spina bifida. On 30 March 1997 Scarlett's parents, Scott and Bernadette Finney, completed an application for Scarlett's enrolment in Kindergarten at the Hills Grammar School ("the School"). At the time of the application, and at a subsequent interview with the School, the School was advised of Scarlett's condition and Scarlett's needs were discussed. By letter dated 20 August 1997 the School advised Scott and Bernadette Finney that it would not be offering Scarlett a place in its Kindergarten class for 1998. The School stated that following a thorough examination of Scarlett's needs and the School's ability to meet them, the School did not believe that it had adequate resources to look after Scarlett.

Scott and Bernadette Finney lodged a complaint on behalf of Scarlett alleging that the School had discriminated against Scarlett on the grounds of her disability. Whilst it was not disputed that Scarlett's disability was one of the reasons for refusing her application, the School argued that the provision of services and facilities required by Scarlett to attend the School would impose an unjustifiable hardship.

Commissioner Innes found that the School directly discriminated against Scarlett on grounds of her disability in breach of the *Disability Discrimination Act*. In considering whether unjustifiable hardship would be imposed on the School, the Commissioner was of the view that the most appropriate way to approach the process in these cases is for a "combined effort" or "shared burden" by both parties to put forward the relevant information as to the services and facilities required. The Commissioner was also of the view that the relevant period for consideration as to the services and facilities required by Scarlett was from Kindergarten to Year 6 only, rather than from Kindergarten to Year 12. Overall, the Commissioner found that an adequate assessment of the services and facilities required by Scarlett was not carried out by the School. In his view, the School's assessment was based on general or stereotypical assumptions rather than on Scarlett in particular. Whilst the Commissioner accepted that the School would have to undergo some hardship in accepting Scarlett's enrolment, as she required services and facilities not required by other students, that hardship would not have been unjustifiable. Accordingly, the Commissioner concluded that the School's assertion of unjustifiable hardship was not made out.

The decision of Commissioner Innes as to liability was upheld by Justice Tamberlin on review by the Federal Court.

Commissioner Innes awarded the sum of \$42,628 to Scott and Bernadette Finney, as trustees for Scarlett.

**Nicolas Feghaly v David Oldfield  
(Janet Wainwright & Nationwide News Pty Ltd joined as Third Parties)**

*Racial Discrimination Act 1975*

Commissioner Andrew Beech

Date of decision: 19 April 2000

Mr Feghaly lodged a complaint under section 18C of the *Racial Discrimination Act*. The complaint arose out of an article published in *The Sunday Times Newspaper* in Western Australia on 16 August 1998. The article was written by Ms Janet Wainwright, then a senior political reporter with *The Sunday Times*. In the article, Mr Oldfield was quoted as saying "Home invasions are ethnically based, Lebanese or Iranian, not Australian". Mr Oldfield denied making the statement attributed to him and, in particular, denied that he made any reference to "Lebanese or Iranian". Section 18C of the *Racial Discrimination Act* makes it unlawful for a person to do an act, otherwise than in private, that is reasonably likely to offend another person or a group of people and the act is done because of the national or ethnic origin of that person or group of people.

At the hearing of the matter, leave was granted for Ms Wainwright and Nationwide News Pty Ltd (the publisher of *The Sunday Times*) to be joined as parties.

The main dispute at the hearing was whether the statement complained of had been made. Commissioner Beech found on the balance of probabilities that it had. He found that during the interview with Ms Wainwright, Mr Oldfield used the words attributed to him, including the reference to "Lebanese or Iranian". Commissioner Beech did not find

however that Mr Oldfield used these words deliberately and that he may have become carried away in the course of the interview. He also accepted that Mr Oldfield believed he did not use those words.

Commissioner Beech then went on to consider whether there had been a breach of section 18C of the *Racial Discrimination Act*. He found that all of the elements of section 18C had been established and the complaint was substantiated.

In considering the requirement that the act "is reasonably likely" to offend another person or group of people (section 18C(1)(a)), Commissioner Beech confirmed that this requirement is an objective one and was plainly satisfied in this case. He said that having received evidence of the reaction of some members of the Lebanese community to the publication of the article, in his view the statement published in *The Sunday Times* was, to say the least, likely to offend members of the Lebanese and Iranian communities.

Commissioner Beech also considered the requirement that "the act is done because of ... the national or ethnic origin" of that person or group of people (section 18C(1)(b)) and found that it had been established. He said that where, as in this case, the act complained of is a statement singling out a particular ethnic group in a way which satisfies section 18C(1)(a), and no other reason for its making is advanced by the maker of the statement, satisfaction of the requirement of section 18C(1)(b) may be readily inferred. In this case Mr Oldfield denied making the statement and so did not suggest any relevant reason for the making of the statement.

Commissioner Beech ordered Mr Oldfield to pay Mr Feghaly compensation of \$1000.00. He also ordered Mr Oldfield to publish a statement in *The Sunday Times* to state that he did not intend to make the statement attributed to him and that he did not then and does not now believe the truth of the statement.

Table 26: Trends in numbers of matters referred for public hearing

Year	1994 – 95	1995 – 96	1996 – 97	1997 – 98	1998 – 99	1999 – 00
<b>Total</b>	<b>120</b>	<b>231</b>	<b>256</b>	<b>169</b>	<b>182</b>	<b>89</b>

\*Part year, due to introduction of Amending Act.

Table 27: Complaints referred for public hearing during 1999-2000 (with comparison to 1998-99) by location and Act

	Total No.		HREOCA		RDA		SDA		DDA	
	98-9	*99-00	98-9	*99-00	98-9	*99-00	98-9	*99-00	98-9	*99-00
Office										
NSW	104	55	5	2	25	13	35	21	39	19
VIC	60	22	-	-	2	3	32	8	26	11
SA	12	8	-	-	1	2	10	5	1	1
WA	1	-	-	-	1	-	-	-	-	-
TAS	5	4	-	-	-	-	3	3	2	1
<b>Total</b>	<b>182</b>	<b>89</b>	<b>5</b>	<b>2</b>	<b>29</b>	<b>18</b>	<b>80</b>	<b>37</b>	<b>68</b>	<b>32</b>

\*Part year, due to introduction of Amending Act.

## Hearing matters terminated on 13 April 2000

As stated above, the transitional provisions of the Amending Act required that matters that had been referred for public hearing but had not commenced their first day of public hearing by 13 April 2000, had to be terminated by the President on that date. If the complainant wished to pursue the matter then they had to do so in the Federal Court.

A total of 145 hearing matters were terminated by 13 April 2000 and **Table 28** represents a breakdown by Act and State of those matters.

*Table 28: Number of hearing matters terminated under the Amending Act on 13 April 2000*

	NSW	VIC	SA	QLD	TAS	NT	ACT	WA
<b>RDA</b>	14	9	3	4	2	1	-	1
<b>SDA</b>	18	16	8	2	3	-	1	-
<b>DDA</b>	23	27	5	4	1	1	2	-
<b>Total</b>	55	52	16	10	6	2	3	1

Matters that had commenced their first day of public hearing by 13 April 2000, remain with the Commission for completion: 41 matters have fallen within this category.

## Decline decisions reviewed by the President

Prior to the commencement of the Amending Act, under the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act, decisions not to inquire into a complaint by the relevant Commissioner were reviewed by the President or his or her delegate if the complainant so requested.

In 1999-2000 the President (or the President's delegate) did not confirm the Commissioner's decision (or part of the decision) on review and returned the matter to the Commissioner for further investigation in 37 (18 percent) out of the 202 review matters which were finalised in 1999\_00 (compared to 23 (19 percent) out of 120 matters finalised in 1998-99). The extent of this work can be seen in **Table 29**.

*Table 29: Trends in numbers of Commissioner's decline decisions which were referred for review by the President*

Year	1994 – 95	1995 – 96	1996 – 97	1997 – 98	1998 – 99	1999 - 00
<b>Total</b>	125	205	245	225	227	149

\*Part year, due to introduction of Amending Act.

## Matters awaiting Presidential review terminated on 13 April 2000

As stated above, the transitional provisions of the Amending Act provided that Presidential review matters had to be terminated where the 21 day period for requesting a Presidential review had not expired by 13 April 2000 or a request had been made but the review had not been completed by 13 April 2000.

A total of 101 Presidential review matters were terminated on 13 April 2000 and **Table 30** represents a breakdown by Act and State of those matters.

*Table 30: Number of Presidential review matters terminated under the Amending Act on 13 April 2000*

	NSW	VIC	SA	WA	TAS
<b>RDA</b>	23	5	4	1	-
<b>SDA</b>	11	1	2	1	1

<b>DDA</b>	<b>31</b>	<b>18</b>	<b>1</b>	<b>-</b>	<b>2</b>
<b>Total</b>	<b>65</b>	<b>24</b>	<b>7</b>	<b>2</b>	<b>3</b>

### Interim determinations

Prior to the commencement of the Amending Act, a party could apply to the Commission (or the President if was expedient to do so), for an interim determination to prevent a party to a complaint from taking action adverse to a complainant or altering the status quo before the complaint is investigated and determined. The period of 1998\_99 saw the largest number of applications for interim determinations since the period 1995\_96. This may be explained by more complainants becoming aware of the existence of this Commission function either through advocacy services or the Commission's inquiry facilities.

Virtually all of the applications for interim determination were dealt with by the President or her delegate, with a very small number being handled over the past few years by the Commission. **Table 31** reflects the number of applications over the past few years.

Please note that as a result of the commencement of the Amending Act, the Commission lost its jurisdiction to grant interim determinations on 13 April 2000.

*Table 31: Trends in numbers of interim determination applications made to the Commission or the President*

Year	1994 - 95	1995 - 96	1996 - 97	1997 - 98	1998 - 99	1999 - 00
<b>Total</b>	<b>61</b>	<b>87</b>	<b>47</b>	<b>37</b>	<b>51</b>	<b>20</b>

No applications were granted in 1999-00.

### External litigation

The Commission is often a party in judicial review legal proceedings. These legal proceedings occur when the Commission is named as a respondent in matters where an application has been made to the Federal Court seeking judicial review of a Commission or Commissioner's decision \_ these reviews can be sought pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

In accordance with established legal principle, the Commission \_ as decision maker \_ usually submits to the jurisdiction of the Court in these matters, leaving the substantive parties (that is, the complainant and respondent to the complaint that was before the Commission) to present the matter to the Court. In a very small number of matters, submission to the jurisdiction of the Court is not practicable \_ in which case the Commission has appeared but has, in these matters, attempted to assist the Court rather than act in a way that would appear contentious or adversarial. The numbers of applications under the *Administrative Decisions (Judicial Review) Act* in relation to a Commission determination (or the President or his or her delegate's review) are shown in **Table 32** for the years 1994\_99.

*Table 32: Trends in numbers of Administrative Decisions (Judicial Review) Act applications where the Commission is named as respondent*

Year	1994 - 95	1995 - 96	1996 - 97	1997 - 98	1998 - 99	1999 - 00
<b>Total</b>	<b>9</b>	<b>9</b>	<b>11</b>	<b>35</b>	<b>19</b>	<b>22</b>

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# Aboriginal and Torres Strait Islander Social Justice

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Aboriginal and Torres Strait Islander Social Justice Commissioner Dr William Jonas commenced his appointment as Aboriginal and Torres Strait Islander Social Justice Commissioner on 6th April 1999 for five years.

## Monitoring and Reporting

### Social Justice Report 1999

Under section 46C(1)(a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), the Social Justice Commissioner is required annually to submit a report to the Attorney-General on the exercise and enjoyment of human rights by Aboriginal persons and Torres Strait Islanders (the Social Justice Report).

The 1999 Social Justice Report is the first by Dr Jonas. It was transmitted to the Attorney-General on 20 January 2000, and tabled in both Houses of the federal Parliament on 6 April 2000. The report focuses on issues relating to Indigenous young people.

Chapter 2 presents a social profile of Indigenous young people and demonstrates the gross disadvantage faced by Indigenous people across every social and economic indicator. The report argues that the disproportionate disadvantage faced by young Indigenous people has the potential to increase and further entrench the disparity between Indigenous and non-Indigenous Australians over the coming decades unless greater effort is made now to reduce the inequality that they face.

The report explains how human rights principles of non-discrimination and equality justify and may in fact require governments to redress this disadvantage through the adoption of remedial programs, or 'special measures'.

Chapter 3 of the report examines issues surrounding Indigenous identity. These issues include how non-Indigenous definitions of 'Aboriginality' have been used by policy-makers to manage and control Indigenous peoples; the challenge faced by Indigenous youth of striking a balance between involvement in the Indigenous community and the mainstream Australian community; and the continuing impact of the historical treatment of Indigenous peoples in Australia. Young Indigenous people variously speak of being alienated from both black and white communities, of difficulty in coming to terms with the past, of living somewhere 'between two worlds', and being unable to find a point of balance.

The report then considers *identity rights*. That is, human rights principles that recognise and protect the distinct cultural characteristics of Indigenous peoples worldwide. The report considers relevant international human rights principles within the following two themes:

- i) the legitimacy of recognising cultural difference - principles of non-discrimination and minority group rights; and
- ii) requirements of 'effective participation' and self-determination.

The report argues that for reconciliation between Indigenous and non-Indigenous Australians to be lasting and meaningful it must involve the full recognition of identity rights.

Chapter 4 considers the human rights implications of the decision of the Northern Territory Government to abolish bilingual education programs for Aboriginal students in public schools.

Bilingual education is the teaching of children in traditional languages with English gradually becoming the main language of instruction. This process helps maintain Indigenous language, culture and identity, and improves Indigenous students' participation in the formal mainstream education system. It is an example of human rights principles in practice.

The philosophy behind bilingual education is strongly supported by educational research and international human rights principles such as the right to an education, the appropriate recognition of cultural difference and self-determination.

The report argues that the governments of the Northern Territory and the Commonwealth have a responsibility to support the principles behind bilingual education as a means to improving students' experience of and participation in the formal education system and supporting the maintenance of unique cultures and languages. Bilingual education programs have tangible long term benefits.

Chapter 5 examines sentencing laws in the Northern Territory and Western Australia which make detention mandatory for particular property offences.

The report:

Places concerns about mandatory detention laws within the context of long held, and widely accepted, concerns of Indigenous over-representation in criminal justice processes;

- reviews statistics on mandatory sentencing and the criminal justice system;
- outlines the key human rights principles applying to the mandatory sentencing debate; and
- identifies alternatives to mandatory detention.

Using case studies, the report analyses the disproportionate impact of mandatory sentencing laws on Indigenous youth in Western Australia and the Northern Territory. The report concludes that these laws are inconsistent with the widely-accepted aim of minimising Indigenous contact with the criminal justice system and are in breach of Australia's international human rights obligations.

The report also presents positive alternatives for dealing with Indigenous juvenile crime and highlights the number of times these recommendations have been made previously. It explains how these alternatives fit within international human rights standards and urges governments to give more urgent consideration to them.

The report recommends that:

WA and the NT should repeal the mandatory sentencing provisions. As they have chosen not to, the federal Parliament should exercise its constitutional power under section 51(xxix) of the Constitution (the external affairs power) to bring the law in WA and the NT within Australia's international obligations under CROC and the ICCPR. The passage of overriding legislation by the Commonwealth would send a clear message to the states and territories that they do not have unfettered power to introduce laws that further disadvantage indigenous Australians. It will also re-emphasise and focus states and territories on the fundamental imperative of the Royal Commission into Aboriginal Deaths in Custody, namely reducing the over-representation of Indigenous people in criminal justice processes (p169).

The introduction to the report also considers four key themes that currently dominate debate about the development of Indigenous policy at the national level and highlights the human rights concerns that they raise. The four themes are:

- Welfare dependency and mutual obligation;
- Accountability;
- Effective participation in decision-making; and
- Reconciliation.

The report argues that there are a number of human rights concerns about the welfare dependency and mutual obligation approach, namely:

It can reduce Indigenous disadvantage to an individual level and fail to recognise the broader, systemic nature of Indigenous disadvantage;

- It breaks down the process of redressing disadvantage into individual programs rather than taking as its frame of reference a broader systemic approach. The focus on individual programs is 'too narrow.' Dr Jonas states that policies that do not acknowledge the fundamental linkages between issues (land and health for example) 'stand a reduced chance of being effective in redressing Indigenous disadvantage'; and

- there is little acknowledgment, through this approach, that integral to the shift from welfare dependency is the empowerment of Indigenous Australians through the full recognition and equal enjoyment of their human rights – including ‘the right to self-determination, to participate in decisions that affect us, as well as having our cultural practices recognised and protected within Australian law.’

Similarly, while welcoming a government focus on accountability in Indigenous affairs, the report argues that a lack of coordination in funding and service delivery hampers the goal of improving Indigenous living conditions.

The report argues that accountability should be expected in every aspect of service delivery to Indigenous people, from all levels of government through to Indigenous organisations. In this regard, Australia’s international human rights obligations require governments to provide services and redress Indigenous disadvantage in culturally appropriate, non-discriminatory manner and with adequate consultation. This is to ensure the effective participation of Indigenous peoples, particularly in the design and delivery of services that affect them.

The report warns that ‘it is essential that the apparently objective aim of ensuring accountability is not used as a subterfuge for not addressing the legitimate and clearly expressed aspirations of Indigenous people. Indigenous people have a role in determining what is ‘a rational allocation of resources’.

The report also highlights that international scrutiny is a form of accountability:

A further and significant type of accountability of the federal government is to the international community through the upholding of human rights standards and compliance with treaties to which Australia is a signatory. These instruments reflect minimum standards of behaviour commonly accepted by the international community (p13).

The report also argues that the requirement of ‘effective participation’ of Indigenous people in decisions that affect them is essential to secure movement away from welfare dependency:

despite the apparent acceptance of the importance of this principle governments continue in most instances to act in a manner that conceives of it as aspirational rather than essential. The consequence of this is that Indigenous perspectives and concerns are able to be dismissed or outweighed when there is a contrary or competing set of interests (pp16-17).

Finally, the report considers the meaning of reconciliation. It argues that reconciliation must include recognition of rights to equality, non-discrimination and effective participation, and must give weight to the aspirations of Indigenous Australians:

A reconciliation process which is based on anything less than negotiation over these principles will join proposals such as the Social Justice Package as an empty, unfulfilled commitment to social justice for *all* Australians (p24).

### **Native Title Report 1999**

Under s.209 of the *Native Title Act 1993* (Cth), the Social Justice Commissioner is required annually to submit to the Attorney-General a report on the operation of the *Native Title Act* and the effect of the Act on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders.

The Native Title Report 1999 is the first by Dr Jonas. It was transmitted to the Attorney-General on 23 December 1999 and tabled in both Houses of the federal Parliament on 6 April 2000.

The report considers the implications of the March 1999 decision of the United Nations Committee on the Elimination of Racial Discrimination (CERD Committee) which found that the Federal Government’s 1998 amended *Native Title Act 1993* is in breach of Australia’s obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The report provides an overview of Australia’s obligations under CERD and how the CERD Committee operates. It provides a detailed analysis of the dialogue between the CERD Committee and the government in March 1999. This dialogue centred on discussion of the two fundamental requirements of the Convention, that parties to the Convention:

1. treat all people equally and in a non-discriminatory manner; and

2. ensure the 'effective participation' of Indigenous people in decisions which affect them.

The report notes that the government sought to justify the native title amendments by arguing that:

- past discrimination cannot be undone,
- the amendments do no more than validate past discrimination and so are not discriminatory in themselves, and
- the human rights obligation on effective participation is limited to consultation with Indigenous groups and does not require informed consent.

The Committee responded that:

- it is an obligation under CERD that past discrimination be redressed \_ in other words, equality must be given substance, it must be achieved in fact; and
- merely to consult with Indigenous groups as interested stakeholders does not meet the standard of effective participation which applies to issues, such as native title, which affect Indigenous people at a fundamental level. The Committee made it clear that unless the legislative regimes which affect native title are negotiated with Indigenous people the Committee will continue to scrutinise and criticise State parties at an international level.

The report argues that native title is a non-discriminatory recognition of Indigenous culture that, under CERD, Australia has an obligation to recognise and protect. The Report agrees with the reasoning of the CERD Committee which found that significant amendments to the *Native Title Act* withdrew the protection which the original Act extended to native title holders, and accordingly that the amended *Native Title Act* is racially discriminatory.

In determining that the amendments to the *Native Title Act* were discriminatory, the CERD Committee looked at the level of participation of Indigenous people in the formulation of the amendments, and whether the informed consent of Indigenous people was given. The report concludes, consistently with the CERD decision, that the standard required under the Convention is that of informed consent, and that the government did not meet this standard in formulating the native title amendments.

The Report then considers the two fundamental principles of the Convention in relation to the following aspects of the Native Title Act:

- the adequacy of the minimum standards which the Commonwealth requires state governments to comply with in their management of native title regimes;
- the impact of the registration test on native title claims; and
- the impact of the amendments to the *Native Title Act* in relation to Native Title Representative Bodies on the capacity of Indigenous people to participate in and determine the outcomes of the decisions which affect them.

The report expresses concern that the minimum standards which the Commonwealth presently applies to state-based native title regimes do not incorporate the human rights of Indigenous people as expressed through the principles of equality and effective participation.

The report examines the impact of the amendments to the registration test to be applied to most native title claims lodged since the inception of the NTA in 1994. The report states that the principle of equality requires that legislation protects native title from the destructive impact of mining and other developments. The level of protection is unacceptable if it fails to protect Indigenous culture and title to land.

The report concludes that the conditions of registration exceed those that, on a *prima facie* basis, satisfy a claim to native title at common law. The test is contrary to the principles of equality and effective participation established by the CERD Committee as the cornerstones of Australia's international obligations to Indigenous people.

The final chapter of the report examines the amendments to the NTA which have significantly altered the identity and functions of native title representative bodies.

Jurisdictional boundaries and eligibility criteria have been substantially amended and accountability requirements significantly changed. The range of functions for representative bodies has been greatly expanded. The report

examines the overall effect of the amendments from a human rights perspective and asks whether the amendments improve the capacity of Indigenous people to participate in and determine the outcome of decisions which affect them.

The chapter concludes that the emphasis for representative bodies is now on organisational transparency and accountability. The need to support and to develop appropriate organisational mechanisms is stressed but not at the expense of meaningful Indigenous participation at local national and international level.

The report concludes that the guiding principle of equality and effective participation have been eroded by the Government's amendments to the *Native Title Act* and diluted by an ever-expanding labyrinth of state legislation. The report urges an end to the divisive approach to Indigenous issues and calls for an acknowledgment that Indigenous people have a right to enjoy their cultural identity.

### **Promoting awareness and discussion of human rights issues**

The Social Justice Commissioner is required under section 46C(1)(b) of the *Human Rights and Equal Opportunity Commission Act* to promote discussion and awareness of human rights in relation to Aboriginal persons and Torres Strait Islanders.

On August 5-6 1999, the Social Justice Commissioner ran a two-day forum for 60 young Indigenous people aged between 15 and 30 years at Tranby College in Sydney.

The objectives of the forum were to:

- Promote discussion and awareness of Indigenous human rights and social justice issues from a young Indigenous perspective;
- Discuss and articulate attitudes and expectations of young Indigenous people towards issues of Indigenous identity and reconciliation between Indigenous and non-Indigenous Australians;
- Provide a forum for a dialogue between young Indigenous people and Indigenous leaders; and
- provide material for use by the Aboriginal and Torres Strait Islander Social Justice Commissioner in the performance of his statutory functions.

Participants were selected through a nomination and application process, with an emphasis placed on bringing together a diverse group of young Indigenous people, with geographical location, area of interest and expertise, age and gender balance all being taken into consideration.

A range of organisations and institutions around Australia were encouraged by the Social Justice Commissioner to nominate a young person to attend the forum. Applicants were also able to nominate themselves. Almost all interstate participants and those travelling to Sydney from regional areas gained support from their workplaces, or philanthropic and community organisations to meet the cost of their travel and accommodation.

The Council for Aboriginal Reconciliation generously contributed \$5000 towards the costs associated with the forum, and workshops and discussions held with the participants formed part of the Council's consultation process on the draft declaration and documents of reconciliation. Tranby Aboriginal College contributed greatly to the success of the forum by hosting it at their premises in Glebe, Sydney. Students of Tranby were also involved in the forum, and their participation counted towards their academic work.

Young Indigenous people at the forum had the opportunity to meet, question and speak with Indigenous leaders such as Dr Bill Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner; Christine Christophersen, Jabiluka activist and artist; and Evelyn Scott, Chairperson of the Council for Aboriginal Reconciliation.

Participants also had the benefit of the knowledge and experiences of young Indigenous leaders such as Trevor Dodds and Nancia Guivarra from ABC's Radio National; Caroline Barton from Koori Radio; film-maker Pauline Clague; Jason Field from the Department of National Parks and Wildlife; and Neva Collings from the Indigenous Law Centre.

The particular human rights and social justice issues discussed at the forum included education, juvenile justice and criminal law processes, the United Nations Draft Declaration on the Rights of Indigenous Peoples, Indigenous people and the media, identity, and reconciliation. Identity, education and reconciliation emerged as the major themes of the forum.

Discussions and perspectives put forward by the young people at the forum has informed the work of the Social Justice Commissioner. The 1999 Social Justice Report focused on youth issues and in particular, contained chapters on identity, education and a statistical profile of Indigenous young people, based on a presentation to the forum by Kate Ross and Tony Barnes of the Australian Bureau of Statistics.

### **UNICEF 10<sup>th</sup> Anniversary Conference on the Convention on the Rights of the Child**

To mark the 10<sup>th</sup> anniversary of the Convention on the Rights of the Child, the Tuscan Regional Authority, in co-operation with UNICEF and the Italian National Committee for UNICEF, held an international conference in Florence, Italy. The meeting specifically addressed the question of cultural diversity and discrimination by looking at the rights of children of minorities, immigrants and Indigenous peoples.

Elsie Fischer, an 18 year old woman from South Australia, was sponsored by the Social Justice Commissioner to attend the meeting. Elsie was a participant in the Indigenous Young People's Forum. The Australian Youth Foundation and an anonymous donor contributed to the costs of Elsie's travel.

Prior to leaving for Florence, Elsie met with Prime Minister Howard, Senator Aden Ridgeway and Senator Natasha Stott Despoja, who as a result put forward a three-part motion to the Senate, passed unanimously, recognising the anniversary of the Convention and expressing support for Elsie.

The involvement of Elsie contributed greatly to the proceedings of the conference. Elsie contributed to the Firenze Youth Statement, which encapsulated the outcomes of the conference. As the youth representative for Australia, Elsie presented the section on Poverty Issues, bringing to the conference her own perspective as a young Indigenous woman.

### **Reconciliation**

Under section 46C(4)(c) of the *Human Rights and Equal Opportunity Commission Act 1986*, the Social Justice Commissioner must have regard to the objectives of the *Council for Aboriginal Reconciliation Act 1991*. The Social Justice Commissioner has sought to promote an awareness of human rights issues through consultation with the Council for Aboriginal Reconciliation.

Dr Jonas has provided regular briefings to the Council's Secretariat on human rights issues, as well as highlighting the human rights dimension of the Council's work through participating in the Council's Document's Reference Committee. This Committee allowed Dr Jonas to attend full council meetings and to make contributions to the debate on the draft documents of reconciliation.

### **International activities**

Section 46C(3) of the *Human Rights and Equal Opportunity Commission Act 1986* states that in the performance of the Commissioner's functions, the Social Justice Commissioner may consult with international organizations and agencies. Section 46C(4) states that in the performance of the Commissioner's functions, the Commissioner must have regard to international human rights treaties to which Australia is a party, including the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights.

In accordance with these functions, Dr Jonas attended the United Nations in Geneva to observe the Committee on the Elimination of Racial Discrimination in their consideration of Australia's 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination.

Dr Jonas made a submission to the Committee on behalf of the Human Rights and Equal Opportunity Commission highlighting a range of matters concerning Indigenous people and race discrimination generally. The submission was based on material previously provided to the government.

In an informal briefing of the Committee, Dr Jonas highlighted four key areas of concern in relation to Australia's compliance with its obligations under the Convention in regard to Indigenous peoples:

#### **1) Native title**

Despite the Committee having found in March and August 1999 that the native title amendments are racially discriminatory, the States and territories have continued to introduce discriminatory legislation, under the authorisation

of the Commonwealth. Dr Jonas stressed that this meant that Australia was not just acting in contravention of the recommendations made by the CERD Committee in March and August 1999 (see discussion of Native Title Report above), it was further breaching its obligations under the Convention. In particular:

- Article 2(1)(a) of the Convention requires States parties to undertake not to engage in any 'act or practice of racial discrimination against persons... and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation'; and
- Article 2(1)(c) provides further that States 'shall take effective measures to review governmental... policies, and to amend, rescind or nullify any laws... which have the effect of creating or perpetuating racial discrimination wherever it exists.'

## **2) The lack of an entrenched guarantee against racial discrimination in Australian law**

Dr Jonas expressed concern that, despite the existence of the *Racial Discrimination Act 1975* (RDA), there still exists the capacity for the federal Parliament to introduce laws that discriminate on the basis of race. That they have done so twice in the past four years – first in relation to the removal of the protection of the RDA in relation to native title, and second through removing the protection of the Aboriginal and Torres Strait Islander Heritage Protection Act in relation to the Hindmarsh Bridge affair – raises concerns under Articles 1,2 and 5 of the Convention.

It also raises concerns under Article 6 of the Convention, which provides that 'States... shall assure to everyone within their jurisdiction effective protection and remedies... against any acts of racial discrimination.' There is no remedy against this discrimination, as the Australian legal system permits such laws.

## **3) Indigenous disadvantage**

Indigenous Australians remain the most disadvantaged of all Australians. There are clear disparities between Indigenous and non-Indigenous Australians across all indicators of quality of life. This disadvantage impacts on the lives of Indigenous people in a number of ways, including through contact with the criminal justice system and welfare services. The Royal Commission into Aboriginal Deaths in Custody concluded, for example, that the over-representation of Indigenous people in the criminal justice system is directly linked to their socio-economic disadvantage. This disadvantage raises concerns under Articles 2 and 5 of the Convention.

Dr Jonas noted that while there is government funding and programs aimed at redressing Indigenous disadvantage, they are clearly not sufficient to raise Indigenous people to a position of equality within Australian society. International human rights principles provide justification for giving higher priority to Indigenous disadvantage and for taking steps, or further steps, to redress this disadvantage and achieve equality of outcome across the full range of economic, social and cultural rights. Articles 1(4) and 2(2) of CERD require this.

## **4) Mandatory sentencing laws**

Dr Jonas noted that mandatory sentencing laws in the Northern Territory and Western Australia raise concerns under Articles 2 and 5 of CERD. In particular:

- The mandatory sentencing provisions target crimes that are generally committed by people from lower socio-economic backgrounds. In the Northern Territory and Western Australia this necessarily means Indigenous people. The limited statistics available show that since the introduction of mandatory detention in the NT there has been an increase in Indigenous women prisoners by approximately 225%. In WA, in the first year of operation of the laws, approximately 80% of juveniles incarcerated under these laws were Indigenous. This is despite their constituting less than 10% of the WA population. These laws have a clear disparate impact upon people of different races. They breach Article 2 and 5 of the Convention.
- In the NT, mandatory detention laws are coupled with the failure of the government to provide interpreter services in courts and medical services. Consequently, Indigenous people appear on mandatory detention charges without an interpreter and often do not understand the nature of the charges or why they are being imprisoned. This is a clear breach of Article 5(a) of the Convention.
- These laws have also been introduced against the background of the over-representation of Indigenous peoples in criminal justice processes and the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the Stolen Generations report. In June 1999 for example, for every 1 non-Indigenous person per 100,000 in corrections in WA there were 22 Indigenous people in corrections. In the NT, the rate for

- Indigenous people is approximately 14 times that for non-Indigenous people. Mandatory detention provisions are not consistent with the principal goals of the Deaths in Custody Royal Commission, namely to reduce the rate of over-representation of Indigenous people with the criminal justice system.

Dr Jonas noted that:

The ultimate message that I am delivering to you today - and while I have a responsibility to deliver it, I am still saddened to deliver it is that the issues that I have focussed on demonstrate a genuine lack of equality for Indigenous people within Australia. In terms of the Convention, they expose serious deficiencies in Australia's compliance.

The Committee on the Elimination of Racial Discrimination provided the Australian government with its concluding observations on 24 March 2000.<sup>4</sup> The Committee welcomed the adoption of various recommendations of the Royal Commission into Aboriginal Deaths in Custody, and expressed concern on the following issues affecting Indigenous peoples in Australia:

- The lack of an entrenched guarantee against racial discrimination (para 6);
- The failure of the Commonwealth government to ensure compliance of the states and territories with treaty obligations (para 7);
- The continuation of discriminatory practices in relation to native title, particularly the development of state native title regimes (para 8);
- The unsatisfactory response to the Committee's findings that the native title amendments are racially discriminatory (para 9);
- Proposed changes to the role and function of ATSIC and the Social Justice Commissioner (para 11);
- The progress of reconciliation, and the apparent loss of confidence of Indigenous people in the process (para 12);
- The inadequate response of the government to the recommendations of *Bringing them home* (para 13);
- Over-representation of Indigenous people in the criminal justice system (para 15);
- Lack of interpreter services for Indigenous people in court processes (para 15);
- The discriminatory impact of mandatory sentencing laws in the Northern Territory and Western Australia (para 16); and
- The extent of continuing discrimination and disadvantage faced by Indigenous people (para 18).

While in Geneva, Dr Jonas also met with a variety of people within the United Nations, including the Deputy High Commissioner for Human Rights; Secretary of the Working Group on Indigenous Populations; Special Rapporteur on Racism, Xenophobia and Other Forms of Racial Intolerance; members of the Committee on the Elimination of Racial Discrimination; and with other international organizations including the Anti-Racism Information Service; and the International Commission of Jurists.

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<sup>4</sup> UN Doc: CERD/C/56/Misc.42/rev.3. Available on the internet at: <http://www.faira.org.au/cerd.index.html>

## Research and educational programs

Under section 46C(1)(c) the Social Justice Commissioner is required to undertake research and educational programs for the purposes of promoting respect for, and enjoyment and exercise of, human rights by Aboriginal persons and Torres Strait Islanders.

### National Community Education Program - Tracking Your Rights

*Tracking Your Rights* was developed in response to recommendation 211 of the Royal Commission into Aboriginal Deaths in Custody, which called on the Commission, and State Anti-discrimination Commissions, to further programs to inform the Aboriginal community about anti-discrimination legislation and how to use it. The package aims to transfer information about anti-discrimination laws to Aboriginal and Torres Strait Islander people so that they know their legal rights and can thereby facilitate the successful resolution of community and individual conflicts.

Tracking Your Rights was launched in January 1998. The implementation of the program relies heavily on coordination with the states and territories, and a number of initiatives is currently in place to promote the program in each state and territory.

The Commission entered into a memorandum of understanding with the Commonwealth Public Service and Merit Protection Commission (PSMPC) for the conduct of training of the *Tracking Your Rights* package for Commonwealth public servants. A national select tender was conducted by HREOC and the PSMPC, and a pool of appropriate training providers with national coverage was selected.

During the reporting period, the PSMPC conducted two *Tracking Your Rights* training programs. The first was held in March and the second in June 2000. Further courses are planned in the coming year, including through regional offices of the PSMPC.

The South Australian Government have played a critical role in implementing *Tracking Your Rights* in that State. Following a launch of the resource in April 1999, the Office of the Commissioner for Public Employment has continued to promote the program and the South Australian Equal Opportunity Commission (SAEOC) conducted two one-day pilot *Tracking Your Rights* in Port Lincoln in June 2000. The SAEOC is currently planning further pilots in Port Augusta.

Negotiations are also under way between the SAEOC and the SA Department of Correctional Services for delivery of the course. The Department of Human Services has also contracted Tauondi College to pilot a *Tracking Your Rights* course during the year and, at the time of writing, were considering its implementation on a more systemic basis.

The Anti-Discrimination Commission, Queensland (ADCQ), has also been funded by the Queensland government to prepare the Queensland component of the *Tracking Your Rights* manual. Tranby College in New South Wales has also received a grant from the Department of Aboriginal Affairs for delivery of the program.

### National Indigenous Legal Studies Curriculum

The National Indigenous Legal Studies Curriculum was developed in 1996 to increase the level of human rights and legal education and training available to Aborigines and Torres Strait Islander peoples, particularly those working as Aboriginal Field Officers in legal services.

As at 30 June 2000, there are seven registered training organisations licensed to use the curriculum. The Institute for Aboriginal Development have also been conducting the course on a trial basis to a number of Aboriginal students in years 11 and 12 of Centralian College and Alice Springs High School. The initiative is endorsed by the Northern Territory Department of Education.

### Collaboration with state and territory equal opportunity and anti-discrimination commissions

In December 1999, HREOC Commissioners and the state and territory equal opportunity Commissioners agreed to work collaboratively on three projects relating to Indigenous peoples:

- Education on issues relating to Indigenous Australians;
- Implementation of 'Tracking Your Rights' program; and

- Examining processes for racial discrimination complaints and Indigenous Australians.

Dr Jonas has carriage for the first two projects, and Ms June Williams, Anti-Discrimination Commissioner of Western Australia, the third.

### **Examining enactments for compliance with human rights principles**

Under section 46C(4) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), the Social Justice Commissioner may examine and report on enactments and proposed enactments to ascertain whether or not they recognize and protect the human rights of Aboriginal persons and Torres Strait Islanders.

The Social Justice Commissioner has sought to fulfill this role through submissions to parliamentary inquiries, as well as by providing briefings on the work of the Commission to various parliamentary committees.

### **Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund - Inquiry into CERD and the Native Title Amendment Act 1998**

The Social Justice Commissioner made a written submission to the Committee on 3 May 2000 and appeared before the Committee on 22 February 2000. The Submission addresses the three terms of reference of the Inquiry, namely;

- whether the finding of the Committee on the Elimination of Racial Discrimination (CERD Committee) that the *Native Title Amendment Act 1998* is inconsistent with Australia's international legal obligations, in particular the Convention on the Elimination of all Forms of Racial Discrimination, is sustainable on the weight of informed opinion;
- what amendments are required to the Act, and what processes of consultation must be followed in effecting those amendments, to ensure that Australia's international obligations are complied with; and
- whether dialogue with the CERD Committee on the Act would assist in establishing a better informed basis for amendment to the Act.

The submission states that the test of whether native title is treated equally to non-Indigenous title under the CERD is a substantive test, namely whether the protection extended to native title by the legislation is the same as the protection extended to non-Indigenous title. The government, in both its oral and written submissions, accepted that, at international law, substantive equality is the relevant standard.

The submission further states that in applying the test of equal protection to the amended NTA, it is clear that native titleholders are not protected to the same degree as non-Indigenous titleholders. The submission points out that in all the situations in which there is a conflict or potential conflict between the interests of native titleholders and the interests of non-Indigenous titleholders, the amended NTA ensures that the interests of non-Indigenous titleholders prevail.

The submission rejects the government's proposition that the CERD permits discriminatory treatment so long as such treatment is reasonable and has a legitimate purpose. Discriminatory treatment cannot be justified by reference to the objective of providing certainty to non-Indigenous titleholders or by reference to the purpose of balancing the interests of all stakeholders.

The submission is available on the HREOC website.

### **Senate motion regarding mandatory sentencing**

On 13 April 2000 the Senate passed a motion requesting that HREOC inquire into all aspects of:

- I. the agreement between the Northern Territory government and the Commonwealth regarding the Territory's mandatory sentencing regime;
- II. the consistency of mandatory sentencing regimes with Australia's international human rights obligations; and
- III. Western Australia's mandatory sentencing regime.

The Senate requested that HREOC report on (i) within 4 weeks; and (ii) and (iii) within 12 months.

The Commission responded to part (i) of the Senate's request by letter dated 3 May 2000. The Commission expressed disappointment that under the deal between the Northern Territory and Commonwealth governments, mandatory detention laws are retained. The Commission commended the raising of the age of majority from 17 to 18 years, and encouraged Queensland and Victoria to follow suit. The Commission also supported announcements for greater use of diversionary programs, the funding of an Indigenous interpreter service and attempts to improve coordination in service delivery.

However, the Commission also noted that the success or appropriateness of these initiatives would depend on the detail of the agreement. The Commission encouraged the two governments to ensure that the diversionary programs introduced complied with international standards as well as recommendations previously made by the Commission in the *Bringing them home* and *Seen and Heard* reports.

In relation to parts (ii) and (iii) of the motion, the Commission indicated that the Social Justice Commissioner intends to undertake the following project over the next twelve months:

- assess the continued impact of mandatory sentencing laws in the Northern Territory and Western Australia on Indigenous Australians;
- assess the impact on Indigenous Australians of the additional discretion placed in the Northern Territory Police; and
- develop a methodology against which to assess the appropriateness and success of diversionary schemes in the Northern Territory and Western Australia, and assess these schemes on this basis.

Dr Jonas stated that:

The development of a methodology against which to assess the appropriateness and adequacy of the Northern Territory and Western Australian schemes will also form the basis of further consideration of diversionary programs for Indigenous youth in other states and territories. Such consideration could significantly enhance the development of best practice models for Indigenous youth in juvenile justice processes Australia-wide.

### **Senate Legal and Constitutional References Committee - Inquiry into the stolen generation**

The Commission made a submission to this inquiry on 8 June 2000. The submission considered terms of reference 1 of the inquiry, namely the adequacy and effectiveness of the federal government's response to the recommendations of *Bringing them home*.

The submission identifies three principles for evaluating the adequacy of the government's response:

- national coordination and leadership;
- addressing forcible removal issues within a human rights framework; and
- ensuring the 'effective participation' of Indigenous people in decisions that affect them.

The submission concludes that:

The Commission is of the view that the Commonwealth government's response to date has been inadequate and inappropriate. The Commission particularly notes that the government's submission to this inquiry constitutes a fresh response to many of the recommendations of *Bringing them home*, which rejects several recommendations of report on the basis of flawed arguments and poor reasoning.

The Commission is of the view that the government has not provided any sound arguments for failing to implement the recommendations of the report. The Commission reiterates that the recommendations constitute the minimum acceptable policy response to the separation of Aboriginal and Torres Strait Islander children from their families.

The first section of the submission provides comment on the government's response to particular recommendations of *Bringing them home*. The second section examines the government's submission to the Senate inquiry and rejects the reasoning of the government in relation to issues of compensation, reparation and the violation of human rights. It also

corrects misrepresentations by the government of the methodology of the *Bringing them home* report. The final section provides international examples of governmental responses to gross violations of human rights, which demonstrate that the Australian government is out of step with international practice in responding to violations of human rights.

The submission is available in full on the HREOC website.

### **Aboriginal and Torres Strait Islander Heritage Protection Act \_ Submission regarding Boobera Lagoon**

The Social Justice Commissioner made a submission to a review of the commencement date of the declaration made under s10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act* 1984 in relation to Boobera Lagoon. The submission expressed concern that any further delay of the declaration, originally made on 24 December 1998, would result in the desecration of the Lagoon as the sacred site of the Rainbow Serpent. The submission also points out that permitting the lagoon to be used as a recreation site for water skiers for a further two years shows a lack of respect for the cultural and spiritual significance of the area to the Indigenous community involved and constitutes a breach of international human rights instruments to which Australia is a signatory.

Provisions which require the protection of minority rights, provisions which promote equality on the basis of race, and provisions which protect freedom of religious practice are integral to Australia's duty to protect indigenous cultural heritage. In addition to this duty, these instruments also require the effective participation of Indigenous people in decisions which effect them.

Australia has extensive human rights obligations to protect Indigenous heritage. These are violated by any delay to the protection promised by the declaration in 1998.

On 28 June 2000 Senator Hill decided to postpone the protection of Boobera Lagoon for a further two years to 1 May 2002.

### **Speeches**

Attached is a selection of speeches, seminars and presentations made by Commissioner Jonas in the reporting period. Selected papers are available on the HREOC website.

**Keynote address to the Model United Nations Conference**, Sydney University.  
12 July 1999.

**Address to the NSW Reconciliation Convention**, Wollongong.  
14 August 1999.

**Address to Human Rights and Sport Conference: 'How You Play the Game: The Contribution of Sport to the Protection of Human Rights'**, Bondi. 1 September 1999.

**Address to the Institute of Australian Geographers Annual Conference**, Sydney.  
28 September 1999.

**Address the Australian Institute of Criminology Conference**, Best Practice Interventions in Corrections for Indigenous People on Indigenous Community Expectations of Best Practice Interventions in Corrections, Adelaide. 14 October 1999,

**Address to the Geelong Catholic Social Justice Committee on Human Rights: Indigenous Australians Current and On-Going Issues**, Geelong. 20 October 1999.

**Address Environment Australia, State of the Environment Advisory Committee**, Canberra.  
8 November 1999.

**Address the Aboriginal Anti-Discrimination and Equal Opportunity Conference on Racial Discrimination and the Native Title Amendment Act**, Sydney. 11 November 1999.

**Address the ACOSS Congress on A New Deal for a New Century \_ Justice for Indigenous Australians**, Sydney.  
11 November 1999.

**Address the Link-Up, National Bringing Them Home Conference, The Spirit of Family Our Future/Our History The Stolen Generations, Friend or Foe \_ The Government's Role**, Gold Coast, Queensland. 23 November 1999.

**Launch of "Too Much Wrong": A Report on the Death of Edward James Murray**, Sydney. 26 November 1999.

**Address Australian Local Government Association's National General Assembly on Social Justice for All**, Canberra. 29 November 1999.

**Address the Southern Cross University, Indigenous Human Rights Conference \_ 'The legitimacy of special measures'**, Ballina. 11-13 February 2000.

**Launch of Maitland's Heritage Month Celebrations and Opening of the Yinarr Baran Bali Exhibition**, Mindaribba Local Aboriginal Land Council Community Centre, Maitland.  
29 March 2000.

**Address the NSW Department of Aboriginal Affairs \_ Aboriginal Seniors Yarn Up Conference on Our Rights and Responsibilities as Older People**, Eagle Hawk Hill, Canberra. 1-3 May 2000.

**Address the NSW Community Legal Centres Conference \_ Searching for justice, 'Searching for justice, the challenges ahead'**, Sydney. 3-9 June 2000.

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# Disability Discrimination Commissioner

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Disability Discrimination Commissioner Susan Halliday has been the acting Disability Discrimination Commissioner since 1999. This is in addition to her duties as the Sex Discrimination Commissioner.

## Deputy Disability Discrimination Commissioner

Mr Graeme Innes AM commenced work in October 1999 on a part time basis as Deputy Disability Discrimination Commissioner, among his other work for the Commission as inquiry commissioner and for a number of other tribunals. This position has been created and funded by the Commission using internal savings made in the Commission's disability policy area, principally by exploiting the capacities of the internet for greater efficiency and economy in a number of the Commission's processes.

The Deputy Commissioner position was established to

- advise and assist the Disability Discrimination Commissioner (or other member or officers of the Commission responsible from time to time for disability discrimination complaints) with exercise of functions and powers regarding Disability Discrimination Act complaints, including conduct of inquiries into disability discrimination complaints;
- advise and assist the Disability Discrimination Commissioner in promotion of compliance with and awareness of the Disability Discrimination Act;
- assist the President with conduct of the reference from the Attorney-General on access to electronic commerce for older Australians and people with a disability.

## Research and policy

### Access to electronic commerce reference

"New technology and e-commerce are already benefiting older Australians and people with a disability, and have enormous potential to do more. The digital divide can continue to be narrowed, helped along by the efforts of government, business and community groups." Graeme Innes AM, Deputy Disability Discrimination Commissioner, releasing the Commission's report.

The report on this reference was tabled by the Attorney-General on 8 June 2000. Press releases welcoming the report and undertaking to take implementation actions were issued by the Attorney; the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts; the Australian Bankers Association; the Australian Internet Industry Association and the Australian Tax Office.

The report welcomes advances made by internet service providers, banks and the Federal Government in combating serious access problems faced by older Australians and people with a disability. These problems are common to services provided by many industries including government, financial services, retailers, communications companies and web service providers. The report found that some older people and people with disabilities face a number of problems in using financial services in bill-paying and phone-based facilities as well as significant barriers to accessing the world-wide web.

Recent statistics released by the Australian Bureau of Statistics highlight a digital divide affecting older Australians in particular, although also indicating that the gap is narrowing in some areas of financial and retail services.

The report noted that for some people with disabilities, these systems are experienced as a great advance in access to information and services. The self service model cannot be expected to suit all users, and may present serious access barriers to some people with disabilities, but for other people availability of this model represents independence and equality.

In conducting research for the Inquiry the Commission consulted with a number of key e-commerce service providers including the internet and banking industries and with peak disability and older persons' groups. A particularly significant outcome is the agreement by the Australian Bankers Association to formation of a joint working party to

progress access issues identified in the report for the banking industry. The Internet Industry Association plans to run an awareness campaign among members to promote better access to web-sites and Internet-based services.

The report, press releases and other documents are available on the Commission's internet site.

### **Public inquiries into complaints**

In 1999 the Disability Discrimination Commissioner began applying public inquiry processes to the investigation of complaints in appropriate cases, including use of the internet for distribution of notices of inquiry and receiving and publishing submissions. This approach has been applied where the subject matter

- requires consideration of interests of, and information from, persons or organisations beyond the immediate parties to the complaint for the purpose of identifying appropriate options for resolution of the matter by the parties or decisions by the Commission;
- involves inquiry into issues of public or social policy rather than principally concerning allegations regarding individual behaviour;
- can be investigated openly without unreasonable disclosure of personal information or breach of other duties of confidentiality.

Application of this approach in appropriate cases also has potential benefits in promotion of awareness of and compliance with the legislation.

The President decided on assuming responsibility for complaint handling in April 2000 to continue this approach on a trial basis. Results in the limited number of matters where this approach has been applied to date have been encouraging.

### **Captioned movies**

The Disability Discrimination Commissioner commenced in 1999 a public investigation into complaints regarding lack of provision of cinema captioning for deaf and hearing impaired viewers. After receiving submissions from interested parties the Commissioner convened and chaired a public forum in February 2000 to progress the matter. Representatives from major movie exhibitors, movie distributors, deaf and hard of hearing advocacy groups and service organisations, and the captioning sector attended. Movie exhibitors and distributors agreed to develop a proposal on how to improve access for deaf and hard of hearing movie patrons in consultation with the hearing advocacy groups and others in attendance. After a further meeting in April 2000 a process of trials of open captioned movies were agreed upon to process assessment of available captioning technologies.

The Commission is pleased to have been able to facilitate these co-operative processes between industry and consumers. The innovation of applying a public inquiry approach to the complaint investigation process has assisted in achieving an industry wide approach and in ensuring that all interested parties have an opportunity to receive and contribute relevant information and perspectives.

### **Closed captioning: broadcast television**

In 1999 the Disability Discrimination Commissioner commenced a public inquiry into complaints regarding limited provision of captioning for deaf and hearing impaired viewers on broadcast television. Submissions in this process have been made publicly available through the internet for the information of interested parties and to assist the Department of Information Technology, Communications and the Arts in preparation of captioning standards under the Broadcasting Services Act.

The Commission's update paper on this inquiry in March indicated a view that the Disability Discrimination Act would not be displaced as a matter of law by the introduction of captioning standards under the Broadcasting Services Act, but that depending on their content such standards (when made) could be accepted as adequately remedying the subject matter of complaints in this area. Standards under the Broadcasting Services Act as yet do not exist and the Commission is now considering what further action would be appropriate on these complaints.

### **Public transport: Sydney Cityrail station access**

In July 1999 the Commission received a representative complaint under the Disability Discrimination Act lodged on behalf of people who use wheelchairs regarding current lack of accessibility of Summer Hill railway station, and seeking implementation of accessibility at that station in the 1999-2000 financial year.

After a public process of issuing a notice of inquiry and taking submissions the Disability Discrimination Commissioner decided to exercise the power to decline to deal further with the complaint. (As of April 13, 2000 this power is now vested in the President).

The Commissioner said:

CityRail's EasyAccess program commitments for achieving physical accessibility of CityRail stations, and current progress in implementation, follow the first five year target set out in the draft Disability Standards for Accessible Public Transport fairly closely.

For the purposes of this complaint I regard achievement of accessibility of stations at, or close to, the rate contemplated by the draft Standards as an adequate remedy.

This means that I regard a complaint about a particular station as adequately remedied by an acceptable overall rate of achievement of accessibility of stations, whether or not the particular station is first on the list of stations to be made accessible.

The Commission is not best placed to judge issues of priority of one station over another within an overall program where acceptable progress is being made. If it is accepted that not every station can be made accessible immediately, in my view the DDA has very little bearing on which stations should be upgraded first. These are more appropriately seen as issues for decision through political processes and for determination by transport operators.

She also noted that

... this decision does not preclude future complaints regarding access to this or other stations if progress in implementation of the Easy Access program does not continue at the projected rate in line with that contemplated by the draft Standards, or if the most recent commitments regarding Summer Hill station specifically are not met.

Likewise, this decision does not preclude complaints on other physical access issues which may arise regarding boarding and disembarking from trains (including in relation to needs for assistance), or other issues affecting access to rail services (including access to announcements, timetables and other information).

### **Electoral access**

A public inquiry into an individual complaint regarding a range of barriers to accessibility in recent local government elections led to the complaint being conciliated, with agreement by the parties to the establishment by the Australian Electoral Council \_ of which all Electoral Commissions are members \_ of a committee, including the Commission and community representation, to develop a standard definition for access, and set benchmarks for its achievement over a period of years. The Commission met in June 2000 with representatives of the Australian Electoral Council to discuss terms of reference for this committee. This outcome and the open nature of the process leading to it have been widely welcomed by disability community organisations.

### **Telecommunications**

Interference from digital mobile phones can be so severe that some people who use hearing aids are unable to use them and can therefore be denied access to mobile phone services. In September 1999 the Commission, in consultation with relevant parties, announced a public inquiry into the issue, prompted by a representative complaint made under the Disability Discrimination Act on behalf of people who use hearing aids or cochlear implants.

The inquiry has provided a forum for exchange of community and industry views about better access to solutions and for clarifying the responsibilities of service providers and mobile phone suppliers. The report finalising this inquiry is planned for July 2000.

### **Access to premises**

As in previous years the Commission has continued to give a high priority to issues of access to premises in view of their prominence in complaints, frequent requests for information and advice, and an increasing tendency for approaches to be made to the Commission (whether by way of formal exemption application or less formally) as part of building or development approval processes.

Like other interested parties the Commission recognises that the main avenue for progress in improving accessibility of buildings is the process of revision of the Building Code of Australia by the Australian Building Codes Board towards a level suitable for recognition as complying with the Disability Discrimination Act, including through endorsement as a Disability Standard under the Act. The Commission has assisted the Board to this end through its membership of the Board's Building Access Policy Committee. Progress in this process has been slow thus far and significant matters remain unresolved.

Pending this, the Commission has been seeking to develop appropriate measures to enable all parties to deal with their rights and responsibilities in this area. The Commission commenced discussions in April 1999 with local government representatives about possible responses to the Federal Court decision in *Cooper v HREOC and Coffs Harbour Council*, which exposed councils to significant liability under the Disability Discrimination Act for permitting actions subsequently found to be unlawful discrimination, even where they make reasonable decisions in approving building or development applications. In June 1999 the Commissioner issued for consultation a draft policy on exercise of relevant powers under the Act to decline complaints where an appropriate alternative remedy is available or has been provided through local government procedures. The Commission did not proceed with this policy in view of responses received – some of which condemned the proposal for doing too much, some for not doing enough, but few expressing support.

An alternative path in response to *Cooper v HREOC* would be for local government authorities to seek exemption from potential liability under the Disability Discrimination Act in relation to building or development approvals, using the mechanism in section 55 of the Act. To be considered, applications for exemption would need to demonstrate to the Commission that the objects of the Act would be advanced by allowing local authorities to apply their own appropriate procedures and criteria to relevant decisions free from potential liability under the Act. To date no applications in these terms have been made.

### **Sterilisation**

The Commission has participated in meetings of the Special Medical Procedures Committee of the Family Court which is working to develop guidelines to be applied when sterilisation procedures are proposed to be carried out on young women with intellectual disabilities.

## **Promotion of awareness, understanding and compliance**

### **Use of internet and public processes**

Internet usage continues to help increase efficiency in the Commission with regard to reduced resources in disability rights policy work while pursuing increased effectiveness. The position of Deputy Disability Discrimination Commissioner has been funded principally by savings achieved by use of the internet as the principal publication and communications medium.

Public use of the disability rights area of the Commission's internet site continues to increase rapidly. For example, there were 4108 hits on the disability rights index page (in its graphics and text only forms) in May 2000, compared to 2440 in May 1999.

### **Guidelines**

Guidelines and advisory notes are available on a number of issues under the Disability Discrimination Act through the Commission's internet site and on request. The Commission has indicated it will take these guidelines and notes into account in complaint handling and in decisions on exemption applications. They are

- Advisory Note on public transport;
- Insurance and Superannuation Guidelines;
- Advisory Notes on Access to Premises; and

- World Wide Web Access (updated May 1999 to take into account the latest recommendation from the World Wide Web Consortium).

The Commission also maintains Frequently Asked Questions materials on a number of areas covered by the Disability Discrimination Act. These materials draw on responses to individual enquiries as well as the Commission's complaint handling experience, participation in policy processes and relevant court and tribunal decisions. In particular, extensive Frequently Asked Questions materials are available regarding employment.

## **Exemptions**

Under section 55 of the Disability Discrimination Act the Commission has power to grant temporary exemption from provisions of the Act which make discrimination unlawful. The Commission's policy on exemption applications is obtainable on the Commission's Internet site or on request.

When the Act was introduced Disability Standards were envisaged as the main mechanism for managing the process of transition over time from discriminatory and inaccessible systems and environments to inclusive, accessible non-discriminatory systems and environments. Particularly, given delay in and in some cases poor prospects for adoption of Standards, the Commission views the temporary exemption mechanism as important for the same purpose and as capable of wider application than it has received to date.

However, the Commission has made clear in a number of decisions that the exemption mechanism is not appropriate for use simply to provide a shield against complaints (including on unjustifiable hardship grounds) without some reason to conclude that granting an exemption would advance the objects of the Act.

Pursuant to the Commission's policy on exemptions under the Disability Discrimination Act, consideration of exemption applications is open to public participation, through publication on line of the Commission's notice of inquiry and details or text of applications and also of submissions from interested parties so that the public has access to a full range of views.

## **Applications decided**

*W.A. Firearms Act:* The Commissioner of Police for Western Australia applied for an exemption concerning decisions to refuse permits or licenses under the Firearms Act 1973 (WA) and related matters. After issuing a notice of inquiry which canvassed options for and against such exemption, the Commission decided in May 2000 not to grant it. In the Commission's view an exemption had not been shown to be required, since complaints regarding legitimate decisions and actions can be expected to be declined under the DDA as not unlawful, or as more appropriately dealt with through the appeal procedure under the Firearms Act.

*Gladstone Touch Association:* The Commission decided in September 1999 to grant an exemption to the Gladstone Touch Association. The exemption for a period of five years was granted from section 23 of the Act (regarding access to premises), and also from sections 24 (provision of goods, services and facilities) and 27 (clubs and associations) to the extent that they relate to lack of ramp access to upper level additions to the premises concerned, on condition that the Association report to the Commission within three years from the date of this decision on progress towards provision of access to its premises. The Commission accepted that granting an exemption in this case would promote the object of the Act to eliminate discrimination as far as possible, taking into account the recognition by section 55 of the Act that achievement of non-discriminatory access may need to occur over a period of some years; the submission by the applicant that it lacked sufficient financial means to provide access at present but was committed to raising funds for provision of access to the proposed facility by 2004, and that local government approval to permit the development to proceed will not be forthcoming without some form of certification that requirements under disability discrimination legislation have been addressed; and the lack of any contrary views received in response to the release of a proposal to grant this exemption.

## **Applications awaiting decision**

*Regional Airlines Association:* The Commission presently has before it an exemption application from the Regional Airlines Association of Australia (RAAA) regarding access to small aircraft by persons using wheelchairs and similar mobility aids.

A notice of inquiry has been issued and submissions taken. Further action on this application is being held pending further advice from the applicants.

*Kendell Airlines:* One of the members of the RAAA, Kendell Airlines, submitted its own application more recently supported by material additional to that in the RAAA application including an action plan under the Act.. The Commission wrote to the airline in June 2000 seeking responses to a number of issues raised in submissions prior to making a decision on this application.

*Olympic Roads and Transport Authority:* In May 2000 the Commission received an exemption application from the Olympic Roads and Transport Authority (ORTA) on its own behalf and on behalf of other relevant government agencies in New South Wales, the Australian Capital Territory, Queensland and Victoria as specified in the application; Bus 2000 Ltd, a company established to procure (under contract with ORTA) the required numbers of buses, coaches, drivers and support staff for the Olympic and Paralympic bus task; and public and private bus operators in New South Wales, the Australian Capital Territory, Queensland, South Australia and Victoria from whom ORTA will be procuring accessible buses during the Olympic and Paralympic Games periods.

The exemption was sought for the period of ORTA's operations in connection with bus transport services for the Olympic and Paralympic Games, that is from 2 September 2000 to 4 November 2000, a total period of 9 weeks. The purpose of the application was to protect bus operators, ORTA and other parties concerned from liability which might otherwise arise from the temporary transfer of accessible buses from other services to Olympic and Paralympic related services.

The Deputy Disability Commissioner issued a notice seeking comment on a proposed recommendation to the Commission to grant the exemption, on the basis that

- If an exemption is not granted, bus operators who have brought accessible vehicles into operation face a potential liability (in making those vehicles available to ORTA and therefore temporarily withdrawing them from other services) which is not faced by operators who have not made the same progress in providing non-discriminatory services (and who therefore have no such vehicles to provide to ORTA). It is appropriate for the Commission to use its exemption power to ensure that the DDA provides incentives rather than disincentives to measures to achieve access and equality.
- The potential complaints under the DDA which this exemption would preclude would, in essence, be concerned with *which services* accessible buses should be applied to in the relevant period, rather than with *whether and at what rate* operators should be required to acquire and deploy accessible vehicles. I endorse the view previously expressed by the Commission, in its reasons for granting an exemption regarding Melbourne trams, and by the Disability Discrimination Commissioner, in her decision on a complaint regarding access to Summer Hill railway station, that the Commission is not best placed to decide issues of allocation of accessible services as between different locations. The objects of the DDA are best served if these issues of allocation are determined by operators in consultation with users of services.

Submissions closed on 13 June 2000 and the Commission granted the exemption for the above reasons.

*Cattle Camp Motel:* Submissions closed on 5 May 2000 on an exemption application regarding accessibility of proposed demountable units at a rural Queensland motel, affected by flood height requirements. The applicant has been asked to respond to a number of issues raised in submissions. Further action in this matter awaits this response.

*Infinity (Gold Coast):* The Commission issued a notice of inquiry on this matter calling for submissions by 22 June 2000. The application concerns access limitations of a proposed entertainment venue. The notice of inquiry indicated that the matter appeared to be in the same category as a number of applications previously refused by the Commission and requested comment on a proposal to refuse the application accordingly.

No comments were received and the Commission refused the exemption.

*Wild Bunch Florists:* Submissions closed on 23 June on an application for exemption from liability under the Act, for a period of five years, regarding lack of wheelchair access to premises in King William Street Adelaide.

The Commission refused the exemption because there was no substantial prospect of an unlawful act occurring if the exemption was not granted.

## **Review of decisions**

Persons whose interests are affected by a decision on an exemption application may seek to have the Commission's decision reviewed by the Administrative Appeals Tribunal. An application for review of the Commission's decision made in March 1999 regarding physical access to Melbourne trams was before the AAT as at the time of writing.

## **Action Plans under the Disability Discrimination Act**

As at 20 June 2000, 170 plans were registered with the Commission, comprising 36 business, non-government and government business enterprises, 31 Commonwealth government, 18 State government and 59 local government organisations, and 29 education providers. The register of Action Plans, and plans provided electronically to the Commission, are available through the Commission's internet site. This assists other organisations interested in developing their own plans and individuals interested in assessing the effectiveness and implementation of an organisation's Action Plan.

## **Legislative reform and assessment**

### **Disability Standards**

The Disability Discrimination Act provides for "Disability Standards" to be made by the Attorney-General in specified areas, which currently include accommodation, administration of Commonwealth laws and programs, education, employment and public transport. Contravention of a Disability Standard is unlawful under the Act.

The Commission supports adoption of Disability Standards as offering potential to increase certainty and clarity of rights and responsibilities for relevant parties.

The Commission has a function under the Disability Discrimination Act to advise the Attorney-General regarding the making of standards. To date the Commission has performed this function by practical participation in standards development processes rather than by way of formal reporting.

### **Access to premises**

The Commission welcomed the amendment by the Human Rights Legislation Amendment Act 1999 of section 31 of the Disability Discrimination Act to allow for the development of a Disability Standard on access to premises. This would permit adoption under the Act of content developed by the mainstream building regulatory regime and would provide industry, local government and other parties with a clearer and more coherent set of rights and responsibilities. As noted under Research and Policy, the Commission has been working extensively with the Australian Building Codes Board for this purpose.

### **Education**

The Commission is not directly involved in the development of draft Disability Standards on education by a taskforce of the Ministerial Council on Employment, Education, Training and Youth Affairs. It is providing advice to participants on request. The Commission understands that the taskforce intends to make draft Standards available for consultation in 2000.

### **Employment**

Previous annual reports have detailed extensive positive work by the Commission, business, industry and community groups towards the development of employment standards. The Commission has not however, regarded as a priority, further work towards standards on employment given the barriers and lack of consensus for proceeding. This view also takes into account the "difficulty" of securing adoption of standards even if and where (as with public transport) a standard is drafted with clearer industry and community support, endorsed by Ministers, and has passed the extensive and resource intensive Regulation Impact Statement processes required.

### **Public transport**

The Federal Department of Transport advised in April that a proposal for adoption of the draft Disability Standards for Accessible Public Transport (with some revisions taking account of the Regulation Impact Statement process conducted from 1996 to 1999) had been prepared and at the time of writing was being considered by government.

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# Human Rights

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## Human Rights Commissioner

Chris Sidoti took up his appointment as Human Rights Commissioner in 1995. His five year term expires on 13 August 2000.

The Human Rights Commissioner's functions include

- promotion of public understanding, acceptance and discussion of human rights
- investigation and conciliation of complaints of discrimination in employment and of human rights violations by or on behalf of the Commonwealth
- reporting to the Attorney-General and Parliament on human rights complaints which could not be conciliated
- advising the Attorney-General and Parliament on action needed to ensure Australia's compliance with its human rights and non-discrimination undertakings, including through legislative amendment
- preparation of guidelines for the avoidance of human rights breaches.
- The Commission's human rights responsibilities flow from
- the *International Covenant on Civil and Political Rights*
- the *Convention on the Rights of the Child*
- the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*
- the *Declaration of the Rights of the Child*
- the *Declaration on the Rights of Mentally Retarded Persons*
- the *Declaration on the Rights of Disabled Persons*.
- Its employment discrimination responsibilities are based on the ILO *Discrimination (Employment and Occupation) Convention* (ILO 111).

## Education and promotion

### Human rights in rural and remote Australia

The experience of people in rural and remote Australia has always featured prominently in the Commission's work. During the reporting year the Commission undertook two major projects addressing the human rights of children and young people in rural and remote Australia.

### Rural and Remote Education Inquiry

The Commission's National Inquiry into Rural and Remote Education commenced in February 1999 in response to the Human Rights Commissioner's *Bush Talks* consultations ([http://www.hreoc.gov.au/human\\_rights/rural/bushtalks](http://www.hreoc.gov.au/human_rights/rural/bushtalks)) which identified education as a serious concern in rural Australia. Every child has the right to education (CROC article 28) without discrimination including discrimination on the ground of race or disability (article 2). That education should be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential among other objectives (article 29).

The terms of reference directed the Inquiry to examine the provision of education for children in rural and remote Australia with reference to

- the availability and accessibility of both primary and secondary schooling
- the quality of educational services, including technological support services, and
- whether the education available to children with disabilities, Indigenous children and children from diverse cultural, religious and linguistic backgrounds complies with their human rights.

The Human Rights Commissioner conducted this inquiry on behalf of the Commission. Six Co-Commissioners were appointed to assist in their respective States and the Northern Territory.

- Dr Alby W Jones, South Australia, was South Australia's Director-General of Education from 1970 until 1977.
- Lady Pearl Logan, Queensland, has been prominent in the Country Women's Association and instrumental, among many other community activities, in the establishment of James Cook University in Townsville.
- Barbara Flick, NSW, was the Director of the Commission's Aboriginal and Torres Strait Islander Social Justice Unit until late May 1999 and previously worked for many years as Manager of the Western Aboriginal Legal Service, NSW, among many other relevant appointments.
- Associate Professor Brian Devlin, NT, taught in rural and remote schools in the Top End of the Northern Territory for 15 years and has been Dean of Education at the Northern Territory University.
- Sister Patricia Rhatigan, WA, is Dean of the Broome Campus of Notre Dame University and taught in rural and remote schools in the Kimberley for over 20 years.
- Tim Roberts, Victoria, is a senior secondary student living in Cohuna. He has been a member of the Prime Minister's Youth Roundtable.

The Inquiry visited 28 rural and remote communities in each State and the Northern Territory, taking evidence and holding discussions with students, teachers, administrators, parents and other community members. It also took formal evidence in every capital city and received 287 written submissions. A national survey was conducted for the Inquiry by the Youth Research Centre at the University of Melbourne to which there were 3,128 respondents, 55% of them rural and remote area students.

*The inquiry utilised, in an exemplary way, a model of research, consultation and reporting highly suitable for exploring the issues related to education in rural and remote Australia. The mix of basic research and community consultations resulted in authentic and powerful outcomes which should be invaluable for rural communities, governments, and those professionals and scholars concerned with sustaining and enriching life and culture in rural Australia. With this timely Inquiry the Commission has demonstrated national and international leadership in the concern for rural and remote communities and rightly focussed on the role of schools in communities*

(Dr David McSwan, Director, Rural Education Research and Development Centre, James Cook University, Townsville Qld).

The Inquiry was committed to ensuring that the views of students were heard and taken into account in developing its recommendations. It was pleased that thousands of children were able to express their views through the meetings in rural and remote communities and the national survey.

A great deal of the information provided to the Inquiry is published on the Commission's website, including submissions supplied in electronic format, transcripts of evidence, records of meetings, a bibliography commissioned from the Rural Education Research and Development Centre at James Cook University, the Youth Research Centre survey report and a series of briefing papers on aspects of the terms of reference ([www.hreoc.gov.au/human\\_rights/rural/education](http://www.hreoc.gov.au/human_rights/rural/education)).

*School is lots of fun. There are lots of activities. It's not just sport. School is about education and education is power for me. And there are a lot of things that I need to know about the whole world. When I leave school I might go to a University in Darwin. I want to be a scientist. I will find a school in Darwin before I go to University. In future I hope to be President of the Land Council*

(student meeting at Nguui NT).

*It is the practice in a number of areas that if the school receives a level of resources that the school considers insufficient to support the child [with a disability], the family is asked to collect the child for example at lunch time a number of days per week*

(Family Advocacy NSW submission).

The evidence and submissions received by the Inquiry were summarised in *Emerging Themes* published in March 2000 ([http://www.hreoc.gov.au/human\\_rights/rural/education/reports](http://www.hreoc.gov.au/human_rights/rural/education/reports)). The Inquiry's report, *Recommendations*, was tabled in Federal Parliament on 28 June 2000 and is also on the website. It presents a blueprint for rural education in 73 detailed recommendations for ensuring that education for all rural and remote children in Australia is available, accessible, affordable, acceptable and adaptable, eliminating discrimination, enhancing the participation of parents and other community members in education decision-making and provision, improving the recruitment and working conditions of teaching and support staff and improving the chances that rural and remote students will succeed at school. The recommendations are addressed to the full range of authorities responsible for the provision of school education in Australia including State and Territory Education Departments, Catholic Education Offices and other independent school authorities, the Commonwealth's Department of Education, Training and Youth Affairs (DETYA) and the national Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA).

The Inquiry will launch three further publications on rural and remote education early in 2000-01: a case study based evaluation of access to education in Australia, a case study based description of models of parent and community participation in school education and a kit for use in schools featuring the comments made to the Inquiry by rural and remote students.

### **Outlink Network \_ Rural Lesbian, Gay and Bisexual Young People**

Recent studies have shown that young lesbian, gay and bisexual people in rural areas are a severely disadvantaged group within Australian society. They experience the stigma associated with homosexuality, the disempowerment common amongst young people and the difficulties of contemporary rural life. Research also shows that in the face of these difficulties they often receive less than adequate support from families, schools, youth services and the broader community. These factors combine to place lesbian, gay and bisexual young people in rural areas at high risk of drug and alcohol abuse, conflict with family and peers, early school leaving, homelessness and suicide.

The Commission, with the support of the Australian Youth Foundation, initiated a network of young lesbian, gay and bisexual people in rural areas and rural service providers. These young people often experience a high level of isolation, as do service providers concerned for their welfare. The Outlink Network aims to bring these individuals and groups together to share knowledge, skills and resources and have a united voice on issues such as community education, service provision, funding and government policy.

The Commission engaged Rodney Croome as Outlink Co-ordinator to establish the Network. Twelve months after his appointment, Mr Croome convened an interim committee of management in Sydney on 1 and 2 April 2000. The interim committee was constituted by one young gay man and one young lesbian from each of NSW, Qld, Tas and Vic, one young gay man from each of SA and WA and one young lesbian from the ACT, together with seven rural service providers (two from Vic and one each from NSW, SA, Qld, Tas and WA).

Outlink has an extensive contact database and a website. With funding assistance from the Commission, the ALSO Foundation and Rabbit International in Victoria, the Network has produced a rural service providers' anti-homophobia training manual. *Not Round Here: Affirming Diversity, Challenging Homophobia*, by Kenton Penley Miller and Mahamati, was launched by the Human Rights Commissioner in Bendigo on 13 June 2000 and in Cairns on 3 July 2000. Both events were well-attended and received positive media coverage.

The Outlink Network is now independent of the Commission although the Commission has a representative on its management committee. The Outlink website is at <http://www.outlink.trump.net.au>

## Action Exchange project

Every child with the capacity to do so has the right to participate in decisions which affect him or her. Article 12 of the *Convention on the Rights of the Child* states that

*(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

The right to participate is a central element in all of the Commission's work involving children and young people. During the reporting year the Commission initiated Action Exchange, a project dealing specifically with this issue.

In January 2000 Action Exchange was launched on the National Children and Youth Law Centre's Lawstuff website ([www.lawstuff.org.au](http://www.lawstuff.org.au)). The Action Exchange webpages present information on the *Convention on the Rights of the Child* and give examples of youth action in Australia and across the world. For example, the Margaret River Youth Advisory Council in Western Australia is highlighted on the webpages, including photos of a skatepark the young people helped create. Action Exchange also encourages children and young people to submit examples of projects they are involved in. Up to eight of the best projects submitted will be highlighted on the webpages, allowing children and young people to exchange ideas on speaking out and participating.

## Research and policy

### Immigration detention

#### Conditions of Detention - Review

The Human Rights Commissioner reviewed the four then-existing immigration detention centres during 1998 and 1999:

- Port Hedland Immigration Reception and Processing Centre, WA
- Villawood Immigration Detention Centre, Sydney NSW
- Perth Airport Immigration Detention Centre, WA
- Maribyrnong Immigration Detention Centre, Victoria.

The Commissioner inspected each centre and was briefed in detail by Department of Immigration and Multicultural Affairs (DIMA) and Australasian Correctional Management (ACM) managers. Staff also interviewed randomly selected detainees. The Commissioner's review was published in March 2000. ([http://www.hreoc.gov.au/human\\_rights/asylum/index.html#idc\\_review](http://www.hreoc.gov.au/human_rights/asylum/index.html#idc_review)).

Overall the Commission was impressed with the efforts of both DIMA and ACM in 1998 to enhance the physical conditions, the opportunities for activities and the support services in detention. Very substantial improvements had been made in a wide range of areas. However, the Commissioner noted a number of outstanding matters of concern:

- the refusal to advise new arrivals of their right to request legal assistance
- the failure of the detainee handbook to advise detainees of the existence, role and contact details of the Human Rights and Equal Opportunity Commission
- the failure to employ interpreters and the failure to use interpreters at all times when needed, for example during induction at all centres and during medical appointments at Maribyrnong IDC
- inadequate phone lines at Villawood IDC resulting in inadequate incoming access for lawyers and others needing to contact detainees
- overcrowding at Villawood Stage One and long-term detention in overcrowded facilities with inadequate recreational facilities, no opportunity for classes or other productive activities, inadequate telephone access and no provision for privacy at Villawood Stage One and Perth IDC

- holding of distressed and disturbed detainees in Villawood Stage One where offenders and violent detainees are also held
- progressive tightening of security, including curfews, additional musters and increased transfer security, in response to a number of escapes
- possibly inappropriate limits on expenditure on health care, especially dental and psychiatric care and the possibility that some medical staff and contractors are constrained by budget or contract pressures at the expense of their patients' well-being
- failure to provide schooling for all children at Port Hedland IRPC, except attendance with adults at ESL classes.

It was also disturbing that the proposed redevelopment of the Villawood site, scheduled to commence in 1999, had been indefinitely delayed. Villawood Stage One, in particular, is unsuitable for use as a detention centre.

In March 2000 the Human Rights Commissioner inspected the new Woomera Immigration Reception and Processing Centre near Roxby Downs in South Australia. The cramped environment at the centre and the lack of adequate facilities, especially for children, are matters of serious concern. The relatively remote location of the Centre means that there is almost no access to trauma counselling and other specialist services.

The Commission is concerned that conditions within some detention centres may have deteriorated in 1999-2000 following the substantial increase in the number of detainees. The President will visit the Port Hedland IRPC and Villawood IDC and the Human Rights Commissioner will visit the Curtin IRPC early in the 2000-2001 reporting year.

### **Immigration Detention Guidelines**

With a view to enhancing clarity and certainty as to the rights of detainees in immigration detention and the obligations of the Department of Immigration and Multicultural Affairs and ACM, the Commission published *Immigration Detention Guidelines* in March 2000 ([http://www.hreoc.gov.au/human\\_rights/asylum/index.html#idc\\_guidelines](http://www.hreoc.gov.au/human_rights/asylum/index.html#idc_guidelines)).

The *Guidelines* draw on relevant international minimum standards which detail what is required for humane detention consistent with respect for human dignity as required by the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child*.

The Guidelines will assist the Commission in its investigation of complaints about the treatment of detainees.

### **Inhumane Detention \_ Perth Immigration Detention Centre Complaint**

During the 1999-2000 year the Commission reported to federal parliament on an individual complaint of the violation of the human rights of a person in immigration detention.

On 22 April 1996 a Nigerian national, Mr George Johnson, entered Australia at Perth Airport without valid travel documents. As a result of the complainant's unlawful entry into Australia, he was placed in immigration detention at the Perth Immigration Detention Centre (IDC). Immigration detention centres are operated by the Department of Immigration and Multicultural Affairs but detention services, including security, are contracted out. At the time of Mr Johnson's detention, the contractor was Australian Protective Services (APS), a federal government agency. On 15 May 1997 the complainant lodged a complaint with the Commission alleging that he had suffered treatment during his detention at the Perth IDC which constituted breaches of his human rights.

- *Allegation 1:* Following an argument with an APS officer, the complainant was placed in a room without a window, where he remained for six days. He was handcuffed for 8.5 hours and shackled for 7 hours.
- *Allegation 2:* APS officers at the Perth IDC required that the complainant be handcuffed when escorted to an external medical facility for treatment for a continuing medical condition. The complainant refused to be handcuffed and accordingly was not treated for his condition.
- *Allegation 3:* The complainant was held in detention at the Perth IDC for more than 12 months in poor conditions of detention.

Before the Commission could interview Mr Johnson in relation to these complaints, he was

removed from Australia. The Commission decided, however, that the allegations were sufficiently serious to warrant continuing the investigation in his absence. In his report (*Report of an Inquiry into a Complaint of Acts or Practices Inconsistent with or Contrary to Human Rights in an Immigration Detention Centre*, HRC Report No. 10, 28 June 2000; [http://www.hreoc.gov.au/pdf/HRC\\_10.pdf](http://www.hreoc.gov.au/pdf/HRC_10.pdf) ) the Commissioner found that Mr Johnson's treatment in relation to Allegation 1 violated his right under ICCPR article 10:

*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

The report details the treatment Mr Johnson received and the Commissioner's findings and recommendations. Recommendations include that the Department ensures the Operational Orders for the Perth IDC contain clearer stipulations with respect to the use of restraints and the application of force in the treatment of detainees. Staff training was also recommended, to ensure that IDC staff deal with distressed or aggressive detainees in an appropriate manner. This training should emphasis techniques that allow detainees to be restrained dignity and with minimum use of force.

Detention services are currently provided under contract by a private company, Australasian Correctional Management. During inspections in October 1998 the Human Rights Commissioners found the conditions at the Perth IDC very much improved.

## Legislative reform and assessment

### Mandatory Sentencing in NT and WA

The Commission has been concerned about mandatory detention of juvenile offenders since mandatory detention laws were first introduced in WA in 1992. In the 1997 report *Seen and heard: priority for children in the legal process*, the Commission, jointly with the Australian Law Reform Commission, condemned these laws as they then operated in both WA and the Northern Territory.

CROC article 37 provides in part:

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*

The highly punitive, arbitrary and racially discriminatory operation of the Territory laws in particular moved a group of federal Members of Parliament to develop with the assistance of the Commission a proposal for their repeal: the *Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999*. The Commission published a Briefing Paper which evaluated the WA and NT legislation ([http://www.hreoc.gov.au/human\\_rights/child\\_rights/h5\\_1\\_7.html](http://www.hreoc.gov.au/human_rights/child_rights/h5_1_7.html) ) in and made a submission to the inquiry by the Senate Legal and Constitutional Legislation Committee into the Bill ([http://www.hreoc.gov.au/human\\_rights/child\\_rights/h5\\_1\\_8.html](http://www.hreoc.gov.au/human_rights/child_rights/h5_1_8.html) ).

In a historic press conference on 17 February 2000, the Commission's President joined the Human Rights Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner in condemning the NT legislation and calling for it to be overturned by federal parliament ([www.hreoc.gov.au/human\\_rights/child\\_rights/h5\\_1\\_9.html](http://www.hreoc.gov.au/human_rights/child_rights/h5_1_9.html)). The President noted that the NT and WA laws affect adults as well as juveniles and therefore also contravene the prohibition of arbitrary detention in article 9 of the ICCPR as well as article 37 of CROC.

### Discrimination in Employment and Occupation

The *Discrimination (Employment and Occupation) Convention* - known as ILO 111 - (1958; 362 U.N.T.S. 31; <http://www1.umn.edu/humanrts/instree/n3ilo111.htm> ) was ratified by Australia in 1973. It requires States Parties to eliminate employment-related discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction and social origin (article 1.1(a)). Article 1.1(b) permits a State Party to add grounds unilaterally for its own domestic purposes. In 1989 Australia added the following grounds: age, medical record, criminal record, impairment, marital status, mental, intellectual or psychiatric disability, nationality, physical disability, sexual preference and trade union activity (*Human Rights and Equal Opportunity Commission Regulations 1989*).

ILO 111 is not incorporated into Australian domestic law. However, it is scheduled to the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOCA) with the effect that people aggrieved by employment-related

discrimination on one or more of the extended list of grounds may complain to the Commission (HREOCA section 31(b)).

The Commission is empowered `to endeavour, by conciliation, to effect a `settlement' between the disputing parties. If the Commission considers conciliation inappropriate or the attempt has been unsuccessful, the Commission may report to the Attorney-General and, through him, to Parliament.

In contrast with other discrimination complaints, both federal and State or Territory, HREOCA employment discrimination complaints cannot be dealt with by a court or tribunal and therefore cannot lead to an enforceable remedy.

Several of the other international instruments for which the Commission has responsibility also contain prohibitions on discrimination, although they do not focus specifically on employment.

The Commission has dealt with issues of employment discrimination through broad national inquiries, development of guidelines, examination of legislation and individual complaints.

### **Age Discrimination Inquiry**

Despite the limits to its jurisdiction, the Commission has received numerous complaints about employment-related age discrimination including

- complaints about age stipulations in job vacancies listed by the former Commonwealth Employment Service and now Job Network agencies
- complaints about age stipulations in job vacancies and training and promotional opportunities in the defence force
- complaints from workers over 65 who were refused employment by employers citing age limits under legislation
- complaints about age discrimination in trade union membership
- complaints from older people about discrimination in the offer of redundancy packages and the monetary value of the packages
- complaints from older people about compulsory retirement.

In light of concerns about age discrimination, the inconsistencies between State and Territory anti-discrimination laws and the fact that Commonwealth employees and many Commonwealth laws and policies are not free from age discrimination, the Commission instituted an inquiry into the need for federal age discrimination legislation by publishing a discussion paper entitled *Age Matters?* in April 1999.

*It is nonsense and ridiculous that the year I was born dictates that I have to be retired, when I am both an excellent performer and in dire need of the dollars. And have never been ill or incapacitated or absent. Performance and attendance should be the only criteria - measurable ability to do the job, and being there to do it every day (submission 25 to Age Matters? inquiry).*

Fifty-seven submissions were received in response to the discussion paper. These were evaluated and the Commission's report entitled *Age Matters: a report on age discrimination* was tabled in the Federal Parliament on 28 June 2000 ([http://www.hreoc.gov.au/human\\_rights/older\\_aust/h5\\_6\\_4.html](http://www.hreoc.gov.au/human_rights/older_aust/h5_6_4.html)). The Commissioner launched the report in Melbourne on 18 July.

The report makes recommendations for Commonwealth compliance with ILO 111 and also with the non-discrimination and equality before the law provisions of the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention on the Rights of the Child* (CROC).

Submissions to the *Age Matters?* inquiry strongly favoured the introduction of comprehensive federal age discrimination legislation on the lines of the existing federal discrimination acts covering race, sex and disability discrimination. The Commonwealth now lags well behind every state and territory in protecting people from discrimination based on age. As a result, there are many discriminatory laws, policies and practices of the Commonwealth that cannot be justified as reasonable and proportionate.

The Commission's 14 recommendations include the need for the Commonwealth to conduct a national public and business education program to counteract prevalent negative stereotypes about young people and older people, to retain special measures for the assistance of unemployed young workers, to introduce additional special measures of assistance for unemployed older workers and to amend discriminatory federal legislation including legislation and regulations dealing with defence force employment. The report also recommends that Federal Parliament enact a more rigorous and effective legal regime to prevent and to remedy acts of discrimination based on age.

### **Religious Belief Discrimination - Guidelines**

In late 1999 the Commonwealth contracted a number of religious organisations, including the Salvation Army, Centacare, Wesley Mission and Mission Australia, to undertake job search on behalf of unemployed people. Early in 2000 the Commission received a number of complaints of discrimination on the ground of religion in employment on the part of a number of these Job Network agencies.

The complaints alleged that selection criteria for employment with some of those agencies either explicitly or implicitly required applicants to profess the religious beliefs of the employing agencies.

While the complaints were successfully conciliated, the Human Rights Commissioner decided to produce guidelines for the benefit of all private agencies contracted to provide services on behalf of the Commonwealth and of service recipients. An expert consultant was commissioned to draft guidelines on religious values and selection criteria for these agencies, using relevant international law and policy as the reference point. The draft guidelines are currently being circulated for stakeholder consultation and will shortly be published in final form. The guidelines will be of assistance to Commonwealth funding bodies, Commonwealth-funded services and members of the public, especially those interested in employment with a Commonwealth-funded service.

### **Sexual Preference Discrimination - Examination of Federal Legislation**

In the report *Superannuation Entitlements of Same-Sex Couples* (HRC Report No. 7, 1999) the Human Rights Commissioner found that, by denying a same-sex partner of a superannuation fund member the right to be a beneficiary in the event of the member's death, the enactments are inconsistent with the human right to equality before the law (*International Covenant on Civil and Political Rights* article 26) and nullify equality of treatment in employment (*International Labour Organisation Convention Concerning Discrimination in Respect of Employment and Occupation*, No. 111). The report recommended amendment of federal superannuation legislation. The Parliament is considering a private member's bill which would implement that recommendation. The Government is not supporting the Bill.

### **Age Discrimination - Australian Defence Force Complaints**

The Human Rights Commissioner's eighth report (*Age Discrimination in the Australian Defence Force*, HRC Report No. 8, 28 June 2000; [url to be included when known] under section 31(b) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) dealt with four complaints of age discrimination in the Australian Defence Force which could not be conciliated. The complaints were made by three prospective entrants to the ADF and one serving member of the ADF:

- Mr Robert Bradley who complained about the upper age limit of 35 for applicants for helicopter pilots in the army
- Mr Kenneth Barty who complained about the upper age limit of 35 for applicants for Administrative Officer positions in the Royal Australian Air Force
- Mr E W Petersen who complained about the upper age limit of 35 for applicants for Administrative Officer positions in the ADF generally and
- Mr Ken Van Den Heuvel who complained about the upper age limit of 35 for remustering to a Load Officer position in the RAAF.

The Commissioner concluded that each complainant had experienced age discrimination in employment contrary to ILO 111 and that the age distinctions imposed could not be justified by reference to the inherent requirements of the positions. He recommended that the ADF should apologise to and/or compensate some of the complainants and remove the age limits which denied them access to the positions for which they applied.

### **Trade Union Activity Discrimination - O'Brien Metal Complaints**

The complainants, Mr Ernest Edwards, Mr Ian Farrell and Mr Wayne Moate, were employed by O'Brien Metal Products Pty Ltd, a small steel fabrication business comprising a metal section and warehouse. They and several coworkers joined the National Union of Workers on 28 May 1997 because of their concerns about perceived unsafe working conditions following some accidents in the factory. Until then, no employee of O'Brien Metal had been a member of a union. The complainants alleged that, after they joined the Union and attended two meetings with its organiser in June 1997, they were subjected to less favourable treatment in the workplace, including harassment by management, a reduction in the level of their work duties and a reduction in the amount of work allocated. Each alleged that he was forced to leave his employment because of the discriminatory treatment based on his trade union activity.

The Human Rights Commissioner's report (*Discrimination on the Ground of Trade Union Activity*, HRC Report No. 9, 28 June 2000; [http://www.hreoc.gov.au/pdf/HRC\\_9.pdf](http://www.hreoc.gov.au/pdf/HRC_9.pdf) ) details the nature of the treatment of the complainants in detail. The Commissioner found that the weight of evidence supported the claims of Messrs Edwards, Farrell and Moate that the actions of O'Brien Metal through its managers occurred solely or partly because of their trade union activity. There was a clear atmosphere of hostility towards the union in the company from the time some of the employees joined it. Therefore, they suffered discrimination in employment within the terms of the Act as O'Brien Metal nullified or impaired their equality of opportunity in relation to the terms and conditions of their employment because of their trade union activity. This culminated in the complainants' forced departures from their employment. The Commissioner recommended that each complainant should receive \$5,000 compensation.

## Speeches

Attached is a selection of speeches, seminars and presentations made by Commissioner Sidoti in the reporting period. Selected papers are available on the HREOC website.

**Futures: Victorian Rural Health Forum**, Country AIDS Network of Victoria, Bendigo. June 1999.

**Rights for All: A human rights perspective on regional development**, 27th National Congress of the Royal Australian Planning Institute \_ *Planning in the Hothouse*, Darwin. September 1999.

**Rural youth suicide: convention, context and cure**, The Australian College of Health Service Executives (SA), Adelaide. 14 October 1999.

**The human rights of older Australians in the bush**, Seminar on Rural Ageing entitled *Harnessing the wisdom \_ Harvesting the gains*. 1-3 November 1999.

**Surviving the bush: health and rural communities**, Australian Healthcare Association National Congress, Melbourne. 10 November 1999.

**Rights for all: Building inclusive communities for all generations**, 1999 Sax Oration. 18 November 1999.

**Statement on Mandatory Sentencing**, HREOC Press Conference. 17 February 2000.

**Beyond Bush Talks**, Outback & Australian Association of Rural Nurses Toowoomba conference. 24 February 2000.

**Age Matters: a report on age discrimination** \_ Council on Ageing (COTA) Australia, Melbourne. 18 July 2000.

**Access to education: a human right for every child**, 29th Annual Federal ICPA Conference. 3 August 2000.

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# Privacy

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## Statement of the Privacy Commissioner

I have pleasure in presenting the twelfth Annual Report on the operations of the *Privacy Act 1988* for the year 1999-2000. The year past has been a challenging and productive year for the Office.

In our modern democratic society our individual privacy is an issue that is taken for granted. However, the year that has just past has seen a re-emergence of privacy as a key issue for the community. Much has happened that has re-kindled the privacy debate including issues such as the establishment of large databases of personal information in the private sector, whether criminal record information should be published on the Internet, the use of public register information by government, the way in which forensic DNA information should be collected, matched and stored and the publication of a "first draft" of the human genome.

Privacy is clearly perceived by Australians as a fundamental human right, and a right we are eager to preserve in a rapidly changing global environment. As always, the challenge in the debate is to balance this important human right with our rights and responsibilities as members of a civil society; that is, the right to privacy must be balanced against factors such as the need to maintain a free flow of information through the media and elsewhere and the importance of ensuring government and business are able to achieve their objectives in an efficient way.

A significant development in Australia has been the introduction to Parliament of the *Privacy Amendment (Private Sector) Bill 2000* (the Bill). Over the last year the Office contributed to the development of the Bill in a number of ways, including providing several key submissions on its development. The last of these submissions during the year was to the House of Representatives Legal and Constitutional Committee, which reviewed the Bill at the request of the Attorney-General.

In that submission I welcomed the Government's move to extend privacy legislation to the private sector by introducing the Bill. This is an important development for the community, as it would introduce privacy law for the private sector and establish a framework to protect personal information held by private sector organisations. This is particularly relevant today with the rapid growth in Australian and Global organisations' utilisation of information handling technologies. There is ample evidence to show that all consumers expect to have control over their personal information and to be able to protect their privacy with minimum inconvenience. Without this control, consumers are unlikely to be willing to participate fully in the developing information economy.

As stated in my submission to the Committee, I believe that the fundamental approach presented in the Bill is sound. However, the Bill also contained a number of exemptions that I believe need careful consideration by Parliament so that the appropriate balance is achieved for the community.

Of these, the exemption for political organisations is of particular concern. If we are to have a community that fully respects the principles of privacy and the political institutions that support them, then these institutions themselves must adopt the principles and practices they seek to require of others. The challenges faced by politicians in appropriately respecting individual privacy are no different than those faced every day by many other professions, including the health professions. I firmly believe that political organisations should follow the same practices and principles that are required in the wider community.

In the submission, I also drew attention to the issues raised by other exemptions. The Committee sought to address these concerns in many of its recommendations. Clearly, the challenge now put to the Parliament is to reach a balance that reflects community expectations. I will look forward to contributing to that debate in the year ahead. Chapter 2 deals with the Bill at greater length.

While the Office has been focusing on these new developments, it has also continued to work on improving compliance with the current legislation. These current responsibilities have also raised new challenges. Many of these are questions arising from new uses of information enabled by new technologies, including the Internet and data mining. The involvement of the Office in assessing the privacy implications of the new taxation system resulted in decisions to change the new tax legislation so that information provided by people for the purpose of obtaining an Australian Business Number would be better protected. Similarly, the Office investigated the provision of an electronic copy of the electoral roll, by the Australian Electoral Commission, to the Australian Taxation Office for mail-out purposes. Recent public debate indicates that the community is apprehensive about the use of public registers, including the electorate

roll, for purposes other than the purpose of collection. This is particularly so when there is some compulsion to provide information to the government for these registers.

Similar community concerns were expressed following the launch of commercial on-line databases that made personal information, such as convictions and debt, publicly available. While the Office's jurisdictional involvement with such databases was from a credit reporting perspective, I have expressed my general concern about the use they are making of sensitive information collected from court reports and other publicly available information. This again raises the question of how the community expects publicly available information to be used. The Office intends to undertake some research into this area in the year ahead.

Debate about privacy on-line for Australians using the Internet has escalated in the past year. Questions have arisen with respect to appropriate behaviour for businesses operating online, consumers seeking to transact and preserve the privacy of their personal information online, and employers and employees trying to work out rights and responsibilities in relation to e-mail protocols. The Office has worked consistently on these issues, building on the *Guidelines on Web Browsing and Privacy* released in 1998-1999, by developing *Guidelines on Workplace E-mail, Web browsing and Privacy* in 1999-2000. The guidelines were launched by the Attorney-General in March 2000. These guidelines advocate building an environment of trust between employers and employees and were the most frequently downloaded item from the Office website in 1999-2000.

Personal health information can be intensely intimate information about the fundamentals of an individual's life. Its misuse can also cause great harm. For these reasons alone, it is very important to protect this information appropriately and to ensure that people have a reasonable level of control over their health information. With public debate increasingly focusing on Health Providers' management of information, the government has been concerned to review mechanisms that can be used to protect such information while at the same time ensuring that health consumers have access to services made possible through powerful new technologies. At the Attorney-General's request, I provided advice on the appropriateness of the National Privacy Principles<sup>5</sup> as a tool to protect personal health information. This advice was based on broad consultation with key health organisations and has been addressed in the development of the current amendments to the *Privacy Act 1988*.

Given the range of work that the Office is undertaking both in our current jurisdiction and with the development of the private sector legislation we need to ensure that our efforts are well focused. To that end, over the last year the Office undertook a significant strategic planning process designed to prepare us for our extended role.

The Attorney-General launched the Office's strategic plan in March 2000. The Plan commits the Office to achieve results in the key areas of:

- establishment of the *Privacy Connections* network that will support organisations and individuals in the development and implementation of privacy solutions;
- development of a comprehensive understanding of current community perceptions of privacy to ensure the solutions we develop are meeting the needs of our clients;
- ensuring that strategic themes are reflected in the job roles of everybody in the Office; and
- ensuring that the Office is ready and prepared to implement the new legislation.

Even though the plan was only launched in April 2000, the key result area relating to the roles and skills of the Office is now completed. With this fundamental strategy complete, work on the remaining strategies has already commenced. This preparatory work meets a commitment made in last year's annual report.

With all that is happening within Australia it is important that we do not lose sight of what is happening internationally. Clearly, the increasing awareness and concern within the Australian community of privacy issues reflects similar developments elsewhere.

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<sup>5</sup> The National Privacy Principles are as set out in the Privacy Amendment (Private Sector) Bill 2000, and are developed from the National Principles for the Fair Handling of Personal Information as issued by the Office in 1999.

In 1995, the European Union (EU) passed a directive<sup>6</sup> that restricts the transfer of personal information from member countries to other countries unless adequate privacy safeguards are in place. In part, the government's private sector privacy legislation aims to provide those safeguards for Australian companies, ensuring Australian access to international markets.

It has been very interesting to watch the United States of America move from a self-regulatory environment to one potentially covered by a great deal of privacy law. Consumer reaction to privacy intrusions by a number of key online organisations, for example, Double-Click, and the sale of personal information held by failed Internet companies has placed the issue firmly on the agenda. The US Federal Trade Commission has called on the American Congress to enact new laws regarding online privacy. This represents a significant change of emphasis, and privacy has become an election issue in the USA.

Seeking an answer to the EU Directive in a currently unregulated environment, the US Government entered into "Safe Harbor" discussions with the EU. Once negotiations are complete, US companies that meet "Safe Harbor" requirements for protecting information would be granted the right to transfer and use data on European citizens.

The 21st International Data Protection Commissioners' Meeting held in Hong Kong in September 1999, saw online privacy assurance programs as a key issue, and established a working group (of which I am a member) to consider the effectiveness of such programs in promoting good privacy practice. We will deliver a report on the project to the 22<sup>nd</sup> meeting in Venice in September 2000.

Looking Ahead 2000-2001

I believe that the next twelve months will see the community focus even more on the privacy issue. The Office will focus on the development of privacy schemes for the private sector, and also continue our work in supporting privacy rights and responsibilities in relation to Federal Agencies, Credit Reporting Agencies, and users of Tax File Numbers. The Office is also likely to contribute significantly to the appropriate protection of health information stored electronically.

The Strategic Plan will guide the Office throughout the year. It will continue to evolve and as we implement the strategies the Office will focus on the subsequent key results to be achieved for the years ahead. With the passing of the *Privacy Amendment (Private Sector) Bill 2000*, I anticipate that a key strategy will develop in relation to a communication program to inform Australians of their privacy rights and responsibilities, and the role the Office can play in developing privacy solutions.

For next year, however, the Office will focus on developing the *Privacy Connections* network into a vibrant resource, and improving our appreciation of community perceptions of privacy, and best practice privacy solutions.

I would like to note that 1 July 2000 marks the formal commencement of our Office as the new Office of the Federal Privacy Commissioner. The formal separation of the Office from the Human Rights and Equal Opportunity Commission is based on sound administrative principles and will ensure that the Office can give best effect to the proposed private sector legislation. We acknowledge the significance of our relationship with the Commission and the importance this has played in recognition of privacy as a fundamental human right.

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<sup>6</sup> 1995 *European Union Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data*, issued 24 October 1995.

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# Race Discrimination

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Dr Jonas has been acting in the position of Race Discrimination Commissioner since September 1999. This is in addition to his role as Aboriginal Torres Strait Islander Social Justice Commissioner.

When the term of former Race Discrimination Commissioner Zita Antonios came to an end in September 1999, the portfolio was taken up on an acting basis by Dr William Jonas, the Aboriginal and Torres Strait Islander Commissioner. Dr Jonas continued work across a number of key policy areas that had been targeted in recent years, as well as completing new projects at the behest of community members with specific concerns of discrimination within the context of the *Racial Discrimination Act 1975*.

In ensuring that the human rights of Australia's immigrant and refugee communities are protected, much of the research undertaken over these past twelve months has centred on identifying areas where specific groups of people experience varying degrees of disadvantage and discrimination. Some people experience multiple layers of disadvantage, which further impedes their ability to interact and contribute as equal members of Australian society.

## Research and policy

### ***On the Sidelines –***

Disability and People from Non-English Speaking Background Communities

In 1999 the National Ethnic Disability Alliance approached the Commissioner with concerns that people with disabilities from non-English speaking backgrounds often experience multiple layers of discrimination in their daily lives. *On the Sidelines* highlights some important discrimination issues facing people with disabilities from non-English speaking background communities.

The report aims to

- Identify some key issues facing this group of people;
- Identify some strategies to assist people with disabilities from non-English speaking background communities; and
- Provide a research and advocacy resource for people and this group and other interested parties.

Several important recurring themes were evident during the preparation of the paper. They included the need to raise general community awareness about disability; the need to increase readily available and accessible information and to improve education about disability across the society as a whole; the importance of advocacy and the imperative of designing more culturally appropriate service delivery. *On the Sidelines* will be publicly available from September 2000.

- **New Country, New Stories**

Small and emerging migrant communities are an ongoing feature of Australia's cultural landscape. In September 1999 the Commission released *New Country, New Stories*, a report documenting the experiences of migrants and refugees from countries with relatively small numbers in Australia. The report was the culmination of national consultations with a cross-section of community organizations, health workers, migrant resource centres, youth workers and other ethnic groups. Consultations covered New South Wales, Western Australia, the Northern Territory and Victoria.

The report focused on communities with less than 20,000 people who had been in Australia for less than 10 years. It identified areas such as housing, employment and recognition of qualifications, where people from cultural and linguistic minority groups may experience disadvantage or discrimination. It also identified issues for future work within the Commission and has already fed into the development of a strategy to encourage compliance with anti-discrimination law in private housing markets. Some of these key areas included:

- Strategies to encourage compliance with anti-discrimination law in the national real estate industry (mentioned above)

- Strategies to provide targeted multilingual human rights and anti-discrimination information to individual small and emerging communities
- Examination of the issue of lack of recognition of overseas skills and employment experience
- Promotion among employers' networks of the value of qualifications and skills 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 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

In the final analysis, the report concluded that there needs to be further research into this area, as racism and discrimination is experienced by many members of small and emerging communities, particularly those who are visibly different from the majority group. *New Countries, New Stories* is reproduced in full on the Commission's website.

### **National Real Estate Industry**

The 1999 *New Country, New Stories* report identified housing as a key area of concern for members of small and emerging migrant communities. In public consultations, community members frequently reported experiences of direct or indirect racial discrimination in private housing markets, particularly in their dealings with the real estate industry.

While the report did not measure the extent of racial discrimination in the industry, it highlighted the need to promote the provisions of the *Racial Discrimination Act 1975* to real estate agents. Above all, racial discrimination represents a challenge to the professionalism of real estate agents in an increasingly multicultural Australia. In the coming year the Race Discrimination Commissioner will approach peak real estate bodies to raise awareness of the Act and promote training and policy standards to prevent racial discrimination from occurring.

### **Water**

*We turn on the tap and out gushes the water; we have no hesitation about drinking a glassful if it. We step into the shower and expect abundant, hot, steamy water to wash over us. We press the button on the toilet and it flushes.*

(Irene Moss, Race Discrimination Commissioner Water Report 1994)

The water and sanitation services most communities take for granted is not readily available in all parts of Australia. The provision of safe, clean, reliable water and sanitation services has been an area of ongoing concern for the Commission. The Commission's 1994 *Water Report* examined the situation in ten remote Aboriginal and Torres Strait communities and found inadequate quality and quantity of water supply and poor sanitation services.

Five years later the Commission engaged Dr Bruce Walker of the Centre for Appropriate Technology (CAT) to once again assess the provision of water and sanitation to these same ten communities. Specifically, CAT was asked to compare the situation in 1994 with the present situation, to provide a 'snapshot' of where communities stand some five years later, with particular reference to

- the effectiveness of contractors and authorities
- Indigenous involvement in decision-making, training and employment opportunities and
- technical compliance, efficiency, effectiveness and sustainability.

CAT's comprehensive review was submitted to the Commission in August 1999. It documents significant advances and initiatives that have taken place in the last five years. At a national program level and in at least seven of the ten individual case study communities, the trend has been toward increased investment in water and sanitation infrastructure by the Commonwealth and States, and increased involvement by the States and the commercial sector in ongoing systems operation, management and maintenance.

However, while technical issues, consultation and cultural understanding may have improved over the past five years, many of the core issues and recommendations of the 1994 *Water Report* remain valid and require further examination before Indigenous people can be confident that their water and sanitation services will be sustainable. This issue will form the basis for future work by the Commission in this fundamental area of human rights - the right to access a clean, safe, reliable supply of water.

## **Alcohol**

Since the release of the *Alcohol Report* in 1995 the Race Discrimination Commissioner has continued to receive approaches from Aboriginal communities requesting restrictions on the sale and distribution of alcohol to their community members. In the past twelve months the Race Discrimination Commissioner renewed two 'special measures certificates', for communities in Wiluna (WA) and Alice Springs (NT). Agreements leading to the issue of 'special measures certificates' are negotiated locally by Aboriginal communities and other relevant parties and certificates are issued in accordance with s8 of the Racial Discrimination Act 1975.

In October 1999 the Darwin-based Menzies School of Health Research released a report entitled *Evaluation of restrictions on the sale of alcohol from Curtin Springs Roadhouse Northern Territory*. The restrictions were in place as a result of 'special measures certificates' issued in 1996 and 1998 by the Race Discrimination Commissioner, between the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Aboriginal Corporation, representatives of Aboriginal Pitjantjatjara communities and the licensee of the Curtin Springs Roadhouse. While the report acknowledged that restrictions on the sale of alcohol is not in itself the answer to the social and health problems associated with excess drinking, a number of findings were encouraging in relation to this area of the Commission's work.

*... the apparent decline in alcohol consumption in the communities concerned has been associated with reductions in the incidence of alcohol-related health problems.  
It also appears to have contributed to an improvement in public order in the communities concerned ...*

Menzies School of Health Research Evaluation Report (p9)

## **Submission to Minister for Immigration and Multicultural Affairs**

During the year Australia's migration and humanitarian programs were widely discussed and debated, including efforts to combat people smuggling operations, detention centres for unauthorised arrivals and appropriate levels for Australia's migrant intake.

In February 2000 the Commission made a submission to the Minister for Immigration and Multicultural Affairs concerning the 2000-2001 Migration and Humanitarian Programs. The submission stressed the importance of the government's role providing accurate information to the public and leading a constructive debate on improvements to the system. Debates that are based on inaccurate information or the demonisation of certain groups of people can threaten broader efforts to encourage community harmony and potentially undermine the human rights of those groups.

In particular the submission focussed on four key issues. Firstly it urged the government to retain the right of appeal to a court when a person is refused a visa under the migration or humanitarian programs. Secondly the Commission reiterated that the mandatory detention of almost all unauthorised arrivals contravenes Australia's obligations under international law. Thirdly it urged the government to promote multiculturalism and its emphasis on the diversity of *all* Australians as central to both tolerant cultural diversity and our evolving democracy. Finally the submission stressed the government's responsibility for providing appropriate settlement services to ensure that migrants and humanitarian arrivals can successfully build new lives in Australia.

## **Education and Promotion**

The Commissioner produced and disseminated a range of information materials targeting education and awareness raising in the community. Given the numbers of job-related complaints, employers again featured as a particular target audience. The *Race for Business* training and information package, developed in 1998, continues as the central platform of our work in this area. As part of the ongoing promotion of *Race for Business*, the Commission intends to identify a range of key partners, both to promote the package and increase the number of cultural diversity trainers accredited to deliver the material.

## Face the Facts

Following the success of this publication over the past five years, with tens of thousands of copies being distributed to schools, members of Parliament, journalists and community groups, the Commissioner decided to update and reprint *Face the Facts*.

Many debates about Australia's migration and refugee programs and Indigenous people have been based on inaccurate and misleading information. In 1997 version of *Face the Facts* countered these myths with simple and accessible facts. The booklet drew together the basic facts about Australia's diversity, migration and refugee programs, the effects of immigration on the Australian community and economy, and Indigenous communities and ongoing disadvantage.

Since that time the debates have changed, but the need for clear, accurate information remains. New questions are being asked, about people smuggling, reconciliation with Aboriginal and Torres Strait Islander communities and the impact of migration on crime rates.

The Race Discrimination Commissioner has produced an updated version of *Face the Facts*, with a new section examining the evidence on migration and crime.

It concludes that there is no evidence of a direct correlation between a particular ethnicity and crime, nor are some ethnic minorities predisposed to criminal behaviour. The new edition will be launched in September 2000 and distributed widely, as well as being available on the Commission's website.

## Cultural Dimensions

The publication *Cultural Dimensions*, released by the Commission in early 2000, highlights the 'best practice' approaches of nine expert cross-cultural practitioners.

It draws on the work of trainers, policy makers and academics working in the field of cross-cultural awareness. The authors present ideas on cultural diversity, productive diversity, Aboriginal cultural awareness and racism. Culture in the workplace is explored through a range of practical scenarios, covering health, the public sector, racist and cultural stereotypes, the judiciary and historical developments in the labour market.

Bill Cope and Mary Kalantzis begin with a brief analysis of the Australian landscape and provide the broad, historical framework for the development of the cross-cultural awareness theme. They draw on the concept of 'productive diversity' and the *Charter of Public Service in a Culturally Diverse Society* as they outline the strategies and knowledge needed to develop organisational learning environments that will assist employees and management to stay abreast of constant workplace change.

Tonina Gucciardo-Masci and Mirta Gonzalez concentrate on the complexity of developing cross-cultural dialogue - within ourselves, between people and with the world around us. Inherent in this is the challenge to step outside our own cultural boundaries and comfort zones. Joanna Kalowski presents ideas on mediation and bridging differences by looking at what people share, not how they are different. She emphasises the 'incontrovertible fact that diversity is here to stay', regardless of the increasing emphasis being placed on a return to mainstream values.

Santina Bertone makes the point that racist and cultural stereotypes in Australia have been rooted in the economic and social environment of the receiving society at the time. Her paper traces the theme, from the Second World War through to the 1990s, of relegating different ethnic groups to particular segments of the labour market. Sonja Pastor and Phil Elsegood highlight the need for Aboriginal cultural awareness training in the Northern Territory. They distinguish between Aboriginal cultural awareness training and cross-cultural training and develop an approach to training that informs organisational change.

Vasiliki Nihlas outlines the principles that guide best practice in tailoring cross-cultural awareness training to the needs of a particular group. She focuses particularly on the public sector, taking into consideration departmental requirements, organisational values and the broader political, social and economic agendas that may affect requirements. In the health arena, Harry Minas presents ideas concerning the relevance of culture to clinical practice, the challenges of cultural pluralism, minority rights in a culturally diverse society and the implications of these issues for health care and professional education in a multicultural society.

Against a background of the intersecting issues of violence against women, sexual assault and racism, Maria Dimopolous challenges the notions of judicial independence and objectivity within the legal system. She outlines a model for training the judiciary. Kerrie Tim draws on lifelong, personal experiences of racism. She examines the broad

historical context of Aboriginal affairs, internalised racism and oppression and suggests ways for Aboriginal people to begin working against them.

This publication contains a broad cross section of issues, authors, approaches and experiences. Ongoing public interest in race issues - including, in some instances, greater public expression of racist views - highlights the ongoing imperative for education and quality training in cross-cultural awareness which addresses prejudice and discrimination. *Cultural Dimensions* is important reading for anyone interested in training, productive diversity, and programs to address the challenges of racism and cultural pluralism in Australia.

### **World Conference against Racism**

The United Nations Commission on Human Rights is holding the *World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance* in South Africa from 31 August to 7 September 2001. The UN General Assembly requested the World Conference to focus on "action-oriented and practical steps to eradicate racism", including questions of prevention, education and protection and the provision of effective remedies. The Conference will also examine emerging challenges such as those posed by the proliferation of race hate speech on the Internet.

The preparatory process for the Conference, and the Conference itself, will be of great importance to the struggle against the various forms of entrenched fascism and intolerance in Australia. The objectives of the World Conference are relevant to many Australian race issues including:

- endemic discrimination against Indigenous Australians;
- reconciliation;
- the treatment of migrants, refugees and asylum-seekers;
- the need for the prevention of racial discrimination through education;
- racial hatred and vilification, including combating hate speech and race hate on the Internet; and
- the progressive development of international mechanisms for the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination.

The Conference provides the opportunity to promote better understanding of racism in all its forms, to share experiences of discrimination and to exchange strategies for preventing it. It offers the potential for a renewed focus on issues of race and racial discrimination in the lead-up to the Conference, and over the coming years.

In the first half of 2000, the Race Discrimination Commissioner began promoting the objectives of the World Conference and held preliminary discussions with a range of sectors concerning how Australians can make most use of the Conference. In the coming year the Commissioner will be working to build a common platform against racism, bringing together as many diverse sectors of the community as possible in a united stand against all forms of intolerance. In addition to activities within Australia, the Commissioner is planning to take an active role in international preparations for the Conference and in the World Conference itself.

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# Sex Discrimination

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## Sex Discrimination Commissioner

Susan Halliday took up her position as federal Sex Discrimination Commissioner on 20 April 1988 for a three year term.

The Sex Discrimination Commissioner administers the federal Sex Discrimination Act 1984. The Act gives effect to Australia's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women and parts of International Labour Organisation Convention 156 regarding family responsibilities. Its major objectives are to:

- promote equality between men and women;
- eliminate discrimination on the basis of sex, marital status or pregnancy and, with respect to dismissals, family responsibilities; and
- eliminate sexual harassment at work, in educational institutions, in the provision of goods and service, in the provision of accommodation and the administration of federal programs.

The Commissioner undertakes research, policy and educative work designed to promote greater equality between men and women. Recent projects have included researching the effect or consequences of, not the fact of pregnancy and potential pregnancy in the workplace through a National Inquiry, raising awareness of the Sex Discrimination Act amongst young women, and eliminating sexual harassment from the workplace.

The Commissioner is also called upon to provide advice to Government on a range of industrial and social issues. She may be granted leave to intervene in industrial proceedings, as was the case with the AMWU Casuals and Part-time Case heard before the Australian Industrial Relations Commission during April 2000.

Some of the aspects of the role of the Commissioners has changed with the commencement of the Human Rights Legislation Amendment Act 1999 (Cth) on 13 April 2000, and the transfer of complaint handling powers away from Commissioners to the President. The new legislation provides the Commissioners with an amicus curiae function in relation to proceedings in the Federal Court or the Federal Magistrates Court.

The Commissioner has a broad educational role to highlight the rights of individuals, as well as the responsibility of all members of the community to respect the rights of others and to work cooperatively in developing a fair and cohesive society.

## Education and promotion

Commissioner Halliday has continued her strong educational focus, working regularly with school students as well as organisations in the private, non-government and community sectors. The Commissioner conducts extensive community education campaigns utilising a range of media including print, electronic and on line. In addition, the Commissioner has spoken to and led discussion with over ten thousand people this year at 77 formal speaking engagements.

### Young Women's Guide

International Women's Day 2000 was marked by the launch of Getting to know the Sex Discrimination Act: A guide for young women. The guide, available free of charge, is a practical source of information for young women in the transition years between school and work. It is particularly aimed at secondary school and higher education students who may be involved in workplace learning programs or part-time or casual work. Feedback has been extremely positive, and initially overwhelming with over 1000 phone calls received from the public in the two days following the launch.

### 15th Anniversary Sex Discrimination Act

August 1999 marked the fifteenth anniversary of the Sex Discrimination Act (Cth) 1984. This occasion presented an excellent educational opportunity. With an overall strategy to promote awareness of the legislation, the educational campaign involved the production of educative postcards (12,000 of which were distributed nationally free of charge in cafes, cinemas and other public places), and two high profile celebratory events. Commissioner Halliday invited

previous Sex Discrimination Commissioners Pamela O'Neil, Quentin Bryce AO and Sue Walpole to take the stage with her and share their perspective. The first event was held at Parliament House Sydney 11 October 1999 with an opening address by the Honorable Dr Meredith Burgmann. The second event was opened by the Attorney-General Daryl Williams AM QC MP and held in Melbourne at the Hotel Sofitel, 10 November 1999. Both events were sold out and each generated good media coverage. The objective of raising the profile of the Sex Discrimination Act was enhanced by comedians Absolutely Not! whose outstanding and memorable performances, treated controversial subject material with humour, were well received.

### **Youth Challenge Video**

This collaborative project between the Race Discrimination and Sex Discrimination Unit resulted in an educational video for secondary school students. The video was about young people in the workplace and how to identify and deal with potentially discriminatory situations. It has been used successfully in schools in NSW, SA and Victoria.

### **Sex Discrimination Seminars**

Two information sessions were run in Melbourne and attracted audiences from the private sector, community organisations, higher education and state and federal government. The sessions were run by Commissioner Halliday and Ms Sabina Lauber and focussed on recent legal decisions in the areas of sex discrimination in the workplace.

### **Youth Expo 2000**

The Human Rights and Equal Opportunity Commission was represented at the Youth Expo 2000 at the Royal Exhibition Buildings in Melbourne 4-7 April. The Expo coincided with National Youth Week and hundreds of secondary school students visited the HREOC stand, taking away with them kits of cross-Unit educative materials.

## **Research and Policy**

### **National Inquiry into Pregnancy and Work**

On 26 August 1998 the federal Attorney-General Daryl Williams AM QC MP requested the Human Rights and Equal Opportunity Commission undertake a National Inquiry into issues relating to pregnancy and workplace discrimination. Conducted by Commissioner Halliday and the Sex Discrimination Unit, the Inquiry involved extensive research and consultations with employers, employees, unions, health professionals, employer associations, government agencies, community groups and school students in metropolitan, regional and rural areas. The report entitled *Pregnant and Productive: It's a right not a privilege to work while pregnant* details the findings of the Inquiry and 46 recommendations.

Launched 25 August 1999, at Parliament House Canberra, ***Pregnant and Productive: It's a right not a privilege to work while pregnant*** evidences the existence of widespread and systemic discrimination on the grounds of pregnancy and potential pregnancy in Australian workplaces.

Key findings:

- many instances of pregnancy discrimination go unreported
- pregnancy discrimination takes many forms. some blatant, some covert, some detrimental to the health of the mother and the unborn child
- a high level of ignorance and misinformation amongst employees and employers
- casual workers are particularly vulnerable
- women with the potential to become pregnant are denied employment, training and promotional opportunities
- pregnant women suffer harassment and victimisation from colleagues
- partners had been denied leave to attend significant medical appointments or even the birth of the child
- employers misuse occupational, health and safety regulations to remove pregnant employees

- women conceal pregnancy because they fear discrimination at work

Pregnancy and potential pregnancy discrimination crosses industry sectors, professions, disciplines and employment level. Significant confusion about the rights and responsibilities of employees and employers when dealing with workplace pregnancy was revealed.

Numerous employees when contacting Families at Work will ask our consultants what their entitlements are within their own organisation. They appear to be unaware of who to contact or where to go to find information on their rights and responsibilities. (Families at Work submission no 40).

Diana is a first year cabinet making apprentice. She re-located from the regions after doing her pre-vocational course. She was told directly by employers that they wouldn't take her as an apprentice because she was a girl and she might get pregnant. (TAFE Queensland and Group Training Australia Focus Group).

Media and community interest generated by the Inquiry and the launch of the Report far exceeded expectations. Analysis of media coverage found radio and television broadcasts in the two days following the Report launch reached 4.5 million people (a conservative estimate) across Australia. Coverage in print and online media was also extensive with 21 articles published about the Report in the first 48 hours. There was also extensive follow-up across the Internet plus interest from neighbouring Asian and Pacific countries, the United Kingdom and Scandinavia. Interest from other overseas print and radio media followed.

A Government response to the 46 recommendations of the report is pending.

### **Women's Labour Market Participation in Regional Australia**

Labour markets vary depending on a range of factors, especially the size of towns and cities. This publication entitled Women's Labour Market Participation in Regional Australia is the result of research undertaken by the University of Newcastle commissioned by the Sex Discrimination Unit. It identifies the profound differences in employment opportunities between city and non-metropolitan areas. The research paper was launched Saturday 1 April 2000 at the Yarra Valley Women on Farms Gathering in Victoria by Commissioner Halliday who has been active in a variety of rural events.

### **Sex Discrimination in the Banking/Finance Industry**

The Sex Discrimination Unit continues to support Ms Sara Charlesworth in her research of the influence of the industrial and anti-discrimination legislative frameworks, as well as non-legislative factors on the treatment of sex discrimination in the banking and finance industries. Ms Charlesworth published a preliminary paper in the Journal on Interdisciplinary Gender Studies which acknowledged HREOC.

### **Migrant and refugee women**

Ms Rachel Gray undertook a three-month internship to research current issues facing migrant and refugee women in Australia. The paper resulting from the collaborative Sex Discrimination / Race Discrimination project is entitled 'An Ocean of Fires: Immigrant and Refugee Women's Voices'.

## **Submissions**

### **'More Jobs, Better Pay' Bill 1999**

Senate Employment, Workplace Relations, Small Business and Education Committee Inquiry into the Workplace Relations Legislation (More Jobs, Better Pay) Bill 1999.

The Sex Discrimination Unit prepared a submission on the behalf of the Human Rights and Equal Opportunity Commission that reiterated the issues raised regarding the Workplace Relations Act 1996 in the Report of the National Pregnancy and Work Inquiry, as well as other issues affecting gender equality in the workplace. Commissioner Halliday also appeared before the Senate Inquiry on 26 October 1999 to clarify and respond in more detail to issues raised in the submission.

### **Welfare Reform**

The submission to the Reference Group on Welfare Reform (December 1999) focussed on the issue of paid maternity leave as a possible future option via the welfare system.

### **Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**

Office for the Status of Women

The Sex Discrimination Unit reviewed Australia's progress under CEDAW as part of its submission to the Office of the Status of Women on progress under this Convention over the past five years.

### **International Convention on Economic, Social and Cultural Rights (ICESCR)**

Report to the Economic and Social Council administering the ICESCR.

The ICESCR contains many articles directly relevant to the work of the Sex Discrimination Unit. This submission reviewed progress under these articles in Australia over the past five years and included achievements, challenges and continuing obstacles.

### **Workplace Relations Amendment Bill 2000**

The Sex Discrimination Commissioner provided comments on section 170LGA(4) of the proposed amendments concerning the decision-making process of the Australian Industrial Relations Commission. Views and advice were provided on the principles of natural justice.

### **Same Sex Superannuation Bill**

Senate Inquiry into the Superannuation (entitlements of same sex couples) Bill 2000.

The Sex Discrimination Unit's submission to this inquiry reiterated the recommendations made in HREOC's 1999 publication Superannuation Entitlements of Same-Sex Couples: Report of Examination of Federal Legislation.

### **AMWU Casuals and Part-time Case**

S113 application to vary the Metal and Associated Industries Award 1998

In April 2000 the Sex Discrimination Commissioner was granted leave to intervene in the AMWU Casuals and Part-time Case heard before the Australian Industrial Relations Commission by way of written submission.

The submission focused on the areas of concern to the role and duties of the Sex Discrimination Commissioner in relation to the objects of the Sex Discrimination Act 1984 (Cth), focussing primarily on issues raised in the context of casual employment.

Interest in the AMWU Casuals and Part-time Case stems from HREOC's legislative functions and responsibilities with regard to the elimination of discrimination in employment and particularly, the functions conferred by the Sex Discrimination Act 1984 [sections 48(1)(d), (e), (GB) and (h)] and by the Human Rights and Equal Opportunity Commission Act 1986 [sections 11 (1) (g), (o) and (p)].

The case was seen by HREOC as an appropriate vehicle to revisit issues associated with casual employment which have the potential to disadvantage and discriminate (directly and indirectly) against women. HREOC sought consideration of these matters by the AIRC to ensure that in the process of any general review of casual employment provisions, discrimination due to a casual employment status is identified and minimised.

## **Consultation**

### **International Labour Organisation Convention 103 (Maternity Protection at Work)**

Comments were provided to the Department of Employment, Workplace Relations and Small Business on a draft of ILO Convention 103 regarding maternity leave. In particular, comments stressed the need for ILO Conventions concerning women to be consistent with standards set by the Convention on the Elimination of All Forms of Discrimination Against Women. Several of the points submitted form part of Australia's observations on the Convention published in the ILO report IV (2A) from its 88th session, 2000.

## **Occupational Health and Safety (Lead) Regulations 2000**

Advice was provided to the Victorian WorkCover Authority on its draft Occupational Health and Safety (Lead) Regulations 2000, draft Code of Practice for Lead and regulatory impact statement. The advice drew upon the Sex Discrimination Unit's research into lead including discussion of lead-related issues documented in the Report of the National Inquiry into Pregnancy and Work.

## **ILO Conventions and Protocol on the night work of women**

The Sex Discrimination Unit responded to a request from the Department of Employment, Workplace Relations and Small Business to contribute to Australia's Article 19 Report to the ILO on the Conventions and Protocol on the night work of women. The submission supported the Australian position not to ratify ILO Convention numbers 4, 41 and 89 and the 1990 Protocol on the night work of women, as any prohibition on women from working at night is directly discriminatory against women in their employment.

## **International work**

### **Beijing +5**

UN General Assembly Special Session: "Women 2000: Gender Equality, Development and Peace for the 21st Century. 5-9 June 2000.

The Sex Discrimination Commissioner is tasked with monitoring the progress of gender issues and ensuring the human rights of women in Australia are protected.

In June 2000, the UN General Assembly held a Special Session to review and build on the outcomes of the fourth world conference on women, known as the '1995 Beijing Conference' and went on to set the international agenda on women's rights for the first decade of the 21st century.

Commissioner Halliday and Ms Sabina Lauber (Director A/g, Sex Discrimination Unit) attended in the capacity of Independent Advisors to the Australian Delegation and were involved in intense negotiations around the 12 critical areas of concern:

- women and poverty
- education and training for women
- women and health
- women and armed conflict
- women and the economy
- women in power and decision-making
- institutional mechanisms for the advancement of women
- human rights of women
- women and the media
- women and the environment
- the girl child.

The "outcomes document" consists of consensus text negotiated amongst the 188 participant countries on human rights commitments to women for the next decade.

### **South African Commission on Gender Equality**

The Sex Discrimination Unit on behalf of the Human Rights and Equal Opportunity Commission successfully tendered to work with AusAID on a project of technical co-operation with the South African Commission on Gender Equality (CGE).

During May 2000 Commissioner Halliday and officers of the Sex & Race Discrimination Unit, participated in phase one of the project. Commissioner Halliday addressed a significant gathering of South African women politicians at Parliament House in Cape Town. As a follow up to this visit, the SDU office returned to Johannesburg in July 2000 to deliver training on the conduct of national inquiries to the CGE.

The good relationships developed with members of the women's machinery within the South African Government were reflected in the positive interactions with the South African delegation at the Beijing +5 conference in New York, June 2000.

The project work in South Africa continues on into the next reporting year.

### **Regional Workshop on the Role of National Human Rights Institutions in Advancing the Human Rights of Women**

Commissioner Halliday attended the Regional Workshop in Suva, Fiji, organised by the Asia Pacific Forum 5-7 May 2000. This meeting was an important opportunity for Pacific Island and Asian nations to determine a common platform for action and joint statement on gender issues. This document was utilized at the Beijing + 5 conference, and will underpin future Asia Pacific work on gender.

### **UN Focal Point on Trafficking**

The A/g Director Sex Discrimination Unit, was appointed HREOC contact for the UN Focal Point on Trafficking in Women to assist the UN High Commissioner for Human Rights with work in this area. Her role is predominantly one of information gathering and dissemination.

### **Speeches**

Attached is a selection of speeches, seminars and presentations made by Commissioner Halliday in the reporting period. Selected papers are available on the HREOC website.

#### **Women at Work**

11th Women, Management and Industrial Relations Conference  
Macquarie Graduate School of Management, Sydney. 20 July 1999.

#### **Inquiry into Pregnancy and Work Member Briefing**

Equal Employment Opportunity Network, Melbourne. 23 July 1999.

#### **Leadership and the Management of Diversity**

Australian Institute of Police Management, Sydney. 29 July 1999.

#### **On the Eve of the 21st Century There are Those Working to Return us to the 19th Century**

Women and Management Dinner, Sydney. 10 August 1999.

#### **Young Women and Pregnancy**

Association of Women Educators, Brisbane. 25 August 1999.

#### **Managing Business and Workplace Pregnancy**

Council of Equal Opportunity in Employment Ltd, Melbourne. 27 August 1999.

**The business of a discrimination and harassment-free workplace: Smart people policies.** Australian Legal Practice Management Group & Law Office Management Group, Sydney. 10 September 1999.

#### **Women and the Law**

International Commission of Jurists, Melbourne University. 11 September 1999.

#### **Young Women Striding into the 21st Century**

St Ursula's and St Xavier's College, Toowoomba. 16 September 1999.

**Keep Pushing We're Almost There**

National Baha'i Office for the Advancement of Women International Women's Conference, Brisbane. 17 September 1999.

**Private Pain, Public Sanction**

Beyond the Barriers - Improving Legal Responses to Domestic Violence Conference  
Domestic Violence Service Gold Coast. 23 September 2000.

**Collaboration, Consolidation and Compliance**

ANU Commercial Law and Human Rights Conference, Canberra. 24 September 2000.

**Women's Rights are Human Rights**

Australian Women Lawyers Breakfast, Canberra. 8 October 1999.

**15th Anniversary Sex Discrimination Act**

Celebration Dinner with previous Commissioners and Attorney-General  
11 October 1999, Sydney. 10 November 1999, Melbourne.

**Who are you Planning to Recruit in the 21st Century?**

Morgan & Banks Seminar, Sydney. 20 October 1999.

**Pregnancy and Work**

Absolutely Women's Health Forum  
Royal Women's Hospital Melbourne. 16 November 2000.

**Human Rights and Equal Opportunity**

Victorian Commercial Teachers Association Conference  
La Trobe University. 22 November 1999.

**Australia's Implementation of International Human Rights: focus on women's rights"**

Launch of Women's Rights Action Network Australia Tribunal Video, Melbourne.  
14 December 2000.

**Queensland Police Service Conference**

Police Academy, Oxley. 7 February 2000.

**Women's Participation in Local Government**

Address to women candidates, Melbourne Town Hall. 10 February 2000.

**Address to students**

Presbyterian Ladies College, Sydney. 22 February 2000.

**Australian women: A national picture**

Association of Women Educators IWD Dinner, Adelaide. 29 February 2000.

**Will Barbie Make it to the Boardroom this Century?**

CEOE Ltd International Women's Day Breakfast. 8 March 2000.

**Launch of Getting to Know the Sex Discrimination Act:**

A guide for young women Hornsby Girls High School, NSW. 8 March 2000.

**2nd Annual Women and Policing Awards**

NSW Police Academy, Goulburn. 8 March 2000.

**21st Century Workplace**

Australia Post, Sydney. 15 March 2000.

**11th Annual Women on Farms Gathering**

Yarra Valley, Victoria. 1 April 2000.

**Status of Women in Australia**

Address to South African female politicians, Cape Town. 3 April 2000.

**Pregnancy and other Employment Issues**

Womens' Infolink Employment Seminar, Brisbane. 3 May 2000.

**Pregnancy and Potential Pregnancy Discrimination**

Asia Pacific Forum of National Human Rights Institutions

Regional Workshop on 'The Role of National Human Rights Institutions in Advancing the International Human Rights of Women'

Suva Fiji, 5-7 May 2000.

**Sex Discrimination - Address to senior students**

Alphington Grammar, Melbourne. 12 May 2000.

**How does Australia become the world's best?**

Curriculum Corporation National Conference, Melbourne. 18 May 2000.

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## **International Activities**

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The Commission undertakes bilateral international activities, generally as part of the Australian Government's development cooperation program developed by the Australian Agency for International Development (AusAID). The most substantial of these is the Human Rights Technical Assistance Program, which is an integral part of the annual Dialogue on Human Rights with China.

The Human Rights Technical Assistance Program (HRTA) undertakes each year a series of activities intended to assist China to promote and protect human rights. In 1999/2000 a total of fourteen activities was undertaken. These included providing scholarship for Chinese officials to study human rights in Australia, conducting seminars in China on human rights subjects, providing training to Chinese judges and prosecutors and assisting with the introduction of measures to protect women from family violence and to protect the rights of prisoners.

The program is intended to have both immediate and long term impact. Over the course of the past year there have been some modest but noticeable results – for instance the introduction of mandatory procedures for informing detained persons of their rights, mandatory complaints procedures for informing detained persons of their rights, mandatory complaints procedures and the initiation of consultations between social reform groups and public authorities, greater openness in this work of courts and the primary regular reporting of judicial determinations, etc.

In the longer term the program is expected to have an impact through increasing the level of knowledge of human rights concepts, with a resultant impact on the formulation of Chinese policy and practice. The program therefore seeks to work with the Chinese authorities to demonstrate the value of institutionalising the regard for human rights and to then work with those authorities to formulate and implement practical strategies to realise that value.

During the course of 1999/2000 the Commission has been involved in discussions with the Vietnamese authorities concerning the possibility of undertaking a program of joint research on human rights and a study of human rights institutions in the Asia-Pacific region. A modest start to this program is expected in the coming year.

The Commission has also worked with other countries on a smaller scale and in more technical areas. For instance the Commission has worked with the Government of Indonesia on preparing plans for the implementation of Convention 111 of the International Labour Organisation (relating to equality in employment) and with the Government of South Africa on technical improvements to the operations of the Commission on Gender Equality.

### **Asia Pacific Forum of National Human Rights Institutions**

The Commission's 1996-97 Annual Report announced the establishment of the Asia-Pacific Forum of National Human Rights Institutions (the Forum) on 10 July 1996. There are currently seven national human rights institutions in the region that are members of the Forum: New Zealand, Australia, the Philippines, India, Indonesia, Sri Lanka and Fiji. The recently established National Human Rights Commission of Nepal is anticipated to become the eighth member at the Forum's Fifth Annual Meeting in August 2000. The Secretariat of the Forum is located at the Australian Commission. The Australian Government, through the Minister for Foreign Affairs and Trade, the Hon. Alexander Downer MP, and the Australian Agency for International Development (AusAID) has been unstinting in its political and financial support for the Forum. Core project funding is provided by the Australian Government. Additional funding for Forum activities is provided by a range of donors on a project by project basis.

During 1999-2000, the Secretariat's operations concentrated on three main areas of activity

- (i) the development and delivery of technical assistance and cooperation projects
- (ii) information dissemination and
- (iii) administrative support for the Forum and its activities.

#### **Technical Assistance and Cooperation Projects**

The objectives of these projects, which are developed jointly with partner institutions or governments, are to:

- improve the levels of appropriate skills and knowledge among members and staff of national institutions in the region
- enhance national institution structures and procedures in accordance with the Paris Principles<sup>7</sup> to facilitate a more effective system to protect and promote human rights
- provide governments in the region wishing to establish a national institution with assistance and information as requested to facilitate the development of a national institution in accordance with the Paris Principles.

Projects developed within the framework of the Forum generally fall into two categories

- (i) country-based or bilateral projects which tend to be medium to long term technical assistance activities focused on the development and strengthening of national human rights institutions and
- (ii) regional projects which focus on identified areas of common need or concern in the region.

The Forum is not a funding agency and has no funds of its own to apply to technical cooperation activities. Rather, its role is to develop proposals that can then be taken to potential funding organisations, whether government or private, for consideration. It is important therefore that any proposals for technical cooperation be developed in a comprehensive manner and in formats that fit with the requirements of the funding agency.

Details of some of these projects are outlined below, under 'Regional projects' and 'Country related activities'.

#### Information Dissemination

The exchange of information is one of the Forum Secretariat's fundamental roles. The objectives in this area are to

- improve awareness among political and administrative decision-makers and the wider community of the value and importance of national human rights institutions
- improve awareness among relevant regional governments and agencies of appropriate functions, powers, structures and legislation for national institutions established in accordance with the Paris Principles
- improve awareness among regional national human rights institutions of the legislation, casework, techniques, procedures and outcomes of other national institutions both within and outside the region
- provide information about Forum activities to member institutions, governments, United Nations agencies, non-government organisations and the general community.

The Forum encourages the participation of governments and human rights non-government organisations in the annual Forum meetings as observers. This has been an important process to promote the establishment of new institutions, the effectiveness of existing institutions, closer partnerships with governments and non-government organisations and greater awareness of the Forum's activities.

#### **Forum Administrative Support**

The Secretariat organises and services the annual meetings and workshops of the Forum; implements decisions of the Forum; undertakes research; develops technical assistance and cooperation projects and other proposals; seeks funding for projects and facilitates the provision of expert assistance to governments in the region concerning the establishment of national institutions.

#### **Regional Activities**

##### **Fourth Annual Meeting of the Asia-Pacific Forum of National Human Rights Institutions – Manila 6-8 September 1999**

The annual Forum meetings are now the largest and most representative human rights gathering held annually in the Asia Pacific.

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<sup>7</sup> *Principles Relating To The Status Of National Institutions*, Commission on Human Rights resolution 1992/54 of 3 March 1992. Annex (Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A); General Assembly resolution 48/134 of 20 December 1993, annex.

Financial assistance was provided by the Office of the United Nations High Commissioner for Human Rights and the Government of Australia, through the Australian Agency for International Development (AusAID).

The special theme for the Meeting was *National Human Rights Institutions and Economic and Social Rights*. The keynote speakers were Justice P C Bhagwati, Regional Representative of United Nations High Commissioner for Human Rights and Deputy Chairperson of the United Nations Human Rights Committee, and Professor Virginia Dandan, Chairperson of the United Nations Committee on Economic, Social and Cultural Rights. Participants included senior representatives of the seven national human rights commissions that comprise the Asia Pacific Forum and the Special Adviser to the United Nations High Commissioner for Human Rights, Mr Brian Burdekin representing the High Commissioner.

The Forum called on governments to give explicit effect to their commitment to the realisation of economic, social and cultural rights, including through their input into the policies and programs of international financial institutions and of international and regional economic forums. The Forum expressed its continued concern at the detrimental impact that some policies and practices of international financial institutions and multinational corporations have upon the enjoyment of human rights. It noted its concern that, as non-state actors, these institutions are not subject in law to international human rights treaties and are not formally accountable for compliance with them. The Forum welcomed the initiative of the High Commissioner for Human Rights to establish a dialogue with United Nations agencies and programs, international financial institutions, international agencies and non-state players. The Forum also encouraged the Committee on Economic, Social and Cultural Rights to continue and extend its dialogue with all these bodies in its work. The Forum agreed to further explore means of promoting and protecting economic, social and cultural rights and resolved to explore closer engagement with relevant organisations.

A full report of the meeting has been placed on the Forum's website.

### **Forum Regional Workshop: The Role of National Human Rights Institutions in Advancing the International Human Rights of Women**

At its Fourth Annual Meeting in 1999, the Forum agreed to hold a workshop in 2000 on the advancement of women's human rights, in consultation with the NGO community. The Fiji Human Rights Commission (FHRC) agreed to host this Workshop to enhance the profile of human rights in the Pacific sub-region.

The Workshop was organised by the Secretariat of the Asia Pacific Forum of National Human Rights Institutions, in collaboration with the host institution, the Fiji Human Rights Commission. It was co-sponsored by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and financially supported by OHCHR, the New Zealand Government, through its Ministry of Foreign Affairs and Trade (MFAT), and the Australian Government, through its Agency for International Development (AusAID) as part of its continuing program of support for the Forum Secretariat.

The Workshop was held from 5 – 7 May 2000 in Suva, Fiji Islands. It was preceded by frequent consultation between the Forum Secretariat, the FHRC and the OHCHR.

The Prime Minister of the Fiji Islands, the Hon Mr Mahendra P Chaudhry, opened the Workshop at a function that was also addressed by the Chairperson of the Fiji Commission on Human Rights, Mr Justice Kepa, the Special Adviser to the United Nations High Commissioner for Human Rights, Mr Brian Burdekin, and Justice Dame Silvia Cartwright, Committee Member, CEDAW and New Zealand High Court Judge.

The goal of the workshop was to promote better understanding and observance of the international human rights of women in the Asia Pacific region.

The workshop was very successful and produced a comprehensive statement of conclusions. Further details on this activity can be found in a separate report to this meeting.

Sadly, ten days following the workshop the elected Fiji Government was held hostage and overthrown by a civilian coup. The Forum Secretariat, however, hopes to continue to develop human rights projects which implement the conclusions of the workshop with Pacific island states.

### **Forum Regional Workshop: National Institutions and Non-Government Organisations: Working in Partnership**

From 26-29 July 1999 the Forum regional workshop, National Institutions and Non-Government Organisations: Working in Partnership was held in Kandy, Sri Lanka. Co-sponsors of the workshop were the Sri Lankan Human Rights

Commission and the Asia Pacific Human Rights Non-Government Organisations Facilitating Team. The workshop was attended by approximately 70 participants representing national institutions, non-government organisations, governments and international organisations. The United Nations Voluntary Fund for Technical Assistance provided US\$50,000 and the New Zealand Government a further NZ\$46,000 towards the workshop. A full report of the outcomes of the workshop was presented at the Forum's Fourth Annual Meeting in Manila in 1999 and is on the Forum's website.

## **Country-based Projects**

### **East Timor**

On 10 December 1999 an officer of the Secretariat participated in a symposium Darwin on the establishment of a judicial system in East Timor, organized by the United Nations Transitional Authority in East Timor (UNTAET) and the School of Law of the Northern Territory University. The Human Rights Commissioner and the Forum officer traveled to Dili, East Timor and met with local NGO representatives and the Director and officers of the Human Rights Unit of UNTAET.

In January 2000 at the request of UNTAET the Forum organized two project proposals: the first a proposal for the establishment of an ombudsman's position in UNTAET; the second a project proposal for an East Timor human rights seminar. This seminar, developed by the Forum Secretariat and implemented by UNTAET is scheduled to be held in Dili in August 2000 and it is expected that the High Commissioner for Human Rights, Mrs Mary Robinson will participate.

### **Indonesia**

The Forum continued its management of technical assistance and cooperation with the Indonesian Human Rights Commission (Komnas HAM). This included the recruitment, selection and placement in May 2000 of an Australian human rights educator at Komnas HAM for two years.

In June 2000 the Secretariat hosted a five person delegation from the Indonesian Human Rights Commission, Komnas HAM. The program included an academic component and meetings with Ministers, the Judiciary, government and non-government representatives as well as focusing on national institution policy, legal, conciliation and education issues. The visit provided the delegation with knowledge of alternative institutional mechanisms for the protection and promotion of human rights and further developed linkages between Komnas HAM and the Forum.

### **Iran**

In July 1999 the Secretariat met with the Deputy Foreign Minister of Iran, Mr Mohsen Aminzadeh and other Iranian government officials. Discussion included the existing cooperation between the Forum and the Islamic Human Rights Commission of Iran.

### **Sri Lanka**

The Forum regional workshop in July 1999, National Institutions and Non-Government Organisations: Working in Partnership was held in Kandy, Sri Lanka. Co-sponsors of the workshop were the Sri Lankan Human Rights Commission and the Asia Pacific Human Rights Non-Government Organisations Facilitating Team. The workshop was attended by approximately 70 participants representing national institutions, non-government organizations, governments and international organizations. The United Nations Voluntary Fund for Technical Assistance provided US\$50,000 and the New Zealand Government a further NZ\$46,000 towards the workshop. A full report of the outcomes of the workshop was presented at the Forum's Fourth Annual Meeting in Manila in 1999 and is on the Forum's website.

### **Thailand**

In October 1999 the Secretariat in partnership with the Centre for Democratic Institutions organised a one week visit of an eight person delegation from Thailand. The delegation was comprised of a cross-section of people from the Thai community including members of Parliament, government officials and non-government representatives. The visit followed the passage of the *National Human Rights Commission Act* by the National Assembly of Thailand.

## **Vietnam**

In July and October 1999 the Director of the Secretariat gave lectures to 20 Vietnamese judges on the interrelationship between human rights and criminal law, the role of national human rights institutions and the activities of the Asia Pacific Forum. This project was in association with the Centre for Asian and Pacific Law at the University of Sydney. The project was funded by the United Nations Development Program.

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# Appendix 1

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## International instruments observed under legislation administered by the Human Rights and Equal Opportunity Commission

### Human Rights and Equal Opportunity Commission Act

The *International Covenant on Civil and Political Rights* deals with many human rights and includes the right without discrimination to:

- freedom from torture or cruel and inhumane punishment
- equality before the law
- humane treatment if deprived of liberty
- freedom of thought, conscience and religion
- peaceful assembly
- a vote and election by equal suffrage
- marriage and family

The *Declaration of the Rights of the Child* provides that every child has the right to:

- a name and nationality
- adequate nutrition, housing and medical services
- education
- special treatment, education and care if the child has a disability
- adequate care, affection and security
- protection from neglect, cruelty and exploitation

The *Declaration on the Rights of Disabled Persons* provides that people with disabilities have the right to:

- respect and dignity
- assistance to enable them to become as self-reliant as possible
- education, training and work
- family and social life
- protection from discriminatory treatment

The *Declaration on the Rights of Mentally Retarded Persons* provides that people with a mental disability have the right to:

- proper medical care and therapy
- protection from exploitation, abuse and degrading treatment
- a decent standard of living
- education, training and work
- due process of law

review of procedures which may deny them these rights

The *International Labour Organisation Convention 111* deals with discrimination in employment and occupation. Australian adherence to this Convention provides that all people have the right to equal treatment in employment and occupation without discrimination on the basis of:

- race
- colour
- sex
- religion
- political opinion
- national extradition
- social origin
- age
- medical record
- criminal record
- sexual preference
- trade union activity
- marital status
- nationality
- disability (whether physical, intellectual, psychiatric or mental)
- impairment (including HIV/AIDS status)

The *Convention on the Rights of the Child* confirms that children are entitled to the full range of human rights recognised in international law (subject to limitations relating to their capacity to exercise these rights and to the responsibilities of families). The Convention also recognises a range of rights relating to the special needs of children. It seeks to ensure that the protection of these rights in law and practice is improved.

The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* became part of the definition of human rights for the purposes of the Human Rights and Equal Opportunity Act on 24 February 1994. The Declaration recognises the right to freedom of religion. The only limitations to this right are those prescribed by law and which are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.

### **Racial Discrimination Act**

The *International Convention on the Elimination of All Forms of Racial Discrimination* aims at the elimination of all forms of racial discrimination in order to promote understanding between races and provide freedom from racial segregation. It is entered into force for Australia by the Commonwealth *Racial Discrimination Act 1975* in which it is scheduled.

### **Sex Discrimination Act**

The *Convention on the Elimination of All Forms of Discrimination Against Women* and certain aspects of the *International Labour (ILO) Convention 156* are multilateral agreements adopted under the auspices of the General Assembly of the United Nations in 1979. The Conventions recognise the civil, political, economic, social and cultural rights of women. The Commonwealth *Sex Discrimination Act 1984* implemented

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# Appendix 2

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## Commission publications released during 1999-2000

### Human Rights

- Rural & Remote School Education Report – January 2000
- Emerging Themes – The National Inquiry into Rural & Remote Education Report 1 – March 2000
- Recommendations the report of the National Inquiry into Rural & Remote Education – June 2000 (tabled report)
- Age Matters – A report on Age Discrimination – June 2000 (tabled report)
- Human Rights Report No. 8 – June 2000 (tabled report)
- Human Rights Report No. 9 – June 2000 (tabled report)
- Human Rights Report No. 10 – June 2000 (tabled report)
- Immigration Detention Guidelines HRU – April 2000
- Convention on the Rights of the Child (Poster)

### General

- Complaint Guide (reprinted updated version)
- Human Rights & Equal Opportunity Commission General Guide (reprinted updated version)
- Human Rights & Equal Opportunity Commission 1999 Annual Report – October 1999 (tabled report)
- Complaint Guide (updated version) – May 2000

### Privacy

- National Principles for the fair Handling of personal information (updated version) – 1999
- Privacy Email Guidelines – April 2000

### Race Discrimination

- Crime & Ethnicity – 1999
- Cultural Dimensions – Approaches to Diversity Training In Australia – April 2000
- New Country, New Stories

### ATSI Social Justice Unit

- Seventh Aboriginal & Torres Strait Islander Social Justice Report 1999 (2000) (tabled report)
- 1999 Social Justice Native Title Report – 2000 (tabled report)
- 1999 Social Justice Annual Report – April 2000 (tabled report)
- 1999 Native Title Report – April 2000 (tabled report)

## **Sex Discrimination**

- Getting to know the SDA – A guide for young women – March 2000
- Women's Labour Market Participation in Regional Australia – April 2000
- Pregnant & Productive – June 1999 (tabled report)

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## Appendix 3

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### Address of Human Rights and Equal Opportunity Commission and State and Territory Commissions

#### Human Rights and Equal Opportunity Commission

Level 8, Piccadilly Tower  
133 Castlereagh Street  
Sydney NSW 2000

GPO Box 5218  
Sydney NSW 1042

Telephone: (02) 9284 9600

Enquiries and publications: 1300 369 711

Complaints infoline: 1300 656 419

Privacy hotline: 1300 363 992

TTY: 1800 620 241

Facsimile: (02) 9284 9611

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

E-mail: [paffairs@hreoc.gov.au](mailto:paffairs@hreoc.gov.au)

#### State and Territory Equal Opportunity Commissions

##### Australian Capital Territory

Human Rights Office  
3rd Floor, GIO House  
City Walk  
CANBERRA ACT 2600

GPO Box 158  
CANBERRA ACT 2601

Telephone: (02) 6207 0576

TTY: (02) 6207 0525

Facsimile: (02) 6207 0587

##### New South Wales

Anti-Discrimination Board  
Level 17, 201 Elizabeth Street  
SYDNEY NSW 2000

Telephone: (02) 9268 5544

TTY: (02) 9268 5522

Facsimile: (03) 9268 5500

##### Northern Territory

Anti-Discrimination Board  
Level 17, 201 Elizabeth Street  
SYDNEY NSW 2000

Locked Mail Bag 22  
GPO DARWIN NT 0800

Telephone and TTY: (08) 8981 3813

Toll free: 1800 813 846  
Facsimile: (08) 8981 3812

### **Queensland**

Anti-Discrimination Commission  
Level 1, 189 Coronation Drive  
(corner Cribb Street)  
MILTON QLD 4064

Telephone: (07) 3247 0900  
Freecall: 1300 130 670 (Qld only)  
TTY: 1300 130 680  
Facsimile: (07) 3247 0960

### **South Australia**

Equal Opportunity Commission  
Level 2, 45 Pirie Street  
ADELAIDE SA 5000

Telephone: (08) 8207 1977  
Toll free: 1800 188 163  
TTY: (08) 8207 1911  
Facsimile: (08) 8207 2090

### **Tasmania**

Anti-Discrimination Commission  
5th floor, 15 Murray Street  
HOBART TAS 7000

GPO Box 197  
HOBART TAS 7001

Telephone: (03) 6233 4841  
Facsimile: (03) 6231 0773

### **Victoria**

Equal Opportunity Commission  
3rd floor, 380 Lonsdale Street  
MELBOURNE VIC 7000

Telephone: (03) 9281 7111  
Toll free: 1800 134 142 (Vic only)  
TTY: (03) 9281 7110  
Facsimile: (03) 9281 7171

### **Western Australia**

Equal Opportunity Commission  
2nd floor, 141 St Georges Terrace  
PERTH WA 6850

Telephone: (08) 9264 1930  
Toll free: 1800 198 149  
Facsimile: (08) 9264 1960

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# Appendix 4

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## Freedom of Information

The Freedom of Information Act gives the general public legal access to government documents.

### Freedom of Information statistics

During 1999-2000, the Commission received the following 31 requests for access to documents under the Freedom of Information Act:

- 29 access requests to documents relating to complaints; and
- 2 related to administrative matters.

A total of 32 applications were processed, including the resolution of applications from 1998-1999.

### Categories of documents

Documents held by the Commission relate to:

- administration matters, including personnel, recruitment, accounts, purchasing, registers, registry, library records and indices;
- conciliation matters, including the investigation, clarification and resolution of complaints;
- legal matters, including legal documents, opinions, advice and representations;
- research matters, including research papers in relation to complaints, existing or proposed legislative practices, public education, national inquiries and other relevant issues;
- policy matters, including minutes of Commission meetings, administrative and operational guidelines;
- operational matters, including files on formal inquiries; and
- reference materials, including press clippings, survey and research materials, documents relating to conferences, seminars and those contained in the library.

### Freedom of Information procedures

Initial inquiries about access to Commission documents should be directed to the Freedom of Information Officer by either telephoning (02) 9284 9600 or by writing to:

Freedom of Information Officer  
Human Rights and Equal Opportunity Commission  
GPO Box 5218  
Sydney NSW 1042

Procedures for dealing with Freedom of Information requests are detailed in section 15 of the Freedom of Information Act. A valid request must:

- be in writing;
- be accompanied by a payment of \$30 application fee;
- include the name and address of the person requesting the information;
- specify the documents to be accessed; and

- be processed within 30 days of receipt.

Some documents are exempt from public perusal under the Freedom of Information Act. Where documents are not accessible by the applicant, valid reasons will be provided. The Commission's decisions about accessibility of documents may be reviewed by the Administrative Appeals Tribunal.

The general public can obtain Commission publications and information from offices listed in Appendix 4.

## **Purchasing**

The Commission's purchasing procedures address a wide range of purchasing situations, allowing managers to be flexible when making purchasing decisions whilst complying with government key purchasing objectives including:

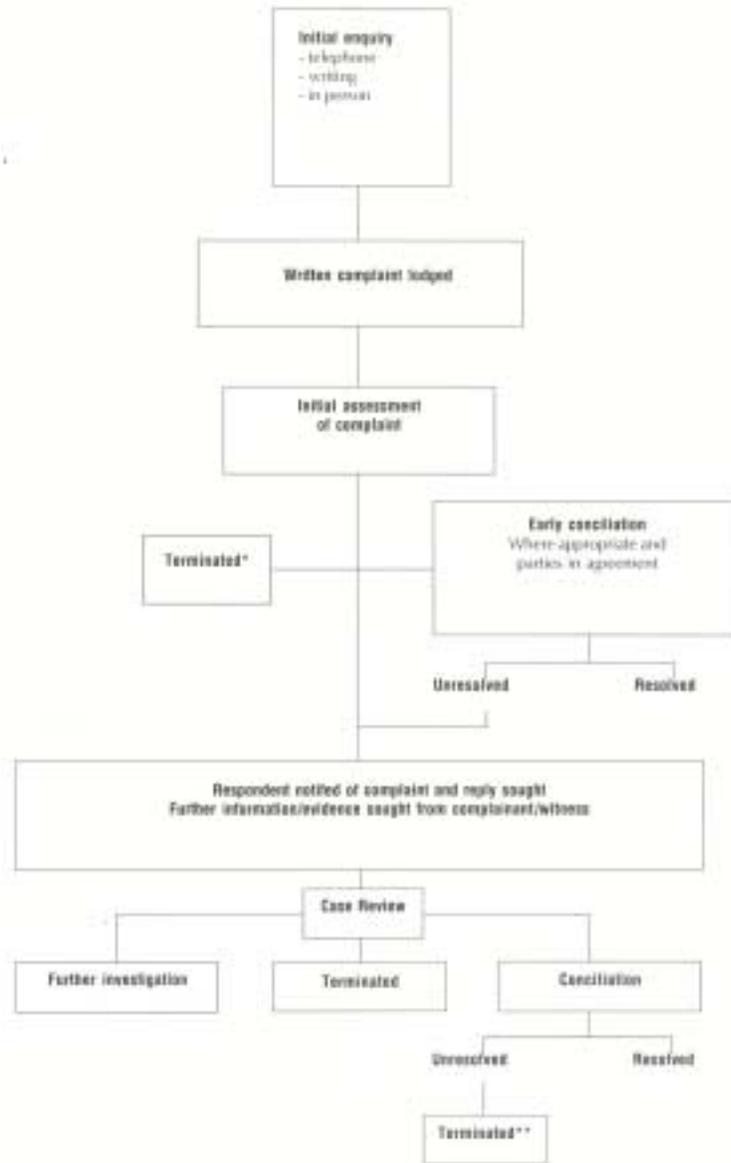
- value for money;
- open and effective competition;
- accountability and reporting;
- national competitiveness and industry development; and
- support for other Commonwealth policies.

## **Consultancy services**

The Commission during 1999-2000 used a range of consultancy services where there was, for example, a need for rapid access to latest technology and experience in its application; limitations on executive time; lack of in-house resources; the need for independent study; or a need for a change agent or facilitator. There were 12 consultants under engagement during the financial year and total payments of \$469,653.00 were made to consultants. A full listing of the names and amounts is available on the Commission's website at <http://www.hreoc.gov.au>

# Appendix 5

## The complaint handling process



\*When complaints under the Racial, Sex & Disability Discrimination Acts are terminated, the complainant may apply to have the allegations heard and determined by the Federal Court.

\*\* Complaints under the Human Rights & Equal Opportunity Commission Act concerning discrimination in employment or a breach of human rights, which cannot be conciliated, cannot be taken to the Federal Court. If the Present is satisfied that the subject matter of the complaint constitutes discrimination or a breach of human rights these findings are reported to the Attorney-General for tabling in Parliament

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# Appendix 6

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## Performance management and staff development

The Commission implemented a Performance Management Scheme for all staff from 1 July 1999. The scheme is intended to strengthen and support the Commission in performing its functions by providing regular and formal assessment of employees' work performance and to provide employees with skill development and career advancement opportunities. A review of the Commission's Performance Management Scheme guidelines, to evaluate its effectiveness and the need to make changes to how it is operating, is planned after completion of the first cycle (1 July 1999 to 30 June 2000).

The Commission's Certified Agreement 2000-2002 also recognises the need to provide adequate training support to accompany changes, innovations or improvements to work arrangements. This is of particular importance with ongoing changes in the Information Technology field where staff are provided with relevant and ongoing computer training.

The Certified Agreement also supports access to the Commission's Studies Assistance policy, where study is relevant to the work of the Commission, an individual's work responsibilities and where it assists with ongoing career development. Staff who have been unable to complete schooling or commence tertiary studies due to personal circumstances are encouraged to apply for assistance.

## Occupational health and safety

The Occupational Health and Safety (OH&S) Committee met at least four times during the year. The Committee includes a staff health and safety representative and at least four corporate support staff. The Committee surveyed staff on their awareness of OH&S issues and as a result was then able to hold relevant training sessions on specific OH&S issues for staff and supervisors. The Committee looked at reviewing the OH&S Plan and this will be finalised in the new year. There have been no accidents or dangerous occurrences reported.

The Commission continues to provide free and confidential counselling for staff and their families through its Employee Assistance Program. Ongoing assistance and support on OH&S and ergonomic issues is provided to new and existing staff.

## Workplace diversity and equal employment opportunity

The Commission's Workplace Diversity Plan was finalised in September 1999. The Commission recognises that diversity in its staff is one of its greatest strengths and assets and is committed to ensuring that its Workplace Diversity Plan achieves its objectives and is congruent with the external approach promoted by the Commission. All staff were provided with the opportunity to contribute to the Plan. The Plan's objectives are defined under three broad areas, covering the organisation, the working environment and the people. Particular strategies, including a focus on indigenous people, people with family responsibilities and people with disabilities have been outlined in the Plan. The Commission continues to support family friendly practices in the workplace through its recent Certified Agreement 2000-2001.

## Workplace relations and employment

Staff in the Commission are employed under section 22 of the Public Service Act 1999. The new Public Service Act was introduced in December 1999 and gives responsibility for employment decisions to Agency Heads. With changes made to the Human Rights and Equal Opportunity Act in December 1999 the President assumed Agency Head status under the Public Service Act. Employment policies have been reviewed to ensure that they conform with the new requirements under the Public Service Act.

The Commission's new Workplace Agreement was certified by the Industrial Relations Commission in June 2000 and is in operation until 1 August 2002.

The Agreement is comprehensive and was certified under *section 170LK of the Workplace Relations Act 1996*. Productivity savings funded a salary increase to staff, to be delivered in three installments over the life of the Agreement. A one off bonus was also payable to staff on certification. Whilst maintaining the core employment

conditions, some conditions such as overtime have been streamlined to be of more relevance to the Commission and its staff. The Australian Public Service Values and Code of Conduct have also been included in the Commission's Certified Agreement as a means to strengthen their understanding and application for staff.

### Staffing overview

An overview of the Commission's staffing profile as at 30 June 2000 is summarised in the following tables. Staffing overview as at 30 June 2000 is summarized in the following tables.

<b>Classification</b>	<b>Male</b>	<b>Female</b>	<b>Full time</b>	<b>Part time</b>	<b>Total Ongoing</b>	<b>Total Non-Ongoing</b>
<b>Statutory Office Holder</b>	3	2	4	1		5
<b>SES Band 2</b>		1	1		1	
<b>SES Band 1</b>	1		1		1	
<b>EL2</b>	7	13	18	2	18	2
<b>EL1</b>	3	13	14	2	14	2
<b>APS 6</b>	16	22	36	2	33	5
<b>APS 5</b>	4	7	11		6	5
<b>APS 4</b>	6		6			6
<b>APS 3</b>	2	19	18	3	17	4
<b>APS 2</b>		6	4	2	6	
<b>APS 1</b>	2	2	4		3	1
<b>Total</b>	44	85	117	12	99	30

## Human Rights and Equal Opportunity Commission Statement by the Chief Executive

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In my opinion, the attached financial statements give a true and fair view of the matters required by Schedule 2 to the Finance Minister's Orders made under section 63 of the *Financial Management and Accountability Act 1997*.



Alice E. S. Tay  
President

September 2000

**Human Rights and Equal Opportunity Commission**  
**Agency Operating Statement**  
*for the year ended 30 June 2000*

	Notes	1999-2000 \$	1998-99 \$
<b>Operating revenues</b>			
Revenues from government	3.1	14,426,000	12,362,517
Sales of goods and services	3.2	3,245,221	2,512,221
Interest	3.3	62,741	-
<b>Total operating revenues</b>		<b>17,733,962</b>	<b>14,874,738</b>
<b>Operating expenses</b>			
Employees	4.1	9,015,177	8,114,104
Suppliers	4.2	7,361,150	6,476,392
Depreciation and amortisation	4.3	641,025	820,829
Write-down of assets	4.4	708,135	151,870
<b>Total operating expenses</b>		<b>17,725,487</b>	<b>15,563,194</b>
<b>Operating surplus/(deficit)</b>		<b>8,475</b>	<b>(688,457)</b>
<b>Accumulated results at 1 July 1999</b>		<b>(1,947,084)</b>	<b>(1,258,627)</b>
<b>Accumulated results at 30 June 2000</b>		<b>(1,938,609)</b>	<b>(1,947,084)</b>

The accompanying notes form an integral part of these statements

**Human Rights and Equal Opportunity Commission**  
**Agency Balance Sheet**  
*as at 30 June 2000*

	Notes	1999-00 \$	1998-99 \$
<b>ASSETS</b>			
<b>Financial assets</b>			
Cash		1,537,633	18,998
Receivables	5	622,609	1,351,125
<b>Total financial assets</b>		<b>2,160,242</b>	<b>1,370,123</b>
<b>Non-financial assets</b>			
Infrastructure, plant and equipment	6.1,6.2	2,236,575	3,040,190
Intangibles	6.3	97,926	99,268
Other	6.4	91,331	228,351
<b>Total non-financial assets</b>		<b>2,425,832</b>	<b>3,367,809</b>
<b>Total assets</b>		<b>4,586,074</b>	<b>4,737,932</b>
<b>LIABILITIES</b>			
<b>Debt</b>			
Other	7	3,055,075	3,775,962
<b>Total debt</b>		<b>3,055,075</b>	<b>3,775,962</b>
<b>Provisions and payables</b>			
Employees	8.1	2,048,111	1,777,478
Suppliers	8.2	270,905	69,539
<b>Total provisions and payables</b>		<b>2,319,016</b>	<b>1,847,017</b>
<b>Total liabilities</b>		<b>5,374,091</b>	<b>5,622,979</b>
<b>EQUITY</b>			
Capital		1,095,000	1,006,445
Reserves		55,592	55,592
Accumulated results		(1,938,609)	(1,947,084)
<b>Total equity</b>	9	<b>(788,017)</b>	<b>(885,047)</b>
<b>Total liabilities and equity</b>		<b>4,586,074</b>	<b>4,737,932</b>
<b>Current liabilities</b>		<b>2,256,805</b>	<b>1,792,307</b>
<b>Non-current liabilities</b>		<b>3,117,286</b>	<b>3,830,672</b>
<b>Current assets</b>		<b>2,251,573</b>	<b>1,598,474</b>
<b>Non-current assets</b>		<b>2,334,501</b>	<b>3,139,458</b>

The accompanying notes form an integral part of these statements

**Human Rights and Equal Opportunity Commission**  
**Statement of Cash Flows**  
*for the year ended 30 June 2000*

	Notes	1999-00 \$	1998-99 \$
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations for outputs		15,435,000	14,436,813
Sales of goods and services		2,983,893	1,194,877
Interest		62,741	-
<b>Total cash received</b>		<b>18,481,634</b>	15,631,690
<b>Cash used</b>			
Employees		8,580,036	8,078,457
Suppliers		7,842,805	7,328,276
<b>Total cash used</b>		<b>16,422,842</b>	15,406,733
<b>Net cash from operating activities</b>	10	<b>2,058,792</b>	224,957
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		3,107	-
<b>Total cash received</b>		<b>3,107</b>	-
<b>Cash used</b>			
Purchase of infrastructure, plant and equipment		(543,265)	(223,188)
<b>Total cash used</b>		<b>(543,265)</b>	(223,188)
<b>Net cash from investing activities</b>		<b>(540,158)</b>	(223,188)
<b>Net increase/(decrease) in cash held</b>		<b>1,518,634</b>	1,769
add cash at 1 July 1999		18,998	17,229
<b>Cash at 30 June 2000</b>		<b>1,537,633</b>	18,998

The accompanying notes form an integral part of these statements

**Human Rights and Equal Opportunity Commission**  
**Schedule of Commitments**  
*as at 30 June 2000*

	1999-00 \$	1998-99 \$
<b>BY TYPE</b>		
<b>CAPITAL COMMITMENTS</b>		
Infrastructure, plant and equipment	-	-
<b>Total capital commitments</b>	<u>-</u>	<u>-</u>
<b>OTHER COMMITMENTS</b>		
Operating leases	<b>9,502,241</b>	11,681,980
Other commitments	<b>379,793</b>	366,601
<b>Total other commitments</b>	<u><b>9,882,034</b></u>	<u>12,048,581</u>
<b>COMMITMENTS RECEIVABLE</b>	<b>(1,932,576)</b>	(2,366,620)
<b>Net commitments</b>	<u><b>7,949,458</b></u>	<u>9,681,961</u>
<b>BY MATURITY</b>		
<b>All net commitments</b>		
One year or less	<b>2,264,524</b>	2,174,921
From one to two years	<b>1,831,157</b>	1,853,071
From two to five years	<b>3,853,777</b>	5,653,968
Over five years	-	-
<b>Net commitments</b>	<u><b>7,949,458</b></u>	<u>9,681,961</u>
<b>Operating Lease Commitments</b>		
One year or less	<b>2,367,876</b>	2,242,364
From one to two years	<b>2,314,301</b>	2,336,215
From two to five years	<b>4,820,064</b>	7,103,400
Over five years	-	-
<b>Net commitments</b>	<u><b>9,502,241</b></u>	<u>11,681,980</u>

**Schedule of Contingencies**  
*as at 30 June 2000*

<b>CONTINGENT LOSSES</b>	<b>(70,000)</b>	-
<b>Total contingent losses</b>	<u><b>(70,000)</b></u>	<u>-</u>
<b>CONTINGENT GAINS</b>	-	-
<b>Total contingent gains</b>	<u>-</u>	<u>-</u>
<b>Net contingencies</b>	<b>(70,000)</b>	-

**Schedule of Unquantifiable Contingencies**

As at 30 June 2000, the Commission was named as respondent in a number of matters before the Federal Court of Australia, one matter before the Supreme Court of NSW and one before the District Court of South Australia that challenge administrative decisions of the Commission. It is not possible to estimate the amounts of any eventual payments that may be required in relation to these claims, though it is not common for costs to be awarded against the Commission.

The accompanying notes form an integral part of these statements

# Human Rights and Equal Opportunity Commission

## Notes to and forming part of the Financial Statements

for the year ended 30 June 2000

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### Note 1 - OBJECTIVES OF THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

The Commission's objective is 'an Australian society in which the human rights of all are respected and promoted.' The Commission aims to ensure that Australians:

- have access to independent human rights complaint handling and public inquiries processes; and
- benefit from human rights education, promotion, monitoring and compliance activities.

### Note 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### 2.1 Basis of Accounting

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general purpose financial report.

The statements have been prepared in accordance with:

- *Requirements for the Preparation of Financial Statements of Commonwealth Agencies and Authorities* made by the Minister for Finance and Administration in August 1999 (Schedule 2 to the Financial Management and Accountability (FMA) Orders).
- Australian Accounting Standards;
- other authoritative pronouncements of the Australian Accounting Standard Boards; and
- the Consensus Views of the Urgent Issues Group.

The statements have been prepared having regard to:

- Statements of Accounting Concepts
- the Explanatory Notes to Schedule 2 issued by the Department of Finance and Administration.

The financial statements have been prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets which as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The continued existence of the Commission in its present form, and with its present functions, is dependent on Government policy and on continuing appropriations by Parliament for the Commission's administration and functions.

The Human Rights and Equal Opportunity Commission is part of the legal entity that is the Commonwealth Government which is ultimately responsible for all the agency's debts. The existence of total liabilities in excess of total assets of the agency as reported in the Balance Sheet has no bearing on whether the agency's debts will be met.

#### 2.2 Changes in Accounting Policy

Changes in accounting policy have been identified in this note under their appropriate headings.

#### 2.3 Agency and Administered items

The Commission has no administered items.

#### 2.4 Reporting by Outcomes

A comparison of Budget and Actual figures by outcome specified in the Appropriation Acts relevant to the Agency is presented in Note 17. The net cost to Budget outcomes shown includes intra-government costs that are eliminated in calculating the actual budget outcome for the Government overall.

The Commission has one outcome.

## **2.5 Revenues from government**

Revenues from government are revenues relating to the core operating activities of the Commission. Policies for accounting for revenue from government follow; amounts and other details are given in Note 3.1.

### *Agency Appropriations*

From 1 July 1999, the Commonwealth Budget has been prepared under an accruals framework.

Appropriations to the Commission for its departmental outputs are recognised as revenue to the extent that they have been received into the Commission's Bank account or are entitled to be received by the Commission at year end.

The appropriations for departmental capital items for 1999-2000 include, as carry-overs, the re-appropriation to the Commission of certain unspent amounts from 1998-99. These amounts were recognised directly in equity in the financial statements for 1998-99.

This is a change in the policy in prior years when agency appropriations, other than running costs, were recognised as revenue to the extent that the appropriations were spent. Amounts appropriated for agency running costs were recognised as revenue in the year of appropriation, except to the extent of: unspent amounts not automatically carried over into the new financial year; and running costs borrowings.

### *Resources Received Free of Charge*

Services received free of charge are recognised in the Operating Statement as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

## **2.6 Other Revenue**

Revenue from the sale of goods is recognised upon delivery of goods to customers. Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets. Dividend revenue is recognised when the right to receive a dividend has been established. Revenue from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

Agency revenue from the rendering of a service is recognised by reference to the stage of completion of contracts or other agreements to provide services to Commonwealth bodies. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

All revenues described in this note are revenues relating to the core operating activities of the Commission, whether in its own right or on behalf of the Commonwealth. Details of revenue amounts are given in Note 3.2.

## **2.7 Employee entitlements**

### *Leave*

The liability for employee entitlements includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Commission is estimated to be less than the annual entitlement for sick leave.

The liability for annual leave and current long service leave reflects the value of total annual leave entitlements of all employees at 30 June 2000 and is recognised at the nominal amount.

The non-current proportion of the liability for long service leave is recognised and measured at the present value of the estimated future cash flows to be made in respect of all employees at 30 June 2000. In determining the present value of the liability, the Commission has taken into account attrition rates and pay increases through promotion and inflation.

### *Separation and redundancy*

Provision is also made for separation and redundancy payments in circumstances where the Commission has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

### *Superannuation*

Staff of the Commission contribute to the Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS). Employer contributions amounting to \$730,948 (1998-99:\$650,570) in relation to these schemes have been expensed in these financial statements.

No liability is shown for superannuation in the Balance Sheet as the employer contributions fully extinguish the accruing liability which is assumed by the Commonwealth.

Employer Superannuation Productivity Benefit contributions totaled \$140,482 (1998-99: \$135,149).

## **2.8 Leases**

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets, and operating leases under which the lessor effectively retains all such risks and benefits. All leases entered into by the Commission have been classified as Operating Leases and lease payments are treated as expenses in the reporting period in which they are incurred.

Operating lease rentals as shown in Note 4.2 represent actual rental expense for the year adjusted for the impact of lease incentives. Calculations are in accordance with mandatory reporting requirements.

Lease incentives taking the form of 'free' leasehold improvements and rent holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

The lease incentive recognised as a result is amortised over the lease term by allocating a portion of the rent expense against the current balance. Fixed assets that are recognised are depreciated over the term of the lease.

## **2.9 Cash**

Cash includes notes and coins held and any deposits held at call with a bank or financial institution.

## **2.10 Financial Instruments**

Accounting policies for financial instruments are stated at Note 16.

## **2.11 Acquisition of Assets**

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

## **2.12 Property, plant and equipment**

### *Asset recognition threshold*

All depreciable non-current assets with historical cost equal to or in excess of \$2000 are capitalised in the year of acquisition and included on the Commission's Asset Register. Except where stated all plant and equipment is valued at historical cost.

### *Revaluations*

Schedule 2 requires that property, plant and equipment be progressively revalued in accordance with the 'deprival' method of valuation by no later than 1 July 1999 and thereafter be revalued progressively on that basis every three years.

Assets in each class acquired after the commencement of the progressive revaluation cycle are not captured by the progressive revaluation then in progress.

The Commission recognises property plant and equipment other than land at its depreciated replacement cost.

Any assets which would not be replaced or are surplus to the requirements are valued at net realisable value. At 30 June 2000, the Commission had no assets in this situation.

All valuations are independent.

### *Recoverable amount test*

Schedule 2 requires the application of the recoverable amount test to departmental non-current assets in accordance with AAS 10 Accounting for the Revaluation of Non-Current Assets. The carrying amounts of these non-current assets have been reviewed to determine whether they are in excess of their recoverable amounts. In assessing recoverable amounts, the relevant cash flows have been discounted to their present value.

### *Depreciation and Amortisation*

Depreciation is calculated on a straight line basis so as to write off the cost of each item of property, plant and equipment over its expected useful life. For leasehold improvements the depreciation is calculated over the lease term or the useful life, whichever is the shorter.

Depreciation/amortisation rates (useful lives) and methods are reviewed at each balance date and necessary adjustments are recognised in the current, and future reporting periods, as appropriate. Residual values are re-estimated for a change in prices only when assets are revalued.

Depreciation and amortisation rates applying to each class of depreciable asset are based on the following useful lives:

	<b>1999-2000</b>	1998-99
Leasehold improvements	<b>Lease term</b>	Lease term
Plant and equipment	<b>4 to 10 years</b>	4 to 10 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 4.3.

### 2.13 Taxation

The Commission's activities are exempt from all forms of taxation except fringe benefits tax and the goods and services tax.

### 2.14 Foreign Currency

Transactions denominated in a foreign currency are converted at the exchange rate at the date of the transaction. Foreign currency receivables and payables are translated at the exchange rates current as at balance date. Associated currency gains and losses are not material.

### 2.15 Insurance

The Commonwealth's insurable risk managed fund, called Comcover, commenced operations in 1998-99. The Commission has insured with the fund for risks other than workers' compensation, which is dealt with via continuing arrangements with Comcare.

The new arrangements replace the previous policy of non-insurance and require the systematic identification, quantification, reporting and management of risk across the Commission.

### 2.16 Comparative Figures

Comparative figures have been adjusted to conform to changes in presentation in these financial statements where required.

Comparatives are not presented in the Notes dealing with the Reporting on Outcomes, due to 1999-2000 being the first year of the implementation of accrual budgeting.

	1999-00 \$	1998-99 \$
<b>Note 3 - Operating revenues</b>		
<b>3.1 Revenues from government</b>		
Appropriations for outputs	14,396,000	12,231,757
Resources received free of charge	30,000	130,760
Total	<u>14,426,000</u>	<u>12,362,517</u>
<b>3.2 Sales of goods and services</b>		
Goods	649,044	1,080,255
Services	2,596,177	1,431,966
Total	<u>3,245,221</u>	<u>2,512,221</u>
<b>3.3 Interest from deposits</b>	<u>62,741</u>	<u>-</u>
<b>Note 4 - Operating expenses</b>		
<b>4.1 Employee expenses</b>		
Remuneration (for services provided)	8,730,988	8,014,274
Separation and Redundancy	284,189	99,830
Total	<u>9,015,177</u>	<u>8,114,104</u>
<b>4.2 Suppliers Expenses</b>		
Supply of goods and services	6,493,204	5,535,309
Operating lease rentals	867,946	941,082
Total	<u>7,361,150</u>	<u>6,476,392</u>
<b>4.3 Depreciation and Amortisation</b>		
Depreciation of property, plant and equipment	170,442	176,329
Amortisation of leased assets	437,941	574,574
Intangibles - Computer software	32,642	69,926
Total	<u>641,025</u>	<u>820,829</u>

Depreciation expenses in 1999-00 are \$69,160 lower than they would have been, as a result of the revaluation of leasehold improvement assets which have been revalued (1998-99: \$284,207).

	1999-00	1998-99
	\$	\$
<b>4.4 Write-down of assets</b>		
Financial Assets		
Receivables	4,043	7,226
Non-Financial Assets		
Plant and equipment - revaluation decrement	653,376	-
Plant and equipment - write-off	50,716	144,644
Total	<u>708,135</u>	<u>151,871</u>

#### Note 5 - Financial Assets

##### Receivables

Appropriations	56,000	1,006,445
Goods and services	570,652	351,906
Less: Bad debts written-off	(4,043)	(7,226)
Total	<u>622,609</u>	<u>1,351,125</u>

##### Receivables (gross) which are overdue are aged as follows:

Not overdue	381,726	1,006,445
Overdue by:		
Less than 30 days	38,414	325,958
30 days to 60 days	175,377	18,722
60 to 90 days	717	-
more than 90 days	26,375	-
Total	<u>622,609</u>	<u>1,351,125</u>

#### Note 6 - Non-financial assets

##### 6.1 Infrastructure, Plant & Equipment

Plant & Equipment at cost	237,585	-
Less: Accumulated depreciation	(23,727)	-
	<u>213,858</u>	-
Plant & Equipment at 1998-99 valuation	1,124,493	1,161,450
Less: Accumulated depreciation	(876,770)	(741,150)
	<u>247,723</u>	420,300
Leasehold improvements at cost	274,380	5,420,253
Less: Accumulated amortisation	(43,468)	(2,800,363)
	<u>230,912</u>	2,619,890
Leasehold improvements at 1999-00 valuation	4,169,310	-
Less: Accumulated depreciation	(2,625,228)	-
	<u>1,544,082</u>	-
Total	<u>2,236,575</u>	<u>3,040,190</u>

The revaluations were as at 1 July 1999 in accordance with the progressive revaluation policy stated at Note 2 and were completed by an independent valuer, Australian Valuation Office.

Revaluation decrements of \$653,376 for leasehold improvements were expensed.

## 6.2 Analysis of Property, Plant, Equipment and Intangibles

TABLE A: Movement summary 1999-00 for all assets irrespective of valuation basis

Item	Land	Buildings	Total Land & Buildings	Infrastructure, Plant & Equipment	Computer software - total intangibles	Total
	\$	\$	\$	\$	\$	\$
<b>Gross Value as at 1 July 1999</b>	-	-	-	6,581,703	270,997	6,852,700
Additions:	-	-	-	-	-	-
- acquisitions of replacement assets	-	-	-	468,229	-	468,229
- acquisition of new assets	-	-	-	43,736	31,300	75,036
Revaluations: write-ups (write-downs)	-	-	-	(1,108,558)	-	(1,108,558)
Write-offs	-	-	-	(150,247)	-	(150,247)
Disposals	-	-	-	(29,095)	-	(29,095)
<b>Gross Value as at 30 June 2000</b>	-	-	-	5,805,768	302,297	6,108,065
<b>Accumulated Depreciation/Amortisation as at 1 July 1999</b>	-	-	-	3,541,513	171,729	3,713,242
Depreciation/Amortisation charges for assets held 1 July 1999	-	-	-	541,188	24,817	566,005
Depreciation/Amortisation charges for additions	-	-	-	67,195	7,825	75,020
Revaluations	-	-	-	(455,182)	-	(455,182)
Write-offs	-	-	-	(114,447)	-	(114,447)
Disposals	-	-	-	(11,074)	-	(11,074)
<b>Accumulated Depreciation/Amortisation as at 30 June 2000</b>	-	-	-	3,569,193	204,371	3,773,564
<b>Net book value as at 30 June 2000</b>	-	-	-	2,236,575	97,926	2,334,501
<b>Net book value as at 1 July 1999</b>	-	-	-	3,040,190	99,268	3,139,458

TABLE B: Summary of balances of assets at valuation at 30 June 2000

Item	Land	Buildings	Total Land & Buildings	Infrastructure, Plant & Equipment	Computer software - total intangibles	Total
	\$	\$	\$	\$	\$	\$
<b>As at 30 June 2000</b>						
Gross Value	-	-	-	5,293,803	-	5,293,803
Accumulated Depreciation/Amortisation	-	-	-	(3,501,998)	-	(3,501,998)
<b>Net book value</b>	-	-	-	1,791,805	-	1,791,805
<b>As at 30 June 1999</b>						
Gross Value	-	-	-	1,161,450	-	1,161,450
Accumulated Depreciation/Amortisation	-	-	-	(741,150)	-	(741,150)
<b>Net book value</b>	-	-	-	420,300	-	420,300

	1999-00	1998-99
	\$	\$
<b>6.3 Intangibles</b>		
Computer software - internally developed	302,297	270,997
Less: Accumulated depreciation	(204,371)	(171,729)
Total	<u>97,926</u>	<u>99,268</u>
<b>6.4 Other</b>		
Prepayments		
Rent	-	125,194
Other	91,331	103,157
Total	<u>91,331</u>	<u>228,351</u>
<b>Note 7 - Other Debt</b>		
Lease incentives	<u>3,055,075</u>	<u>3,775,962</u>

	1999-00	1998-99
	\$	\$
<b>Note 8 - Payables and Provisions</b>		
<b>8.1 Employees</b>		
Salaries and wages	268,902	123,272
Leave	1,594,907	1,567,530
Superannuation	30,394	5,298
Workers' compensation	-	-
Separation and redundancies	153,908	81,378
Total	<u>2,048,111</u>	<u>1,777,478</u>
<b>8.2 Suppliers</b>		
Trade creditors	266,930	69,539
Operating lease rentals	3,975	-
Total	<u>270,905</u>	<u>69,539</u>

**Note 9 - Equity**

Item	Capital		Accumulated Results		Asset revaluation reserve		Total reserves		TOTAL EQUITY	
	1999-00	1998-99	1999-00	1998-99	1999-00	1998-99	1999-00	1998-99	1999-00	1998-99
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Balance 30 June 1999	1,006,445	-	(1,947,084)	(1,258,627)	55,592	-	55,592	-	(885,047)	(1,258,627)
Equity rounding adjustment prior year	(445)								(445)	
Equity appropriation	89,000								89,000	
Operating Surplus/(Deficit)	-	-	8,475	(688,457)	-	-	-	-	8,475	(688,457)
Net revaluation increases	-	-	-	-	-	55,592	-	55,592	-	55,592
Net revaluation decreases										
Unspent Appropriation	-	1,006,445	-	-	-	-	-	-	-	1,006,445
<b>Balance 1 July 2000</b>	<b>1,095,000</b>	<b>1,006,445</b>	<b>(1,938,609)</b>	<b>(1,947,084)</b>	<b>55,592</b>	<b>55,592</b>	<b>55,592</b>	<b>55,592</b>	<b>(788,017)</b>	<b>(885,047)</b>

	1999-00	1998-99
	\$	\$
<b>Note 10 - Cash flow reconciliation</b>		
Reconciliation of operating surplus (deficit) to net cash provided by operating activities:		
Operating surplus (deficit)	8,475	(688,457)
Recognition of capital reserve	88,555	1,006,445
Depreciation and Amortisation	641,025	820,828
Write down of non-financial assets	704,092	151,870
Proceeds on disposal of assets	-	-
(Increase)/Decrease in Receivables	728,516	(118,732)
(Increase)/Decrease in Prepayments	137,020	(15,982)
Increase/(Decrease) in Employee provision	270,631	44,708
Increase/(Decrease) in Suppliers provision	201,365	(202,108)
Increase/(Decrease) in Debt	(720,887)	(773,615)
<b>Net cash provided by operating activities</b>	<u>2,058,792</u>	<u>224,957</u>

**Note 11 - Executive Remuneration**

The number of executive officers of the Commission whose total remuneration for the financial year is more than \$100,000 is shown below in their relevant remuneration bands.

REMUNERATION OF	1999-00 Number	1998-99 Number
\$110,001-\$119,999	-	1
\$120,000-\$129,999	1	-
\$140,000-\$149,999	2	1
\$150,000-\$159,999	1	3
\$160,000-\$169,999	-	2
\$170,000-\$179,999	4	-
\$180,000-\$189,999	-	1
\$190,000-\$199,999	1	-
	<u>9</u>	<u>8</u>

	1999-00 \$	1998-99 \$
The aggregate amount of fixed remuneration received, or due and receivable, by the above officers of the Commission	<u>1,456,889</u>	<u>1,249,417</u>

The aggregate amount of separation and redundancy payments during the year to executive officers shown above	<u>87,949</u>	<u>16,858</u>
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**Note 12 - Services provided by the Auditor-General**

Financial statement audit services are provided free of charge to the Commission. The fair value of the audit services was:

Other Services		
Amounts paid in relation to the audit of two special purpose financial reports	3,000	600
Total	<u>33,000</u>	<u>30,600</u>

**Note 13 - Act of grace payments and waivers**

No Act of Grace payments were made during the reporting period.

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997.

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**Note 14 - Average Staffing Levels**

126 130

**Note 15 - Appropriations**

Annual Appropriations for Commission items (price of outputs)

	1999-2000
	\$
Balance available at 1 July	-
Add: Appropriation Acts 1 & 3 Credits	
Section 6 - Act 1 - basic appropriations	14,396,000
Section 6 - Act 3 - basic appropriations	-
Section 9 - adjustments	-
Section 10 - Advance to the Finance Minister	-
Section 11 - Comcover receipts	-
Add: FMA Act	
s30 appropriations	-
s31 appropriations	3,049,741
Total appropriations available for the year	<u>17,445,741</u>
Expenditures during the year	<u>15,972,329</u>
Balance of appropriations for outputs at 30 June	1,473,412

Annual Appropriations for Commission non-revenue items

	Equity injections	Loans	Carryovers
	1999-2000	1999-2000	1999-2000
	\$	\$	\$
Balance available at 1 July	-	-	-
Add: Appropriation Act No 2 (Budget)	89,000	-	950,000
Add: Advance to the Finance Minister	-	-	-
Add: FMA ACT s30 appropriations	-	-	-
Add: Appropriation Act No 4	-	-	-
Total appropriations available for the year	<u>89,000</u>	<u>-</u>	<u>950,000</u>
Expenditure debited during the year	<u>30,506</u>	<u>-</u>	<u>950,000</u>
Balance of appropriations for capital at 30 June	58,494	-	-

**NOTE 16 - FINANCIAL INSTRUMENTS**

**a) Terms, conditions and accounting policies**

<b>Financial Instrument</b>	<b>Notes</b>	<b>Accounting Policies and Methods (Including recognition criteria and measurement basis)</b>	<b>Nature of underlying instrument (including significant terms &amp; conditions affecting the amount, timing and certainty of cash flows)</b>
<b><i>Financial Assets</i></b>		Financial assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably recognised.	
Cash		Deposits are recognised at their nominal amounts. Interest is credited to revenue as it accrues	The Commission received interest payments from term deposits and the operating account. All accounts are held at the RBA and operate under the DOFA agency banking arrangements
Receivables for goods and services	5	Receivables are recognised at the nominal amount due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provision is made when collection is judged less rather than more likely.	Balance of receivables are with entities external to the Commonwealth. Credit terms are net 30 days. (1997-98: 30 days).
Appropriations	5	Appropriations are recognised as a receivable equal to the unspent appropriation.	The appropriation receivable represents the balance of the 1998/99 carryforward.
<b><i>Financial liabilities</i></b>		Financial liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.	
Lease incentives	7	Lease incentives are recognised as a liability at the time of receipt. The amount of the liability is reduced on a straight line over the life of the lease by allocating a portion of the rent expense against the current balance.	The Commission received lease incentives on entering a property operating lease in October 1994. Lease payments are made monthly.
Trade creditors	8.2	Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of being invoiced).	The majority of creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days.

NOTE 16 - FINANCIAL INSTRUMENTS (Cont.)

b) Interest rate risk: Commission

Financial instrument	Notes	Floating interest rate		Fixed interest rate		Non-interest bearing		Total		Weighted average effective interest rate	
		99-00 \$	98-99 \$	99-00 \$	98-99 \$	99-00 \$	98-99 \$	99-00 \$	98-99 \$	99-00 \$	98-99 \$
<b>Financial Assets</b>											
Cash		1,531,906	-	-	-	5,727	18,998	1,537,633	18,998	5%	n/a
Receivables for goods and services	5	-	-	-	-	566,609	344,680	566,609	344,680	n/a	n/a
Appropriations	5	-	-	-	-	56,000	1,006,445	56,000	1,006,445	n/a	n/a
<b>Total Financial Assets (Recognised)</b>		1,531,906	-	-	-	628,336	1,370,123	2,160,242	1,370,123	n/a	n/a
<b>Total Assets</b>								4,586,074	4,737,932		
<b>Financial Liabilities</b>											
Lease incentives	7	-	-			3,055,075	3,775,962	3,055,075	3,775,962	n/a	n/a
Trade creditors	8.2	-	-			266,930	69,539	266,930	69,539	n/a	n/a
Operating lease rentals	8.2					3,975	-	3,975			
<b>Total Financial Liabilities (Recognised)</b>		-	-			3,325,980	3,845,501	3,325,980	3,845,501	n/a	n/a
<b>Total Liabilities</b>								5,374,091	5,622,979		

**NOTE 16 - FINANCIAL INSTRUMENTS (Cont.)**

**c) Net Fair Values of Financial Assets and Liabilities**

	Note	1999-00		1998-99	
		Total Carrying amount	Aggregate Net Fair value	Total Carrying amount	Aggregate Net Fair value
Agency Financial Assets		\$	\$	\$	\$
Cash		1,537,633	1,537,633	18,998	18,998
Receivables for goods and services	5	566,609	566,609	344,680	344,680
Appropriations	5	56,000	56,000	1,006,445	1,006,445
<b>Total Financial Assets</b>		<b>2,160,242</b>	<b>2,160,242</b>	<b>1,370,123</b>	<b>1,370,123</b>
<b>Financial Liabilities (Recognised)</b>					
Lease incentives	7	3,055,075	3,055,075	3,775,962	3,775,962
Trade Creditors	8.2	266,930	266,930	69,539	69,539
Operating lease rentals	8.2	3,975	3,975	-	-
<b>Total Financial Liabilities (Recognised)</b>		<b>3,325,980</b>	<b>3,325,980</b>	<b>3,845,501</b>	<b>3,845,501</b>

*Financial Assets*

The net fair values of cash and non-interest bearing monetary financial assets approximate their carrying amounts.

*Financial liabilities*

The net fair values of lease incentives liabilities are based on discounted cash flows using current interest rates for liabilities with similar risk profiles.

The net fair values for trade creditors are short-term in nature and are approximated by their carrying amounts.

**d) Credit Risk Exposures**

The Commission's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Assets and Liabilities.

The Commission has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

**Note 17 - Reporting of Outcomes**

	<b>Outcome</b>	
	<b>Budget</b>	<b>Actual</b>
	<b>\$</b>	<b>\$</b>
Net cost to Budget Outcome	14,430,000	14,387,525
Total assets deployed as at 30/6/00	3,008,000	4,586,074
Net assets deployed as at 30/6/00	(2,500,000)	(788,017)

The net cost to budget outcome shown includes intra-government costs that would be eliminated in calculating the actual budget outcome.

<b>Outcome</b>	<b>Departmental Outputs (\$)</b>				<b>Total Appropriations (\$)</b>	<b>Total Expenses (\$)</b>	
	Revenue from Government (Appropriations)			Revenue from other sources	Total price of outputs		
	(A)			(B)	(A)+(B)		
	Special Appropriations	Annual Appropriations	Total				
Outcome	-	#1	#1	#1	17,725,487	14,396,000	17,725,487
						1,039,000	
						15,435,000	

#1. It is not possible to identify expenses incurred against specific funding sources.