

Human Rights and Equal Opportunity Commission

Annual Report 1996 - 1997

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Chapter 1: The Commission

The 1996-97 Annual Report of the Human Rights and Equal Opportunity Commission provides an overview of the Commission and its work during the period 1 July 1996 to 30 June 1997.

This Report has been prepared in compliance with the *Requirements for Departmental Annual Reports* outlined by the Department of Prime Minister and Cabinet (March 1997).

Mission

“To promote respect for, and observance of, the human rights of all people in Australia and their access to equal opportunity”. Our purpose is to:

- Work nationally with individuals, community groups, governments and other organisations towards the elimination of all forms of unfair discrimination, to advance human rights and Indigenous social justice and to protect privacy.
- Promote and facilitate community access to the services and functions performed by the Commission and its staff.

- Foster recognition of the indivisibility of human rights by developing management and operational strategies which achieve the Commission's collective purpose in the most efficient and effective way possible.
- Facilitate the performance of functions and addressing issues that are the special responsibility of individual Commissioners.

History

The Commission was established on 10 December 1986, replacing the former Human Rights Commission and incorporating the functions of the Commissioner for Community Relations and functions under the *Sex Discrimination Act 1984*.

The original Human Rights Commission was established by the introduction of the *Human Rights Commission Act 1981* on Human Rights Day, 10 December 1981.

This gave effect to the following five international instruments:

- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Declaration of the Rights of the Child;
- Declaration on the Rights of Mentally Retarded Persons; and
- Declaration on the Rights of Disabled Persons.

A more detailed history of the Commission can be found on page 8 of the 1994-95 Annual Report.

The Commissioners

The Commission as a body corporate is comprised of a President and six Commissioners.

Sir Ronald Wilson, President
Appointment expires 31 July 1997.

Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner
Appointment expires 22 January 1998.

Elizabeth Hastings, Disability Discrimination Commissioner
Appointment expires 17 December 1997.

Chris Sidoti, Human Rights Commissioner
Appointment expires 13 August 2000.

Moira Scollay, Privacy Commissioner and Acting Sex Discrimination Commissioner
Privacy appointment expires 5 February 2002.
Acting sex discrimination appointment expires 1 March 1998.

Zita Antonios, Race Discrimination Commissioner
Appointment expires 25 September 1999.

Legislation

The Commission is responsible for implementing the following Acts:

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

Functions performed under these Acts are vested in either the Members, the Commission as a collegiate body or the Federal Attorney-General.

Other legislation administered by Commissioners includes:

- *Privacy Act 1988* implemented by the Privacy Commissioner; and
- functions under the *Native Title Act 1993* performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner.

All of these Acts give force to the relevant international instruments ratified by Australia.

Disability Discrimination Act

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

- eliminate discrimination against people with disabilities;
- ensure people with disabilities have the same rights to equality before the law as the rest of the community; and
- promote community acceptance of the principle that people with disabilities have the same fundamental rights as other members of the community.

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 for observing seven international instruments ratified by Australia. These instruments are:

- International Covenant on Civil and Political Rights;
- Declaration of the Rights of the Child;
- Declaration on the Rights of Disabled Persons;
- Declaration on the Rights of Mentally Retarded Persons;
- International Labour Organisation Convention 111 which deals with discrimination in employment and occupation;
- 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.

Privacy Act

The *Privacy Act 1988* gives effect to the Organisation for Economic Development *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* and the International Covenant on

Civil and Political Rights (Article 17). The guidelines cover the collection of personal information, its use, and access to and alteration of the information.

The Act has three spheres of operation where the guidelines are given specific effect as legally binding standards, set out below.

- 1 **Information Privacy Principles** to protect personal information which is collected by Federal Government departments or agencies. There are strict privacy safeguards which agencies must observe in collecting, storing and using information.
- 2 **Tax file numbers** to ensure that tax file numbers are collected and used only for tax related or assistance agency purposes.
- 3 **Consumer credit reporting** privacy protection for consumer credit information, including the type of information that may be collected and the use and disclosure of this information.

One of the Privacy Commissioner's functions is to encourage businesses to conform voluntarily with the Guidelines. The Commissioner also has functions under a range of other federal statutes. These are explained in detail below.

Racial Discrimination Act

The *Racial Discrimination Act 1975* outlines Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. Its major objectives are to:

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

Sex Discrimination Act

The *Sex Discrimination Act 1984* gives effect Australia's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women and certain aspects of International Labour Organisation Convention 156. 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 services, in the provision of accommodation and the delivery of federal programs.

Functions and powers

The functions and powers of the Commission fall into four main categories.

The Commission investigates alleged infringements under the anti-discrimination and privacy legislation, and attempts to resolve these matters through conciliation, where this is considered appropriate. Where conciliation is unsuccessful or is inappropriate, matters can be referred for formal hearing or consideration by Hearing Commissioners. After further discussion, determinations are issued to resolve matters. This applies to the Race, Sex, Disability Discrimination and Privacy Acts.

The Commission 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.

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.

The Commission may advise on legislation relating to human rights and also monitor its implementation. It reviews 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. It examines any new international instruments relevant to human rights and advises the Federal Government on their consistency with other international treaties or existing Australian law. The Commission may also propose laws or suggest actions the Government may take on matters relating to human rights and discrimination. This applies to all Acts.

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

- refer individual complaints to Commissioners for investigation and conciliation;
- require persons to produce information or documents or appear before the Commission to give evidence in public hearings related to individual complaints;
- report to the Government on any matters arising in the course of its functions;
- establish advisory committees;
- formulate guidelines which ensure governments act in conformity with human rights rules;
- intervene in court proceedings involving human rights matters;
- grant exemptions under certain conditions (Sex and Disability Discrimination Acts); and
- 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

The Privacy Commissioner may make ‘public interest’ determinations which fulfil a similar role to exemptions under the anti-discrimination legislation. The Commissioner has several specific functions

relating to guidelines, standards, codes of conduct, compliance and audits, and has a number of responsibilities in the specialised areas of credit and tax file number information. The Commissioner also performs functions under the following legislation.

- Under Part VIIC of the *Crimes Act 1914*, the Commissioner is responsible for assessing applications for exclusion from meeting requirements safeguarding the disclosure of individuals' spent convictions. The Commissioner can then make recommendations to the Attorney-General.
- 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. The Commissioner is responsible for issuing guidelines, investigating complaints and monitoring agency compliance under this Act.
- 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.

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;
- 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
- 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.

Commission structure

In 1995, the Human Rights and Equal Opportunity Commission Act was amended to vest ultimate authority for organisational decision making in the collegiate body of the Commission, made up of the President and six Commissioners.

The management structure of the Commission reflects the various functions performed, with anti-discrimination Commissioners heading their own area of legislative responsibility and sharing resources for complaint handling, legal support and administrative functions. The Commission consists of the following program elements:

- Aboriginal and Torres Strait Islander social justice;
- disability discrimination;
- human rights;

- privacy;
- race discrimination; and
- sex discrimination.

The Privacy Commissioner is directly responsible for all operational functions under the Privacy Act, including privacy complaint handling. The Aboriginal and Torres Strait Islander Social Justice Commissioner is directly responsible for all functions conferred under the Human Rights and Equal Opportunity Commission Act and the Native Title Act.

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families

Background

The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families was completed in March 1997. The report *Bringing them home* was presented to Daryl Williams, Attorney-General by Sir Ronald Wilson, Commission President on 5 April 1997. It was tabled in the Senate on 26 May 1997 by Senator John Herron, Minister for Aboriginal and Torres Strait Islander Affairs.

The Inquiry was established in response to increasing concern among key Indigenous agencies and communities that the general public's ignorance of the history of forcible removal was hindering the recognition of the needs of its victims and their families and the provision of services. The Secretariat of the National Aboriginal and Islander Child Care and Link-Up (NSW) campaigned for a national inquiry into this issue.

A key turning point was the 1994 Going Home conference in Darwin. Representatives from every state and territory met to share experiences and to bring to light the history of forcible removal and its effects in each jurisdiction. They also devised strategies to meet the needs of those children and their families who survive.

Terms of reference

The then Attorney-General, Michael Lavarch, referred the issue of past and present practices of separation of Indigenous children from their families to the Commission. The Inquiry had four main terms of reference.

- 1 To examine the past and continuing effects of separation of individuals, families and communities. The Inquiry relied upon Indigenous and non-Indigenous individuals and government and non-government organisations to participate by making submissions or giving evidence to the Inquiry.
- 2 To identify what should be done in response. This could entail recommendations to change laws, policies and practices, to reunite families and deal with losses caused by separation.
- 3 To find justification for, and the nature of, any compensation for those affected by separation.
- 4 To look at current laws, policies and practices affecting the placement and care of Indigenous children. This includes looking into the welfare and juvenile justice systems and advising of any changes in the light of the principles of self determination.

The full terms of reference can be found at Appendix 2 of the 1995-96 Annual Report.

The Inquiry process

Sir Ronald Wilson, Commission President and Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner took primary responsibility for conducting the Inquiry's hearings. They were assisted by other Commissioners, including the former Queensland Anti-Discrimination Commissioner. In each region visited, the Commission appointed an Indigenous woman as a Co-Commissioner.

Inquiry Co-Commissioners

Dr Maryanne Bin Salik, South Australia
 Sadie Canning, Perth
 Jackie Huggins, Queensland
 Olive Knight, Kimberleys
 Professor Marcia Langton, Federal
 Anne Louis, Alice Springs
 Kathleen Mills, Darwin
 Annette Peardon, Tasmania
 Josephine Ptero-David, Torres Strait
 Marjorie Thorpe, Victoria
 Laurel Williams, New South Wales

Indigenous Advisory Council

To provide advice on the hearing process, the solicitation of evidence and submissions, and the analysis of the material presented, the Inquiry appointed a representative Indigenous Advisory Council consisting of members from all the major regions of Australia. They were Maureen Abbott, Margaret Ah Kee, Brian Butler, Floyd Chermiside, Isabel Coe, Barbara Cummings, Nigel d'Souza, Grant Drage, Matilda House, Carol Kendall, Yami Lester, Bill Lowlah, Lola McNaughton, Annette Peardon, Peter Rotimah, Irene Stainton and Jim Wright.

Hearings

The Inquiry completed an extensive program of hearings in every capital city and in many regional and smaller centres. The Inquiry's limited resources precluded visits to every centre where Indigenous people and others wished to give evidence. Hearing locations are listed below.

Australian Capital Territory Canberra.

New South Wales Sydney, Redfern, Campbelltown, Nowra, Grafton, Dubbo, Wilcannia and Broken Hill.

Northern Territory Darwin and Alice Springs.

Queensland Brisbane, Rockhampton, Palm Island, Townsville, Cairns and Thursday Island.

South Australia Adelaide, Coober Pedy, Glossop, Murray Bridge, Port Lincoln, Ceduna, Raukkan, Mount Gambier, Port Augusta and Berri.

Tasmania Hobart, Flinders Island, Cape Barren Island, Wybalenna, Launceston and Burnie.

Victoria Melbourne, Lake Tyres, Bairnsdale, Morwell, Ballarat, Geelong, Framlingham, Portland, Mildura, Swan Hill and Echuca.

Western Australia Perth, Halls Creek, Broome, Bunbury and Katanning.

Evidence and submissions

Public evidence was taken from Indigenous organisations and individuals, state and territory government representatives, church representatives, non-government organisations, former mission and government employees and individual members of the community. Confidential evidence was taken from Indigenous people affected by forcible removal and from adoptive and foster parents. Many people and organisations made written submissions to the Inquiry, and many also gave oral evidence.

Approximately 1 000 submissions were received from every state and territory. There were:

- 545 Indigenous individual and group submissions;
- 49 church submissions;
- seven government submissions; and
- 500 confidential submissions.

Recommendations

Bringing them home makes 54 recommendations. They are directed towards healing and reconciliation for the benefit of all Australians. A commitment to the implementation of both the spirit and letter of those recommendations is essential to the future unity, justice and peace of the nation. The Inquiry's recommendations include:

- recording testimonies;
- that reparation be made to all who suffered, including individuals, families, communities and descendants of those removed;
- acknowledgement and apology from parliaments, police forces, churches and others who played a role in the administration of the removal laws and policies;
- a national commemoration day;
- school education on the history and continuing effects of forcible removal;
- professional training for those who work with Indigenous people about the history and effects of forcible removal;
- legislation to implement the Genocide Convention;
- assistance for victims to return to their country;
- expansion of funding for language, culture and history centres;
- establishment of a joint National Compensation Fund and Board to administer the fund;
- to preserve and index records relating to individuals, families and/or communities removed from their families for any reason, and prohibit the destruction of these records;
- establishment of minimum access standards for records;
- training of Indigenous archivists, genealogists, historical researchers and counsellors;
- establishment of family tracing and reunion services and adequate funding to relevant Indigenous organisations to establish parenting and family well being programs;
- review of church and non-government counselling and support services to ensure they are culturally appropriate;
- to develop and implement a social justice package for Indigenous families and children;
- establishment of national framework legislation for the implementation of self determination in relation to the well being of Indigenous children and young people;

- establishment of minimum national standards for the treatment of all Indigenous children (eight standards); and
- amendment of the Family Law Act.

Distribution of *Bringing them home*

The Australian Government Publishing Service (AGPS) is selling Bringing them home on behalf of the Commission. At the time of writing, AGPS has commissioned 6 500 copies for sale through its outlets.

Community guide and video

In addition to the full report presented to Parliament, the Inquiry recognised the importance of reporting directly and in an accessible form to Indigenous Australians and the broader Australian community, particularly those who gave evidence or made submissions to the Inquiry. Therefore, a community guide and video were prepared for distribution free of charge to Indigenous and non-Indigenous communities.

Publication and distribution of the community guide and video were made possible through funding provided by the Aboriginal and Torres Strait Islander Commission, the Australian Youth Foundation and the Australian Institute of Aboriginal and Torres Strait Islander Studies.

The Australian Youth Foundation funded the first print run of 15 000 copies of the community guide. The Institute of Aboriginal and Torres Strait Islander Studies funded the reprint of 30 000 copies. The Aboriginal and Torres Strait Islander Commission funded the distribution of 10 000 copies of the guide to non-Indigenous individuals and organisations, and also supported production of the video.

Government response

At the time of writing, the Government has not made a formal response to the report.

Media and public response

Media coverage and analysis of *Bringing them home* was extensive. The public response, in the form of requests for the community guide, has been overwhelming. Ten thousand telephone calls from all over Australia were received over a two week period, each requesting copies of the community guide. AGPS outlets sold out of the initial print run of the 700 page report within 24 hours of it being tabled. Subsequently, over 5 000 copies of the report have been sold.

The Commission has distributed 30 000 copies of the community guide free of charge, and orders for bulk copies of the guide to go to schools around the country are being processed. Requests for the video outnumber current stocks.

1996 Human Rights Medal and Awards

The Australian 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 1996 Medal and Awards were supported by Ansett Airlines, *The Sydney Morning Herald* and the Council for Aboriginal Reconciliation.

The 1996 presentation ceremony was combined with the celebration of the 10th anniversary of the Commission. The presentation was held on Tuesday 10 December 1996 at a luncheon in Sydney. The luncheon, attended by 314 people, was preceded by the inaugural Human Rights Day Statement by Sir Ronald Wilson, Commission President. Both events received extensive national media coverage. Indira Naidoo, ABC newsreader, donated her services as MC, as did the distinguished panel of judges who reviewed 205 entries across seven categories.

Joint winners of the Human Rights Medal

This year, twenty one nominations were received for the Medal. The judging panel consisted of Dr John Yu, 1996 Australian of the Year, Ray Martin, host of Channel Nine's 'A Current Affair', and Faith Bandler, writer and human rights activist.

The Medal was awarded jointly to Robert Samuel Riley (1954-1996) for outstanding service to the Australian Indigenous community, and Rebecca Peters, Convenor of the Coalition for Gun Control for services in the protection of human rights. The medals were presented by Dame Roma Mitchell and Sir Ronald Wilson. Robert Riley's medal was accepted by his mother, Violet Riley, and his three children in a very moving ceremony.

Winners of the Human Rights Awards

The 1996 Human Rights Awards were streamlined significantly to feature a stronger focus on the role of the media in educating and informing the community about human rights issues. Two new award categories were added this year: the Community Award which recognises significant contributions to human rights by non-government and community organisations; and the Photographic Award which includes photographs published in newspapers or magazines.

Community

Includes non-government or community based organisations.

Joint winners: End Child Prostitution in Asian Tourism (ECPAT)
Coalition for Gun Control

Arts

Combines literature (poetry, fiction, non-fiction and children's literature), feature film, documentary film, drama and songwriting.

Winner: "The Coolbaroo Club"
Producers Steve Kinnane, Lauren Marsh, Roger Scholes and Penny Robins

Commendations: Various films on Lebanon
Daizy Gedeon

"Cry in the Wilderness: Guinea Pigs of Vietnam"
Jean Rhonda Williams

Television

Combines news, current affairs, drama and documentaries.

Winner: "Telling His Story"
Liz Jackson and Ashley Smith, Four Corners, ABC TV

Commendations: "You Might as Well Live"

Con Anemogiannis and Judy Menzel, *The Cutting Edge*, SBS TV

“Paul O’Grady”

Nick Greenaway, *Witness with Jana Wendt*, Seven Network

Radio

Combines news, current affairs and documentaries.

Winner: Julie Posetti
PM Radio Series, ABC Radio

Commendations: “Children of Mentally Ill Parents”
Ann Arnold, *Life Matters*, ABC Radio

“Riley’s Story: The Strive for Justice”
Adrian Shaw, Radio 6AR, Western Australia Aboriginal Media Association

Print media

Combines metropolitan or regional newspapers, magazines and other print media.

Winner: “Victoria’s Forgotten People”
The Age

Commendations: Series on Indigenous issues
Debra Jopson, *The Sydney Morning Herald*

Series on East Timor
Wilson da Silva

Photography

Includes photographs published in newspapers or magazines.

Winner: “Street Kids of Manila”
Palani Mohan, *The Sydney Morning Herald*

Commendation: “Cash Crisis”
John Mokrzycki, *The West Australian*

Unfortunately, there were insufficient entries for an award to be presented in the Corporate category, which recognises companies, unions, employers, associations and private or public sector organisations advancing human rights in Australia.

The 1997 Human Rights Medal and Awards will cover the above categories as well as a Youth Award for people under 25 years of age.

Chapter 2: Complaint handling and Legal Services

The Commission is responsible for handling complaints under the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1993* and the *Human Rights and Equal Opportunity Commission Act 1986*. Under each of the Acts, complaints of discrimination or breaches of human rights are made to the Commission. They are then referred to the relevant Commissioner, who is responsible for inquiring into and trying to conciliate the complaint.

Under the Racial, Sex and Disability Discrimination Acts, complaints which appear to have substance but cannot be conciliated can be referred by the relevant Commissioner to the Commission for a hearing and determination. This function is carried out by Hearing Commissioners assisted by the Commission's Legal section. A determination by the Commission does not bind the parties and further proceedings must be taken in the Federal Court for an enforceable judgement.

At the date of writing, legislative amendment necessitated by the High Court's decision in *Brandy v Human Rights and Equal Opportunity Commission* is before Parliament. The legislation will remove the Commission's role in hearing and making determinations on unconciliated complaints. These matters will go directly to the Federal Court, whose judgements on complaints will be binding.

The Human Rights and Equal Opportunity Commission Act covers complaints of breaches of human rights and discrimination under international instruments to which Australia is committed. The Act applies to the Commonwealth and its agencies where breaches of human rights are concerned, but has wider coverage for complaints of discrimination in employment or occupation. Complaints which cannot be resolved by conciliation do not proceed to hearing and determination but may, after appropriate inquiry, be made the subject of a report to the Attorney-General for presentation to Parliament.

Complaints are made to the Commission through its central office, regional offices and through state and territory anti-discrimination or equal opportunity agencies. There has been a substantial and continuing reorganisation of the Commission's cooperative arrangements with the states and territories. This has resulted in both Queensland and the Australian Capital Territory establishing their own independent anti-discrimination agencies.

Further reform of Commission complaint handling procedures

Previous Annual Reports have detailed external reviews of the Commission's complaint handling practices and the reforms implemented as a result. As noted last year, the three principal areas of reform were the implementation of a comprehensive procedures manual, training in investigation and conciliation methods and the development of a computerised complaint management system.

With the first two complete, the Commission's Complaint Handling and Records Management System (CHARMS) became operative in its central office in October 1996. While it will take some time to build up sufficient complaints data from which conclusions about complaints can be drawn, it has already proven to be an effective working tool for complaints officers and managers to obtain performance information. As reported last year, the Victorian Equal Opportunity Commission has adopted CHARMS and discussions are continuing with the new Anti-Discrimination Commission of Queensland and the South Australian Equal Opportunity Commission. The Commission hopes that the adoption of CHARMS by agencies handling discrimination complaints will contribute to increasing consistency in complaint handling across Australia.

Benchmarking

This year, the Commission's central office complaints section completed its first benchmarking exercise. This involved Commission officers visiting the benchmarking 'partners' to document their complaint handling procedures, consider the Commission's processes, make recommendations to improve Commission practices and establish benchmarks for performance within the Commission.

The project has proved extremely valuable, making a number of recommendations which will improve efficiency, assist in setting officer caseloads and performance targets, as well as establishing periodic review and reassessment of performance.

The Commission has implemented the bulk of the recommendations and congratulates its central complaint handling section on adopting and developing a culture of continuous workplace improvement.

Complaint handling performance

The number of complaints finalised under the complaints legislation rose 15 percent from 1994-95 to 1995-96 and a further 5 percent from 1995-96 to 1996-97.

The nature of the outcomes also demonstrates the increasing proportion of complaints which have been conciliated. The proportion of complaints conciliated have risen from 9 percent in 1994-95 to 24 in 1996-97. As shown in the section below under each of the Acts, the proportion of conciliated complaints differs between the Acts for various reasons and the rates of conciliation are higher in some areas than others.

Complaint statistics

Total complaints

As noted in the cooperative arrangements section, reviews of the complaint handling agreements with the Commission's state partners included reviews of their complaint handling processes. While complaint handling practices are broadly similar, differences in the way in which complaints have been counted meant that comparisons of raw numbers between agencies was not reliable. The differences were noted in the past two Annual Reports, but reviews this year resulted in a more detailed analysis.

The Commission has traditionally counted its complaints by complainant and matter; that is, one complainant who is complaining about a matter is counted as one complaint.

The Equal Opportunity Commissions in Victoria, South Australia and Western Australia have counted their complaints by the number of grounds of complaint and the number of respondents. If one complainant complains of sex discrimination and sexual harassment against a fellow employee for example, this would be counted as three complaints by the state commissions because the employer may be directly liable for the alleged sex discrimination as well as vicariously liable for the conduct of the alleged individual sexual harasser. The individual alleged harasser would also be the subject of complaint.

The Commission does not consider one method to be inherently superior to the other and notes that the method employed by the state commissions allows for separate outcomes for each individual respondent to a complaint matter. All of the cooperative arrangement partners are working towards a consistent counting practice, assisted by the adoption of a common complaints database.

The result of a deeper understanding of the different counting methods is that this year, for the first time, complaint statistics, from all offices handling complaints under federal legislation, can be reported on the same basis. The method used by the Commission has also been applied by the state cooperative arrangement partners. While consistency has been achieved this year, the consequence is that comparisons between complaint numbers from the states in previous years' reports should be avoided.

Table 1: Complaints received by location of office

Under the current cooperative arrangements, Commission offices handle all complaints under the Human Rights and Equal Opportunity Commission Act; the South Australian and Western Australian Equal Opportunity Commissions do not handle complaints under the Disability Discrimination Act or complaints of racial hatred.

| Act | Central office | NT | Tas | Vic | SA | WA | Total |
|---|-----------------------|-----------|------------|------------|------------|-----------|--------------|
| Disability Discrimination Act | 433 | 32 | 29 | 186 | - | - | 680 |
| Human Rights and Equal Opportunity Commission Act | 295 | 19 | 4 | - | - | - | 318 |
| Racial Discrimination Act | 375 | 16 | 12 | 70 | 90 | 26 | 589 |
| Sex Discrimination Act | 311 | 13 | 29 | 138 | 153 | 18 | 662 |
| Total | 1 414 | 80 | 74 | 394 | 243 | 44 | 2 249 |

Table 2: Complaints finalised by location of office

| Act | Central office | NT | Tas | Vic | SA | WA | Total |
|---|-----------------------|-----------|------------|------------|------------|-----------|--------------|
| Disability Discrimination Act | 428 | 32 | 25 | 254 | - | - | 739 |
| Human Rights and Equal Opportunity Commission Act | 304 | 25 | 1 | - | - | - | 330 |
| Racial Discrimination Act | 303 | 18 | 16 | 99 | 130 | 24 | 590 |
| Sex Discrimination Act | 358 | 12 | 26 | 202 | 278 | 19 | 895 |
| Total | 1 393 | 87 | 68 | 555 | 408 | 43 | 2 554 |

More complaints were finalised during the reporting year than were received. The Victorian and South Australian Equal Opportunity Commissions, in particular, finalised considerably more complaints than were received.

Although detailed time lapse data is not available, all offices report considerable reductions in waiting times.

Overall, the areas of sex and disability discrimination remain dominant although there has been a significant rise in complaints under the Racial Discrimination Act from previous years to the extent that the number of complaints received is approaching those under the Disability and Sex Discrimination Acts.

Racial Discrimination Act

Comparisons cannot be made with previous years' figures for the State Equal Opportunity Commissions due to different methods of counting. Complaints under the Racial Discrimination Act received by the Commission's central office, however, rose from 154 in 1994-95 to 197 in 1995-96, to 375 in 1996-97, an increase of 90 percent over the past year. Complaints of racial hatred are handled almost exclusively by the Commission's central office. The racial hatred amendments to the Racial Discrimination Act were in force for nine months of 1995-96.

Table 3: Received and finalised by office

| Racial Discrimination Act* | Central office | NT | Tas | Vic | SA | WA | Total |
|-----------------------------------|-----------------------|-----------|------------|------------|-----------|-----------|--------------|
| Received | 375 | 16 | 12 | 70 | 90 | 26 | 589 |
| Finalised | 303 | 18 | 16 | 99 | 130 | 24 | 590 |

*Includes complaints lodged under the racial hatred provisions.

There are three primary outcomes of a complaint: it may be declined; conciliated; or referred to the Commission for hearing and determination. Inquiry into the complaint may be declined by the Race Discrimination Commissioner on the grounds provided in the Racial Discrimination Act. These are reproduced in Table 4, with the category 'withdrawn' subdivided to illustrate the reason for the complainant withdrawing.

Table 4: Outcomes of finalised complaints

| Racial Discrimination Act | Central office | NT | Tas | Vic | SA | WA | Total |
|---|-----------------------|-----------|------------|------------|------------|-----------|--------------|
| Declined | 171 | 9 | 5 | 72 | 83 | 14 | 354 |
| Not unlawful | 23 | 1 | - | - | 2 | 1 | 27 |
| Withdrawn, does not wish to pursue, advised Commission | 38 | 4 | - | 18 | 23 | 6 | 89 |
| Withdrawn, does not wish to pursue, settled outside Commission | 6 | - | - | - | - | - | 6 |
| Withdrawn, lost or unable to contact | 22 | 1 | 3 | 4 | 33 | 4 | 67 |
| More than 12 months old | 5 | 1 | - | - | - | 1 | 7 |
| Vexatious, misconceived, lacking or frivolous | 77 | 2 | 2 | 50 | 25 | 2 | 158 |
| Conciliated | 53 | 5 | 10 | 12 | 24 | 6 | 110 |
| Referred for hearing | 20 | 2 | 1 | 14 | 23 | - | 60 |
| Terminated* | 33 | - | - | - | - | 2 | 35 |
| Transferred** | 26 | 2 | - | 1 | - | 2 | 31 |
| Total | 303 | 18 | 16 | 99 | 130 | 24 | 590 |

*Not an aggrieved party, state complaint previously lodged.

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

If a complaint cannot be conciliated between the parties and the Commissioner is of the opinion that it should not be declined, it will be referred for public hearing and determination by the Commission.

In the central office, 31% of complaint outcomes are conciliated. The proportion of complaints conciliated under the Racial Discrimination Act is somewhat lower than for complaints of sex and disability discrimination. There is no readily acceptable explanation for this difference. The impression gained by conciliation officers, who handle complaints of all types of discrimination, is that alleged discriminatory behaviour on the basis of race tended to be less overt than in the areas of sex and disability. While complainants may suffer some detriment, it is more difficult to attribute this to unlawful discrimination than in complaints under the Sex and Disability Discrimination Acts.

Table 5: Area of complaints

| Racial Discrimination Act | Central office | NT | Tas | Vic | SA | WA | Total |
|------------------------------------|-----------------------|-----------|------------|------------|------------|-----------|--------------|
| Rights to equality before the law | 31 | - | - | 1 | 1 | - | 33 |
| Access to places and facilities | 13 | - | - | 16 | 2 | - | 31 |
| Land, housing, other accommodation | 5 | 1 | 1 | 3 | 10 | 4 | 24 |
| Provision of goods and services | 52 | 4 | 1 | 33 | 35 | 14 | 139 |
| Right to join trade unions | 1 | - | - | - | - | - | 1 |
| Employment | 88 | 6 | 6 | 65 | 41 | 4 | 210 |
| Advertisements | - | - | - | - | - | - | 0 |
| Education | 7 | - | 1 | 3 | 10 | - | 21 |
| Incitement to unlawful acts | 2 | - | - | - | - | - | 2 |
| Other | 12 | 1 | 3 | - | 2 | 4 | 22 |
| Racial hatred** | 186 | 4 | - | 11 | - | - | 201 |
| Total* | 396 | 16 | 12 | 132 | 101 | 26 | 683 |

*One complaint may have multiple areas.

**Complaints of racial hatred are primarily handled by the Commission's central office.

The number of complaints received in the area of racial hatred is almost as high as those in the area of employment. The Racial Discrimination Act was amended in October 1995 to include the racial hatred provisions and it appears to be growing into a substantial area of the Commission's work. More details on this area of complaint are provided below. The high proportion of complaints of racial hatred has informed a great deal of the policy work of the Race Discrimination Commissioner, including publication of a widely distributed booklet *Face the Facts*. It aims to correct some current misconceptions about race issues.

Ethnicity of complainants

The collection of data on ethnicity raises a number of complex issues. Previous Annual Reports have published figures based on very broad categories such as Aboriginal or Torres Strait Islander, non-English speaking background and English speaking background. The state agencies handling complaints under the Racial Discrimination Act have provided the following figures in Table 6.

Table 6: Ethnicity of complainants

| Racial Discrimination Act | Vic | SA | WA | Total |
|----------------------------------|------------|-----------|-----------|--------------|
| Indigenous | 7 | 36 | 18 | 61 |
| English speaking background | 15 | 14 | 3 | 32 |
| Non-English speaking background | 30 | 37 | 5 | 72 |
| Information not provided | 18 | 3 | - | 21 |
| Total | 70 | 90 | 26 | 186 |

Coinciding with the development and introduction of its new database, the Commission's central office now sends a detailed questionnaire to complainants when their complaint is made. The questionnaire asks demographic information, including ethnicity. Instead of the broad categories previously used, complainants are asked to nominate their country of birth and any ethnicity which may not be apparent from their country of birth. The questionnaire is sent out separately to any complaint material, and complainants are advised that there is no connection between responding to the questionnaire and the handling of their complaint.

Of the 375 complaints received under the Racial Discrimination Act during the reporting year, 148 (40 percent) complainants returned the questionnaire. The results of the responses are summarised in Table 7.

Table 7: Complainant country of birth/ethnicity by geographical location

| Country of birth/identified ethnicity | Number of complainants |
|---|-------------------------------|
| Australian born (English speaking background) | 50 |
| Indigenous Australian | 8 |
| Australian born (non-English speaking background) | 4 |
| Asia (including India and China) | 23 |
| Western Europe (including the United Kingdom) | 23 |
| Eastern Europe | 9 |
| Southern Europe | 5 |
| Africa | 10 |
| South/Central America | 3 |
| North America | 2 |
| New Zealand | 2 |
| Middle East | 4 |
| South Pacific Islands | 2 |

Any analysis of the above data is extremely problematic. The percentage of respondents to complainants is less than half. Factors such as literacy and education play a large part in the number of complainants who respond. It also appears that complainants are suspicious about providing information and concerned about how the information will be used. The apparent reluctance to respond could be a result of the complainants' experience of government and this attitude towards data collection impacts on the reliability of the data itself. One complainant responded to the questionnaire claiming that the collection of such data was, in itself, racist and refused to answer. Two other complainants who returned the questionnaire didn't answer the relevant questions.

The Race Discrimination Commissioner is continuing community liaison on this issue to improve the collection of data.

Table 8: Complainant gender or group

| Racial Discrimination Act | Central office | NT | Tas | Vic | SA | WA | Total |
|----------------------------------|-----------------------|-----------|------------|------------|-----------|-----------|--------------|
| Male | 234 | 8 | 6 | 38 | 52 | 13 | 351 |
| Female | 117 | 5 | 6 | 32 | 38 | 12 | 210 |
| Organisation | 14 | - | - | - | - | - | 14 |
| Community, other organisation | - | - | - | - | - | - | 0 |
| Joint, multiple | 10 | 1 | - | - | - | 1 | 12 |
| On others behalf | - | 2 | - | - | - | - | 2 |
| Total | 375 | 16 | 12 | 70 | 90 | 26 | 589 |

Racial hatred

One of the most contentious complaint areas handled by the Commission is racial hatred. This has been the first full year's figures for racial hatred complaints. Since complaints of racial hatred have been handled principally by the Commission's central office, all of the statistics produced in this section are from the central office.

Table 9: Racial hatred complaints received and finalised

| | |
|-----------|------------|
| Received | 186 |
| Finalised | 98 |

Table 10: Racial hatred outcomes

| | |
|--|-----------|
| Declined | 44 |
| Not unlawful | 13 |
| Withdrawn, does not wish to pursue, advised Commission | 15 |
| Withdrawn, does not wish to pursue, settled outside Commission | 1 |
| Withdrawn, lost or unable to contact | 6 |
| More than 12 months old | 0 |
| Vexatious, misconceived, lacking or frivolous | 9 |
| Conciliated | 27 |
| Referred for hearing | 7 |
| Terminated | 12 |
| Transferred | 8 |
| Total | 98 |

The proportion of complaints conciliated (35 percent) is significantly higher than the proportion conciliated under the Racial Discrimination Act generally. When racial hatred complaints are removed from the general Racial Discrimination Act outcomes, the proportion of complaints conciliated is 19 percent. As set out below, a large proportion of complaints of racial hatred are in the context of neighbourhood and personality disputes which are amenable to conciliation.

Table 11: Racial hatred areas of complaint

| | |
|----------------------|------------|
| Media | 32 |
| Neighbourhood | 55 |
| Personality conflict | 22 |
| Employment | 6 |
| Racist propaganda | 21 |
| Entertainment | 1 |
| Sport | 1 |
| Public debate | 35 |
| Other | 13 |
| Total | 186 |

The area of racial hatred has generated considerable public attention during the reporting year. Table 11 shows that nearly half the complaints received are generated by the very public nature of the debate on issues of race. Complaints in the areas of media, public debate and racist propaganda account for 47 percent of all complaints.

Complaints about statements made in public arenas are, however, balanced by complaints alleging acts of racial hatred in a more local and personal context. Complaints in the categories of neighbourhood and personality disputes account for 41 percent of the total.

Are complaints of racial hatred increasing?

The most persistently asked question throughout the year has been whether the number of complaints of racial hatred are going up. The issue has been the subject of almost constant media enquiry, in the context of the public debate around race. The enquiries appear to be aimed at establishing a link between some of the level of public debate and the number of complaints. Unfortunately there is no simple answer.

Amendments to the Racial Discrimination Act making acts of racial hatred unlawful came into force on 13 October 1995. At the end of June 1997 they will have been in force for just under two years. Determining any reliable trend is not safe given the short time the legislation has been in place. A further complication with new legislation is that numbers of complaints may be influenced by a relative lack of awareness of the law or by a rush to test it, or a combination of both and other factors.

The Race Discrimination Commissioner has been conducting public education programs since the commencement of the legislation. Where the programs target a particular section of the population, there is increase in complaint numbers from that section which may impact upon the statistics.

While it is clear that complaints have increased over time, the pattern is erratic and there doesn't appear to be any ready explanation for the pattern in the number of complaints received.

Case studies

Verbal abuse

The complainant worked in the reception area of a company. She alleged that while serving the respondent, the respondent made a derogatory reference to the complainant's Aboriginality, in hearing of other customers. In conciliation, the respondent agreed to provide a public apology.

Travel

An Aboriginal complainant alleged that, in sorting out a mix up over travel arrangements, the respondent's employees favoured a non-Aboriginal customer, resulting in the cancellation of the complainant's booking and her having to wait three hours to travel. In conciliation, the respondent acknowledged that the mix up was their fault and acknowledged the complainant's sense of grievance. While denying any discriminatory treatment because of the complainant's Aboriginality, the respondent agreed to pay financial compensation of \$11 000.

Housing

A complaint of racial discrimination was made by an Aboriginal couple against a Real Estate Agent through whom the couple were renting accommodation. It was claimed and confirmed that a property manager asked the owner of the property whether he minded renting to people who are Aboriginal. The couple claimed that the property manager followed up arrears in payment of rent more energetically than with other tenants and undertook property inspections more frequently.

During the investigation of the complaint, the property manager was counselled in relation to her actions and chose to leave her employment. The manager and owner of the Real Estate Agency agreed to pay the couple \$900 compensation for hurt feelings and provided the couple with a written apology. An officer of the Commission ran a half day training session on the Racial Discrimination Act for staff at the Real Estate Agency.

Refusal of service

The complainants, three members of a remote Aboriginal community, alleged that when they attempted to join two white friends for drinks at the poolside of the hotel where the friends were registered guests, they were asked to leave because they weren't wearing shoes, even though the friends and several other hotel guests in that area were also not wearing shoes. The complainants believed that they were treated in this way because of their race. When informed of the complaint the hotel manager was very apologetic. He advised that the duty manager, who was the subject of the complaint, no longer worked for the hotel and would definitely not be reemployed because management was aware that he did not relate well with Aboriginal customers. The manager confirmed that the hotel had a non-discriminatory policy and that the way in which the complainants

had been treated was totally unacceptable. His apology was accepted by the complainants and the file closed as conciliated.

Harassment

An employee in the manufacturing sector alleged she had been the subject of racist taunts for several years by her coworkers. She said that she had become isolated in her workplace and that her attempts to stand up for herself had been met with increased hostility. Although she complained to her supervisors, she said they were unable to exert any pressure for changes of behaviour by her coworkers.

Following a conciliation conference, the respondent agreed to pay financial compensation and implement a training program and grievance process to address harassment in the workplace.

Accent at work

The complainant alleged he was denied the opportunity to apply for an advertised position because of his accent. The complainant alleged that he rang the employer about the vacancy but was told by the employer he was not suitable because of his accent. A statement confirming the allegation was provided by an employee of a large job placement agency who was told that the complainant was not a suitable applicant for the position because of his accent.

The respondent denied the allegations but provided \$5 000 as an ex-gratia payment to the complainant. Both parties watched a video developed by the Commission called *Accents Are Everywhere* as part of the conciliation process.

Employment

The complainant alleged that he was discriminated against in the terms and conditions under which employment was offered because of his race. The complainant was employed by a large international organisation, whose head office was based overseas. The complainant claimed that, because he was a different race from the managers who were appointed from overseas, he was denied the opportunity to attend work functions and denied access to training and promotion. He claimed that staff notices were not written in English and that, as a result, he missed out on information that was necessary for him to perform his duties effectively.

The employer denied that it had discriminated against the employee on the basis of race. It was confirmed that cultural differences between management and employees had led to misunderstandings and general difficulties.

The complainant sought damages for loss of promotional opportunities, stress and humiliation. The complaint was settled for \$41 263, a verbal apology and the provision of discounted products produced by the respondent company. The respondent company agreed to implement training programs for staff at all levels to ensure fair policies and practices for employment and promotion.

Racial hatred

The complainant was employed as a shop assistant. She claimed that while serving a customer, an ex-employee entered the shop and screamed abuse which was racially offensive. Witness statements from the complainant's co workers and customers in the store supporting her allegations were provided. In settlement of the complaint the respondent agreed to pay \$200 compensation for hurt feelings to the complainant. A written apology was also provided.

Sex Discrimination Act

While comparisons with previous year's state figures cannot be made, complaints under the Sex Discrimination Act, received by the Commission's central office, increased by 35 percent from

229 in 1995-96. The number of complaints finalised under the Sex Discrimination Act also increased by around 35 percent from 1995-96, which has contributed to the reduction of the backlog in this area.

Table 12: Received and finalised by location of office

| Sex Discrimination Act | Central office | NT | Tas | Vic | SA | WA | Total |
|-------------------------------|-----------------------|-----------|------------|------------|-----------|-----------|--------------|
| Received | 311 | 13 | 29 | 138 | 153 | 18 | 662 |
| Finalised | 358 | 12 | 26 | 202 | 278 | 19 | 895 |

Table 13: Outcomes of finalised complaints

| Sex Discrimination Act | Central office | NT | Tas | Vic | SA | WA | Total |
|--|-----------------------|-----------|------------|------------|------------|-----------|--------------|
| Declined | 167 | 9 | 10 | 122 | 156 | 11 | 475 |
| Not unlawful | 29 | 1 | - | - | 1 | - | 31 |
| More than 12 months old | 7 | - | 1 | - | 1 | - | 9 |
| Frivolous, lacking substance, misconceived or vexatious | 48 | 2 | 1 | 48 | 44 | 4 | 147 |
| Withdrawn, does not wish to pursue, advised Commission | 50 | 4 | - | 58 | 40 | 5 | 157 |
| Withdrawn, does not wish to pursue, settled outside Commission | 2 | - | 5 | 7 | 12 | - | 26 |
| Withdrawn, lost or unable to contact | 31 | 2 | 3 | 9 | 58 | 2 | 105 |
| Conciliated | 105 | 2 | 14 | 42 | 78 | 3 | 244 |
| Referred for hearing | 40 | 1 | 1 | 37 | 44 | - | 123 |
| Terminated* | 19 | - | 1 | 1 | - | 3 | 24 |
| Transferred** | 27 | - | - | - | - | 2 | 29 |
| Total | 358 | 12 | 26 | 202 | 278 | 19 | 895 |

*Not an aggrieved party, state complaint previously lodged.

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

Table 13 shows the proportion of outcomes between declined, conciliated and referred for public hearings. The rate of conciliation of complaints under the Sex Discrimination Act is relatively high. In the Commission's central office the rate of conciliation is 34 percent. Conciliation staff have found that complaints under the Sex Discrimination Act are particularly amenable to conciliation when the matter is quickly allocated and emphasis is on resolving the complaint rather than investigation.

Table 14: Grounds of complaints

| Sex Discrimination Act | Central office | NT | Tas | Vic | SA | WA | Total |
|--|-----------------------|-----------|------------|------------|------------|-----------|--------------|
| Sex discrimination | 110 | 5 | 7 | 81 | 37 | 3 | 243 |
| Marital status | 32 | 4 | 3 | 12 | 3 | 3 | 57 |
| Pregnancy | 39 | 1 | 9 | 22 | 22 | - | 93 |
| Sexual harassment | 143 | 3 | 10 | 126 | 160 | 10 | 452 |
| Parental status, family responsibility | 10 | - | - | 4 | 8 | - | 22 |
| Victimisation | 11 | - | - | 43 | 11 | 2 | 67 |
| Total* | 345 | 13 | 29 | 288 | 241 | 18 | 934 |

*One complaint may have multiple grounds.

Table 14 shows the spread of complaints between the various types of sex discrimination defined in the Sex Discrimination Act.

Sexual harassment remains overwhelmingly the single greatest cause of complaint, with sex discrimination the next most numerous area. The nature of the complaints informs the policy work of the Sex Discrimination Commissioner. The Commission has focused on sexual harassment with the launch of the publication *Sexual Harassment A Code of Practice* and the publication of guidelines for educational institutions.

Table 15: Areas of complaints

| Sex Discrimination Act | Central office | NT | Tas | Vic | SA | WA | Total |
|--|-----------------------|-----------|------------|------------|------------|-----------|--------------|
| Employment | 236 | 9 | 23 | 288 | 216 | 13 | 785 |
| Goods, services and facilities | 44 | 2 | 6 | 20 | 20 | 4 | 96 |
| Land - | - | - | - | - | - | - | 0 |
| Accommodation | 1 | 1 | - | - | 2 | - | 4 |
| Superannuation, insurance | 6 | - | - | - | - | - | 6 |
| Education | 2 | 1 | - | 5 | 1 | - | 9 |
| Clubs | 1 | - | - | - | 2 | - | 3 |
| Administration of federal laws and programs | 34 | - | - | - | - | 1 | 35 |
| Application forms etc | 1 | - | - | 1 | - | - | 2 |
| Trade unions, accrediting bodies | - | - | - | - | - | - | 0 |
| Total* | 325 | 13 | 29 | 314 | 241 | 18 | 940 |

*One complaint may have multiple areas.

Table 15 and shows the spread of complaints across the areas of unlawful discrimination under the Sex Discrimination Act.

The Sex Discrimination Act aims to combat discrimination in public life. Clearly it is the area of employment, which necessarily involves personal relationships within a work environment, which forms the largest area of complaint. Policy work under the former and acting Sex Discrimination Commissioners has concentrated heavily on discrimination in employment.

Table 16: Complainant gender or group

| Sex Discrimination Act | Central office | NT | Tas | Vic | SA | WA | Total |
|-------------------------------|-----------------------|-----------|------------|------------|------------|-----------|--------------|
| Male | 59 | 4 | 5 | 14 | 10 | 4 | 93 |
| Female | 250 | 9 | 24 | 124 | 143 | 14 | 567 |
| Organisation | 1 | - | - | - | - | - | 1 |
| Community, other group | - | - | - | - | - | - | 0 |
| Joint, multiple | 1 | - | - | - | - | - | 1 |
| On others behalf | - | - | - | - | - | - | 0 |
| Total | 311 | 13 | 29 | 138 | 153 | 18 | 662 |

Table 16 shows that the overwhelming number of complainants under the Sex Discrimination Act are women. It should be noted that there are constitutional limitations on the Commonwealth, which may only legislate under the heads of power granted to it in the Constitution. The Sex Discrimination Act implements the Convention on the Elimination of all forms of Discrimination Against Women and has restricted application to men. State and territory anti-discrimination laws are not limited in this way.

Case studies

Sexual harassment at work

An urgent complaint was received alleging sexual harassment by the complainant's manager for over two years, including constant and aggressive taunts of a sexual nature and threats that he would force her to have sex with him. The complainant was on sick leave and stated that her employer, a small business, had conducted an investigation into the alleged harassment, and would offer her a substantial amount of compensation if she decided to resign.

A conciliation conference was scheduled immediately. Through a number of discussions with the Commission, the employer's potential liability for the alleged actions of the manager was realised and the complaint was settled. The manager resigned and made an undertaking to seek counselling. The complainant was able to quickly return to work. The complaint was lodged, conciliated and settled within a month.

Sexist, sexual and racial harassment

A complaint was received from a woman alleging that her employer had failed to remedy or protect her from sexist, racial and sexual harassment by her supervisor. The complainant alleged that during the employer's investigation of her allegations, the supervisor had admitted to the alleged harassment and provided the complainant with a forced apology. The complainant said no further action was taken by the employer, even though she had suffered short term emotional and physical illness and associated medical costs due to the harassment. She added that she and the supervisor had never received any training or information from their employer on their rights and responsibilities regarding sexual harassment. There had been some attempts at negotiating a settlement between the parties when the complaint was received and, after a conciliation conference conducted by the Commission, the matter was fully settled for \$6 000 compensation.

Hostile work environment

A complex and detailed complaint was received from a woman alleging that she had left her workplace on sick leave due to sexual harassment. The complainant alleged that following her complaints to her employer about explicit pornographic posters in her workplace, her coworkers and supervisors victimised her daily with sexual gestures, hostility and ostracism. She claimed that her attempts to get assistance from her employer were fruitless and further intensified the hostility. When notified of the complaint the employer, a large manufacturer, claimed that the allegations were unclear and there was no documentation or staff remaining from the time of the alleged harassment. A conciliation conference was scheduled to explore the evidence of the complainant and any preventative or remedial action by the employer. The complaint was settled in conciliation for \$8 500 for general damages.

Sexual harassment

A complaint was received from a young woman alleging that she had been coerced into sex, with the owner of the business on a number of occasions and feared it would happen again. The respondent admitted that he had sex on two occasions with the complainant and agreed to attend a conciliation conference within a matter of days. At the conference the respondent acknowledged that the complainant had expressed hesitation and regret on both occasions they had sex, and that as her employer, she may have been intimidated by him. The complaint was settled in conciliation with a written apology and \$4 000 compensation. The complaint was acted upon immediately upon receipt and settled within a week after contacting the respondent.

Pregnancy dismissal

The complainant worked for a motor parts manufacturer in a regional town. She had worked as a casual factory hand for less than six months when she claimed she was dismissed because she was pregnant. The complainant claimed that she had been in line for a permanent position due to the

reclassification of her position. When she told her supervisor that she was pregnant, four weeks after joining the company, a different position was made permanent. The complainant asked her supervisor if she would be dismissed. The supervisor allegedly said that it would be discriminatory to do so, and that there was enough contract work to provide employment until 1998. Her supervisor later praised her work. However, when staff cutbacks on her assembly line were announced about six weeks later, the complainant alone was singled out to work "on loan" to other lines. Four weeks later five more casuals were employed to fill specific line positions, and the complainant was told that she would not be trained because she was pregnant and would leave soon. She was dismissed five months after commencement on the alleged verbal explanation that she was pregnant and that her assembly line would need to be reorganised. She did not receive a separation certificate.

The complaint was settled at a conciliation conference by the employer reemploying the complainant on a full time basis.

Sexual harassment and sex discrimination

The complainant worked for a suburban real estate agency, as a secretary and receptionist, for about three years. On Christmas Eve in the office, the complainant alleges that an argument developed with the principal, over the complainant's wish to do property management work. This issue had been raised with the employer and he had formerly offered her these duties in writing when she was offered another job. However, the offer was not honoured. When asked by the complainant why he did not want her to do property management, he allegedly said that he wanted her to be his 'right hand girl' and cover for his sexual antics (using crude terms and including her as a theoretical partner). The complainant claims the principal was drinking and became more direct in his sexual overtures. He then put the light out and kissed her. When she further rebuffed his overtures he blocked her egress, and when she ran away, he chased and further assaulted her. The complainant resigned.

The complaint was settled at a conciliation conference for \$6 500 and a written apology.

Pregnancy discrimination

The complainant was a young single woman who had worked at a suburban newsagency for three years. The complainant took leave for severe illness for six months and then resumed work at the shop. A few months later the complainant found that she was pregnant and told her employer. The complainant claimed that she was ridiculed for being pregnant and told that she would not get any special treatment. Her duties included climbing a ladder to stack and clean shelves without help, from 10.45 am to 3.15 pm and then vacuum.

The complainant experienced medical problems during her pregnancy and was ordered by her doctor to take a week's bed rest and thereafter only do light duties. Not long after, she was dismissed on the given grounds that there was no more work for her.

A conciliation conference was conducted and the complaint was settled with provision of a work reference and \$6 500 compensation.

Family responsibilities

The complainant, a single parent with a new baby, worked as a counter hand at a restaurant. She alleged sex discrimination and that she had been dismissed from her employment because of her family responsibilities. The employer denied that she was dismissed because of her family responsibilities and claimed the reason was because of unreliability. At a conciliation conference the complaint was settled with the respondent apologising and acknowledging that he should have handled matters differently and given more consideration to making adjustments for the complainant's family responsibilities. The respondent also paid \$400 to the complainant to

compensate her for lost earnings and the humiliation she suffered. As a part of the settlement, the respondent also agreed to have the Commission conduct an information and education seminar open to all staff at the workplace.

Pregnancy discrimination

The complainant applied for a temporary three month position, with the prospect of a possible extension, as a clerk with a federal government agency. The complainant was some eight months pregnant when she was selected and due to start training. On the first day of training she was sent away on the ground that she was not fit to carry out the duties of the position. Her husband told the Commission that this opportunity was vital to her morale as she had been unemployed for some time. The respondent claimed that she had not been technically employed on paper at that point, as the delegate had not signed her employment approval document. The complaint was settled through telephone negotiations and the complainant commenced work, on the same terms as her original contract, a few days later.

Marital status

The complainant and her spouse both worked for a large company. The spouse had a supervisory position that resulted in him working permanent day shift. The complainant's job had been adjusted so that she could also work permanent day shift. However, management ended this arrangement and the complainant had to go back on rotating shifts. The complainant believed that the company wanted to get rid of her and her spouse and had changed her shifts because they knew that would result in them both leaving their jobs. She alleged discrimination on the basis of marital status. The respondent denied the allegations of discrimination, but acknowledged that their handling of the matter had been insensitive and had caused unnecessary distress to the complainant. They offered a small sum of \$2 000 to the complainant to compensate her for her humiliation and distress and also gave her a written assurance that she would be given due consideration for any other position she might wish to apply for with the company, without any prejudice or victimisation because of this complaint. All parties were very happy with the conciliated outcome.

Pregnancy dismissal

The complainant lodged a complaint of discrimination in employment on the basis of her pregnancy. The complainant worked as a receptionist, office administrator and parcel deliverer for a small family firm (employing one person and the company's directors). She had worked for the firm on two occasions for a total period of about five years.

The complainant claimed that about a month after she advised her employer of her first pregnancy, her employer repeatedly approached her regarding her future intentions and told her the expected dates of maternity leave were not acceptable. The happy family atmosphere that had characterised the work place soured and communication broke down. Over the next few weeks, she said that her duties changed to emphasise her driving or delivering duties, her work was over scrutinised and she was counselled about her work performance. The complainant subsequently took sick leave.

The complainant sought either a return to work or financial compensation. Because of the possibility of retaining the employment relationship, the Commission decided to proceed with early investigation and a conciliation conference.

The conference was held within four weeks of receiving the complaint. The matter settled with the employer agreeing to compensate the complainant for three months loss of wages.

Sexual harassment

A complaint was received by a young woman alleging that she had been sexually harassed in employment with a large employer over a period of two years. The complainant also claimed that the male dominated work environment was hostile to her on the basis of sex. The complainant

claims that pornographic posters were displayed freely throughout the work site, references were made about her sexuality, there were frequent unwelcome comments of a sexual nature, she was questioned about her private life and unwelcome touching was commonplace. The complainant said that she frequently complained to the management but that little was done to address her concerns. The matter settled without admission of liability and in confidence for \$90 000 financial compensation, a letter of apology and review of sexual harassment policies.

Disability Discrimination Act

Complaints received by the Commission's central office rose by 51 percent from 286 in 1995-96. It should be noted that the 1995-96 number received was a substantial fall from the number of 457 received in 1994-95. The number of complaints finalised is consistent with last year's figure, which has meant a further reduction in the backlog.

Table 17: Received and finalised by location of office*

| Disability Discrimination Act | Central office | NT | Tas | Vic | Total |
|--------------------------------------|-----------------------|-----------|------------|------------|--------------|
| Received | 433 | 32 | 29 | 186 | 680 |
| Finalised | 428 | 32 | 25 | 253 | 738 |

*Complaints under the Disability Discrimination Act are not currently handled by either the South or West Australian Equal Opportunity Commissions.

Table 18: Outcomes of finalised complaints

| Disability Discrimination Act | Central office | NT | Tas | Vic | Total |
|--|-----------------------|-----------|------------|------------|--------------|
| Declined | 230 | 25 | 9 | 159 | 423 |
| Not unlawful | 40 | 3 | - | - | 43 |
| More than 12 months old | 8 | - | - | - | 8 |
| Trivial, lacking in substance, misconceived or vexatious | 67 | 12 | 2 | 80 | 161 |
| More appropriate remedy available | 15 | - | 2 | - | 17 |
| Adequately dealt with already | 11 | 1 | 2 | 6 | 20 |
| Withdrawn, does not wish to pursue, advised Commission | 56 | 3 | - | 57 | 116 |
| Withdrawn, does not wish to pursue, settled outside Commission | 4 | - | - | 3 | 7 |
| Withdrawn, lost or unable to contact | 29 | 6 | 3 | 13 | 51 |
| Conciliated | 105 | 7 | 15 | 43 | 170 |
| Referred for hearing | 27 | - | 1 | 48 | 76 |
| Terminated* | 13 | - | - | 1 | 14 |
| Transferred** | 53 | - | - | 2 | 55 |
| Total | 428 | 32 | 25 | 253 | 738 |

*Not an aggrieved party, state complaint previously lodged, not otherwise entitled to complain or administrative error.

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

Table 18 details the outcomes of finalised complaints under the Disability Discrimination Act. The proportion of conciliated complaints is 25 percent, which is lower than under the Sex Discrimination Act but higher than those under the Racial Discrimination Act.

Although the Disability Discrimination Act has a wider variety of grounds on which complaints can be declined, the proportion of complaints declined is consistent with those under the Racial and Sex Discrimination Acts.

Table 19: Complainant's type of disability

| Disability Discrimination Act | Central office | NT | Tas | Vic | Total |
|---|-----------------------|-----------|------------|------------|--------------|
| Physical disability | 77 | 6 | 4 | 55 | 142 |
| A mobility aid is used (walking frame or wheelchair) | 23 | 1 | 8 | - | 32 |
| Physical disfigurement | 7 | - | - | 5 | 12 |
| Presence in the body of organisms causing disease (HIV/AIDS) | 4 | 1 | - | 1 | 6 |
| Presence in the body of organisms causing disease (other) | 7 | - | - | - | 7 |
| Psychiatric disability | 29 | 18 | 1 | 45 | 93 |
| Neurological disability (epilepsy) | 18 | - | 2 | 3 | 23 |
| Intellectual disability | 8 | - | - | 16 | 24 |
| Learning disability | 7 | 3 | 1 | 9 | 20 |
| Sensory disability (hearing impaired) | 8 | - | 1 | 13 | 22 |
| Sensory disability (deaf) | 5 | - | 1 | - | 6 |
| Sensory disability (vision impaired) | 10 | - | 2 | 11 | 23 |
| Sensory disability (blind) | 7 | - | 1 | 2 | 10 |
| Work related injury | 24 | 2 | 5 | 10 | 41 |
| Medical condition (diabetes) | 10 | 1 | 2 | 11 | 24 |
| Other | 14 | - | 1 | 95 | 110 |
| Total | 258 | 32 | 29 | 276 | 595 |

Table 20: Areas of complaints

| Disability Discrimination Act | Central office | NT | Tas | Vic | Total |
|---|-----------------------|-----------|------------|------------|--------------|
| Employment | 144 | 10 | 17 | 171 | 342 |
| Goods, services and facilities | 128 | 14 | 11 | 138 | 291 |
| Access to premises | 93 | - | - | 12 | 105 |
| Land 1 | - | - | - | 1 | |
| Accommodation | 8 | 1 | - | 9 | 18 |
| Incitement to unlawful acts or offences | 1 | - | - | - | 1 |
| Advertisements | - | - | - | - | 0 |
| Superannuation, insurance | 9 | 5 | - | - | 14 |
| Education | 37 | - | - | 62 | 99 |
| Clubs, incorporated associations | 5 | - | - | 2 | 7 |
| Administration of federal programs | 11 | 2 | - | 1 | 14 |
| Sport2 | - | - | 1 | 3 | |
| Application forms, requests for information | 1 | - | 1 | - | 2 |
| Trade unions, registered organisations | 2 | - | - | - | 2 |
| Unlawful to contravene disability standards | - | - | - | - | 0 |
| Total* | 442 | 32 | 29 | 396 | 899 |

*One complaint may have multiple areas.

Table 20 shows the areas of public life in which complaints were made.

While employment remains the single greatest area of complaint, complaints about the provision of goods and services are not far behind. While complaints in the area of employment are significant, they don't predominate as under the Sex Discrimination Act. The number of complaints in employment and goods and services has slightly increased from last year. The area of access to premises has shown the most dramatic increase from 19 received in the Commission's central office in 1995-96 to 93 in 1996-97.

The policy work of the Disability Discrimination Commissioner is greatly influenced by the nature of the complaints made.

Table 21: Complainant gender or group

| Disability Discrimination Act | Central office | NT | Tas | Vic | Total |
|--------------------------------------|-----------------------|-----------|------------|------------|--------------|
| Male | 210 | 8 | 17 | 153 | 388 |
| Female | 204 | 22 | 10 | 100 | 336 |
| Organisation | 10 | - | - | - | 10 |
| Community, other group | - | - | - | - | 0 |
| Joint, multiple | 9 | - | 2 | - | 11 |
| On others behalf | - | 2 | - | - | 2 |
| Total | 433 | 32 | 29 | 253 | 747 |

Case studies

Caring for carers

The complainant, who has quadriplegia, travelled interstate to attend a university conference on the rights of people with disabilities. On registration, she was required to pay an additional registration fee of \$395 for her carer, who assists her with personal care, but was not taking part in the conference. The complainant objected to the fee, but the organisers refused to refund it.

Immediately after the conference, she lodged a complaint under the Disability Discrimination Act alleging she had been discriminated against in the provision of services, because she was accompanied by a carer. She noted the irony of a conference purporting to foster the rights of people with disabilities enforcing what she thought was a discriminatory policy. The university acknowledged that its policy on equal access had not been followed in this case. It agreed to apologise to the complainant, refund the carer's registration fee and implement staff training on disability issues.

A sporting chance

Ms C and her son were members of a sporting club that also operated a large sports venue. Ms C complained that she did not have equal access to the services of the club because her son's severe mobility disability limited their use of sporting facilities. The only accessible area in the grandstand limited their vision of events and their access to other services at the venue such as toilets and food outlets. Ms C claimed that she could not sit with her son, but had to sit behind or in front of him because of the inflexible seating arrangements. The club claimed that modifications to the venue were expensive and that adequate seating was provided. In conciliating the complaint, the club agreed to survey their members to get an understanding of what services were required. The club agreed that future alterations, to be completed by the next season, would include integrated seating for people using wheelchairs and each toilet block would include wheelchair accessible toilets.

Motel refitted

The complainant, who uses a wheelchair, stayed at a motel when attending a conference and found the facilities to be inadequate for his disability. He lodged a complaint because aspects of his accommodation were unsuitable, even though the motel was advertised in a widely published accommodation guide as accessible for people with disabilities. He also found the toilet facilities in the conference room inaccessible.

The complaint was settled by the respondent refitting the motel rooms with shower chairs, body sprays in shower recesses, and new and accessible power points. The respondent also undertook to ensure that all motel and conference room staff were properly instructed, through the engagement of a local disability representative body, in how to assist people using wheelchairs. The respondent also

ensured that clients of the motel using wheelchairs would be provided with assistance and, made aware of the assistance available from staff.

Travel trouble

A group of five women from Sydney who have physical and mobility disabilities arranged to join a tour group travelling to Perth. The women had all travelled independently before and had travelled extensively overseas. The complainants alleged that early in the tour, the tour organiser threatened to send them home as he could not 'care for them'. He frequently expressed his concern at the need for medical support and harassed them throughout the two weeks by constantly checking to see if they were alright. The complainants claimed they could care for themselves and that the tour organiser's response was because of their appearance rather than abilities.

The tour company claimed that the organiser had expressed his concerns because other passengers had complained about the amount of assistance they had to provide to the group, which had become a burden on the other passengers, rather than common courtesy and good manners as stated by the group.

In conciliation, the complaint settled for an apology, compensation to each complainant and an agreement that the complainants would have input to staff training processes.

Member suspended

A young man with a psychiatric disability was a member and regular attendee of a local club. He suffered an accident involving an involuntary bodily function and was summarily suspended from the club for one month. The man explained to the club that the episode was related to his disability, that he attended the club five to six times a week and the suspension would have a severe impact on his social life, but the suspension remained in place. He noted that many people in the local community queried why he was not at the club and he was embarrassed by these approaches. People also claimed they had heard rumours that he had been suspended because of an episode.

During investigation, the club advised that the man had a similar episode 12 months earlier but they had taken no action. This time, other members had complained and action was taken to protect the interests of those members. The club confirmed they had not spoken with the man about the earlier episode, but claimed there was an unwritten rule that all members knew that each member could have one 'warning' before being suspended.

In conciliating the complaint, the club agreed to provide education for staff regarding people with disabilities, to provide an apology to the individual, and to provide \$4 300 compensation for hurt and humiliation.

Insurance

Mr D applied for income protection insurance, disclosing that he was homosexual and not currently in a relationship. He had previously been in a relationship with a man who was HIV positive. He submitted to an HIV test and the result was negative, but the company declined to offer him insurance as it considered he was at risk of HIV infection. Mr D alleged he had been discriminated against in the provision of services because the company thought he may acquire a disability in the future.

In settling the complaint, the company made no admission of liability, but it offered Mr D a policy with an HIV/AIDS exclusion clause, an apology for remarks allegedly made to him about his 'abnormal lifestyle' and an amount of money to cover his legal costs. The complaint was settled on this basis.

Financial services

A woman with cerebral palsy brought a complaint against a financial institution when the institution asked her to undergo an assessment by a solicitor to determine whether she understood a loan document. An inquiry was conducted, and during the course of the inquiry the respondent institution apologised to the complainant. At a conciliation conference, the respondent agreed to review their policies and practices in relation to service provision to people with disabilities, and to update or amend them accordingly. They also undertook to provide training on their new policies and practices and the Disability Discrimination Act for management and staff throughout the institution's branches.

Parking

A woman with severe rheumatoid arthritis complained about a local council because it had removed a disabled parking bay from her local shopping centre. The council responded promptly to the complaint and, in conciliation, undertook to restore the parking bay and provide another in the shopping centre. The council further agreed to consider provision of additional bays at other locations suggested by the complainant. The complainant was given a copy of the council's draft Disability Anti-Discrimination Action Plan.

Hotel service

A woman with multiple sclerosis who uses a wheelchair at all times brought a complaint against a hotel, alleging it had refused her service because she was not wearing shoes. The woman stated that her condition makes the wearing of shoes impossible. As the complaint seemed one where a quick informal resolution may be possible, the owner was contacted the day the complaint was received. The owner expressed considerable concern about the events described in the complaint. He offered to meet with the complainant to apologise to her and to assure her that what she had experienced was contrary to the hotel's non-discriminatory policy and was, at the very least, a poor exercise of common sense. The complainant had been upset by the incident and did not wish to meet with the owner or staff, but said she would be satisfied by the provision of a written apology on behalf of the management and staff. The apology was provided and the complaint considered conciliated.

Offer withdrawn

The complainant, Mr V, approached an optometrist seeking employment as an optical dispenser. The optometrist invited him to meet the other staff and do one day's trial work. The complainant claimed that he was offered the position but the offer was withdrawn after he disclosed that he had Hepatitis C. The employer denied making a firm offer of employment. Mr V alleged discrimination on the ground of disability.

In settlement of the complaint, Mr V accepted an apology and \$13 500. The respondent made no admission of liability.

Pre employment medical

The complainant applied for employment, performing heavy manual labour with a statutory authority, and was offered a job subject to a successful medical check. A medical examination was performed by a medical service contracted by the employer. The examination recorded a high blood pressure reading, however the report stated that there were no problems with his cardiovascular system that would affect his capacity to perform heavy manual labour. The examination did not disclose any problem with his lung capacity or function, but stated that he was unable to perform heavy manual labour because of problems with his respiratory system. The employer decided not to hire the complainant on this advice. The employer did not question the apparent anomalies in the report, claiming that it did not have the expertise to do so.

The complainant claimed that his blood pressure problem was temporary and had been resolved soon after the examination. He claimed that it did not affect his capacity to perform the inherent requirements of the job.

At conciliation, the respondent admitted that it had delegated its responsibility for deciding whether the complainant could perform the inherent requirements of the job to the doctor performing the medical examination, and decided that it was appropriate to review its policies and practices. The matter settled for an amount of \$18 000 which took into account the economic loss suffered by the complainant who had difficulty finding alternative work as he was in his early fifties and lived in a regional area of high unemployment.

Psychiatric disability

The complainant was employed by an advertising company for six months. During that time he developed an anxiety condition and sought leave to get medical assistance. Leave was denied and he subsequently resigned, although he continued to work for the agency on a casual basis for another few months while getting treatment for his disability. Having successfully completed treatment, he sought appointment to a full time position with the agency that had recently become available and was equivalent to his previous position. The agency refused to appoint the complainant on the grounds that he was a workers compensation risk as the duties of the position had not changed. In a conciliation conference, the respondent agreed that they had not sought medical advice regarding the complainant's condition and had not checked out his claim that he was cured. An apology and compensation of \$9 000 was provided by the respondent without admission of liability.

Sales slump dismissal

The complainant had a degenerative disability and claimed that reasonable accommodation, in the form of reduced sales targets, had not been provided by her employer. The employer claimed that the woman had not requested any special consideration because of her disability and had indicated that her disability did not impact on her ability to perform her duties. The employer claimed that she had been dismissed for regularly failing to meet sales targets and disability was not a consideration in that decision. At conciliation, the matter was settled on the basis that the respondent would provide an apology to the complainant, financial compensation of \$15 000 and disability discrimination training for management.

The right person for the job

The complainant was a man with a speech impediment. He applied for one of several regionally based jobs with a government department. The selection panel scored each of the applicants. A predetermined number of successful applicants who had received the best scores were recruited. The complainant's score fell in an average range. Average scores excluded applicants only in so far as they provided the department with a numerically competitive assessment. This did not suggest that the complainant was unable to carry out the job requirements.

When the complainant received notification of his unsuccessful application, he telephoned the interview panel members. He alleged that he was told his speech impediment had been taken into account when the panel was deciding his suitability and used to rank him with an average score.

The parties settled the complaint on the following terms: the inclusion in a departmental reference manual of specific guidelines on working with people with speech impediments; amendment of the job selection training package to ensure that an applicant may request a representative member of the same disability group be placed on the interview committee, subject to availability; provide a written apology; and pay the complainant \$2 000 for hurt and humiliation.

Prior disability

The complainant was employed part time as a medical receptionist in a busy specialist practice in a regional city. After two months, the employer became aware that she had previously claimed workers compensation for occupational overuse syndrome. Several weeks later she was dismissed. She claimed that she had been told by the employer that the reason for her dismissal was the previous

workers compensation claim. The employer claimed that she was dismissed because of poor performance and that there had been no discrimination on the basis of her disability. The employer did not admit liability but showed a willingness to settle the claim by paying an amount of \$2 500.

Education

Six representative complaints were lodged by the Parent Council for Deaf Education on behalf of all school children with hearing disabilities, against the New South Wales Department of School Education. The complainants detailed a range of grievances including alleged deficiencies in the provision of education services; lack of access to suitably qualified interpreters for sign dependent students; inadequate numbers of qualified Teachers of the Deaf; no option of a segregated high school for sign dependent students with hearing disabilities; lack of bilingual or bicultural programs for students with hearing disabilities; and that resources and personnel funding for students with hearing disabilities who are integrated is provided on an ad hoc basis.

After lengthy investigation and conciliation processes, an outcome was reached which included provision for a working party comprising members of the complainant group and respondent, to meet regularly to discuss issues raised in the complaint, and new issues that may arise concerning the provision of education to hearing impaired students. The parties did not request that the terms of the conciliation be confidential.

Inaccessible artistic venue

Complaints were lodged by Norwood Legal Service on behalf of complainants who have mobility disabilities. The complaints concerned lack of accessibility to Elder Hall, which is used for events during the Adelaide Festival of the Arts and is a major artistic venue in Adelaide.

The University was advised of the complaints in October 1995. After negotiations with the University, Norwood Legal Service advised that the University had approved plans and allocated funds to modify access to the hall, with work to be carried out no later than August 1997. Both Norwood and the complainants reviewed and approved the proposed plans. The University also agreed that should Elder not be accessible by the time of the Festival in 1998 it would not be used for Festival events.

Alterations were finished, however, well before the proposed date and events in Elder Hall can now be enjoyed by people who use wheelchairs or who have other mobility disabilities.

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.

Breaches of human rights

The Human Rights and Equal Opportunity Commission Act allows the Commission to inquire into and attempt to conciliate complaints that acts or practices by, or on behalf, of the Commonwealth are in breach of human rights. Human rights are defined in the Act as rights and freedoms contained in any 'relevant international instrument' which is appended to or declared under the Human Rights and Equal Opportunity Commission 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.

The Commission receives a great deal of correspondence alleging breaches of human rights. Where the alleged breach is not the subject of a human right contained in the relevant international instruments, the Commission is obliged to decline to inquire into the complaint. If a complaint alleges a breach by any person other than the Commonwealth or a person acting on its behalf, then the Commission has no power to inquire into the matter as a complaint under the Act. Finally, if the alleged breach arises by operation of law rather than a discriminatory act or practice, then the Commission cannot deal with the issue as a complaint. In those circumstances, it may report to Parliament on the law itself but it cannot provide a remedy to those disadvantaged by it.

Employment

The Human Rights and Equal Opportunity Commission Act gives the Commission a much broader charter where complaints of discrimination in employment are concerned. Australia is a party to the Convention concerning discrimination of employment and occupation (referred to as ILO 111), which is a convention of the International Labour Organisation.

The ILO 111 Convention requires each member state to adopt and pursue a national policy to discourage discrimination in employment on the basis of race, colour, sex, religion, political opinion, national extraction, social origin or any other distinction which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the member state.

The Human Rights and Equal Opportunity Commission Act adopts ILO 111 into federal law by providing a scheme for the inquiry into, and conciliation of, complaints of discrimination in employment. In addition to the grounds specifically noted in ILO 111, under a declaration made under the Human Rights and Equal Opportunity Commission Act, the Commission may also accept complaints of discrimination on the basis of age; medical record; criminal record; impairment; marital status; mental, intellectual or psychiatric disability; nationality; physical disability; sexual preference; or trade union activity.

The Human Rights and Equal Opportunity Commission Act does not limit the Commission's power to inquire into complaints of discrimination in employment to complaints against the Commonwealth. Complaints against state and local governments, private corporations and individuals may be the subject of inquiry.

The complaints process

Complaints where the Commission has the power to inquire and conciliate are treated in the same way as complaints under the other Acts, at least up to the point where it is clear that they cannot be conciliated.

Unlike the other Acts, however, the Human Rights and Equal Opportunity Commission Act has no provision for the determination of complaints or for the enforcement of any determination. Where a complaint is neither declined nor conciliated, the Commission can conduct an inquiry. If the Commission is satisfied that the subject matter of the complaint constitutes discrimination in employment, it reports its findings to the Attorney-General for tabling in Parliament.

Table 22: Complaints received and finalised

Complaints received under the Human Rights and Equal Opportunity Commission Act increased from 251 in 1995-96 to 318 in 1996-97, an increase of 27 percent. The number of complaints closed was consistent with last year's figure.

| Human Rights and Equal Opportunity Commission Act | Central | NT | Tas | Total |
|--|----------------|-----------|------------|--------------|
| Received | 295 | 19 | 4 | 318 |
| Finalised | 304 | 25 | 1 | 330 |

Table 23: Outcomes of finalised complaints

| Human Rights and Equal Opportunity Commission Act | Central office | NT | Tas | Total |
|--|-----------------------|-----------|------------|--------------|
| Declined | 241 | 22 | 1 | 264 |
| Does not constitute discrimination | 27 | - | - | 27 |
| Human rights breach, not inconsistent or contrary to any human right | 96 | 14 | - | 110 |
| Withdrawn, does not wish to pursue, advised Commission | 28 | 2 | 1 | 31 |
| Withdrawn, does not wish to pursue, settled outside Commission | 4 | - | - | 4 |
| Withdrawn, lost or unable to contact | 19 | 1 | - | 20 |
| More than 12 months old | 8 | 2 | - | 10 |
| Vexatious, frivolous, lacking in substance or misconceived | 33 | 3 | - | 36 |
| More appropriate remedy available | 15 | - | - | 15 |
| Adequately dealt with | 11 | - | - | 11 |
| Conciliated | 25 | 2 | - | 27 |
| Referred for reporting* | 13 | - | - | 13 |
| Terminated | 18 | - | - | 18 |
| Transferred | 7 | 1 | - | 8 |
| Total | 304 | 25 | 1 | 330 |

*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 report.

Table 23 shows that the decline rate under the Human Rights and Equal Opportunity Commission Act is much higher than under the other three Acts. Complaints alleging a breach of human rights cover an extraordinary range of issues, which are not human rights as defined by Human Rights and Equal Opportunity Commission Act.

The Human Rights and Equal Opportunity Commission Act is also limited to the Commonwealth in complaints, except for those alleging discrimination in employment. Many complaints alleging breaches of human rights by people other than the Commonwealth must be declined for this reason. Lack of enforceability may also contribute to the low conciliation rate. However, the conciliation rate has more than doubled over the last two years.

Table 24: Grounds of complaints

| Human Rights and Equal Opportunity Commission Act | Central office | NT | Tas | Total |
|--|-----------------------|-----------|------------|--------------|
| Race (ILO 111) | 2 | - | - | 2 |
| Colour (ILO 111) | 1 | - | - | 1 |
| Sex (ILO 111) | 2 | - | - | 2 |
| Religion (ILO 111) | 9 | - | - | 9 |
| Political opinion (ILO 111) | 11 | - | - | 11 |
| National extraction (ILO 111) | - | - | - | 0 |
| Social origin (ILO 111) | - | - | - | 0 |
| Age (ILO 111) | 61 | 2 | - | 63 |
| Medical record (ILO 111) | 1 | - | - | 1 |
| Criminal record (ILO 111) | 29 | - | 3 | 32 |
| Impairment (including HIV/AIDS status) (ILO 111) | - | - | - | 0 |
| Marital status (ILO 111) | 1 | - | - | 1 |
| Disability (ILO 111) | 3 | - | - | 3 |
| Nationality (ILO 111) | - | - | - | 0 |
| Sexual preference (ILO 111) | 13 | - | - | 13 |
| Trade union activity (ILO 111) | 20 | 1 | - | 21 |
| International Covenant on Civil and Political Rights | 124 | 10 | - | 134 |
| Declaration on the Rights of the Child | 9 | - | - | 9 |
| Declaration on the Rights of Mentally Retarded Persons | 1 | - | - | 1 |
| Declaration on the Rights of Disabled Persons | 3 | - | - | 3 |
| Convention on the Rights of the Child | 10 | 1 | - | 11 |
| Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief | 1 | 2 | 1 | 4 |
| Not a ground within jurisdiction | 5 | 3 | - | 8 |
| Not a human right as defined by the Act | 5 | - | - | 5 |
| Total* | 311 | 19 | 4 | 334 |

*One complaint may have multiple grounds.

Table 24 shows that complaints of breaches of the International Covenant on Civil and Political Rights are the highest single category. The Covenant has 53 Articles which enumerate many different human rights.

Complaints of discrimination in employment are headed by alleged discrimination on the basis of age, prior criminal record and trade union activity.

Table 25: Areas of complaint

| Human Rights and Equal Opportunity Commission Act | Central office | NT | Tas | Total |
|---|-----------------------|-----------|------------|--------------|
| Employment, occupation | 131 | 6 | 4 | 141 |
| Acts or practices of the Commonwealth | 76 | 3 | - | 79 |
| Not act or practice of the Commonwealth (not employment cases) | 88 | 10 | - | 98 |
| Total | 295 | 19 | 4 | 318 |

Table 25 shows the distribution of complaints under Human Rights and Equal Opportunity Commission Act.

In 30 percent of complaints, the Commission has no jurisdiction to inquire because the complaints do not concern discrimination in employment or acts or practices of the Commonwealth.

Table 26: Non-employment complaints

| Human Rights and Equal Opportunity Commission Act | Central office |
|--|-----------------------|
| Prisons, prisoners | 33 |
| Religious institutions | 1 |
| Family court matters | 5 |
| Other law court matters | 9 |
| Immigration | 47 |
| Law enforcement agency | 5 |
| State agency | 16 |
| Other service provider (private sector) | 6 |
| Local government | 5 |
| Education systems | 12 |
| Welfare systems | 5 |
| Health systems | 4 |
| Other | 16 |
| Total | 164 |

Table 26 shows the nature of complaints under Human Rights and Equal Opportunity Commission Act, alleging breaches of human rights under the various international instruments, excluding the ILO 111 Convention dealing with discrimination in employment.

Complaints in the area of immigration are the highest single category, while complaints from prisoners are the next largest group. The Commission has jurisdiction to inquire into complaints of immigration because it is a responsibility of the Commonwealth. The Commission may only inquire into complaints from prisoners, however, if they are complaints from persons imprisoned under federal laws.

The figures are only available for the Commission's central office because the new classification of complaints was introduced with the complaints database in Sydney this year. The database has not been provided to the Commission's regional offices yet. Ninety three percent of these complaints are handled in the central office.

As with the other areas, the nature of complaints informs the policy work of the Human Rights Commissioner.

Table 27: Complainant gender or group

| Human Rights and Equal Opportunity Commission Act | Central office | NT | Tas | Total |
|--|-----------------------|-----------|------------|--------------|
| Male | 230 | 12 | 2 | 244 |
| Female | 49 | 5 | 1 | 55 |
| Organisation | 8 | - | - | 8 |
| Community, other group | 3 | - | - | 3 |
| Joint, multiple | 5 | 1 | 1 | 7 |
| On others behalf | - | 1 | - | 1 |
| Total | 295 | 19 | 4 | 318 |

Case studies***Discrimination on the basis of age in the provision of employment***

Complaints were lodged by several individuals, all over the age of 60 years, in relation to the policy of a large federal agency. The policy was to deny short term employment to people over the age of 60. The federal agency, in response, confirmed its policy not to offer employment to this group because of problems with workers compensation coverage. Through conciliation, the workers compensation problems were resolved. It was confirmed that applicants would be employed for positions on merit. All of the complainants were offered the positions for which they applied. This result was a significant step towards the elimination of age discrimination in the Australian Public Service.

Discrimination on the basis of criminal record in the provision of a service

A federal prisoner, who had been in prison for several years, alleged that he had been denied access to medical assistance (surgery) because of his criminal record. The complainant stated that he had a medical condition which caused him severe pain and could be easily resolved through surgery. After intervention by the Commission, it was agreed that the prisoner would be allowed access to the surgery. The complainant contacted the Commission after the surgery and confirmed that the operation had been a success.

Immigration

The complainant had spent over 18 months in detention waiting for the result of his application to remain in Australia as a refugee. He had left his country of birth for fear of persecution some years ago and that country subsequently denied he was its national. Unable to secure a safe life in other countries, he arrived in Australia claiming he was 'stateless' and sought refugee status.

The Human Rights Commissioner commenced an inquiry into whether his detention in Australia had become arbitrary, since there appeared to be no country he could be readily deported to and as there had been no action by Australian authorities in relation to his refugee application. The complainant feared he may remain in detention indefinitely. After further representations by the Commissioner and humanitarian agencies, and a change in policy by the Minister in handling humanitarian applications, the complainant was granted permanent residential status and released from detention.

Age discrimination in the private sector

The respondent was a large private company. Its employment policies required its employees to retire on reaching 60 years of age. The complainant unsuccessfully applied to work beyond this age. He believed his skills continued to be needed and that he was in good health and fit to do the job.

In conciliation, the respondent denied it had discriminated on the ground of age, but agreed to pay the complainant the equivalent of almost two years wages and allow him to reapply should any suitable positions become available.

Age discrimination in the public sector

A woman alleged that a federal agency had refused to employ her because she was too old. She stated in her complaint that she had been told that 'age was a factor' in her being unsuccessful in her application. The respondent, while acknowledging the inappropriateness of the remark, stated that it was made in answer to the complainant's question as to whether her age had been a deciding factor. The complainant stated that she had suffered considerable loss of confidence and was consequently unable to seek work. She made a very large claim on the respondent which included loss of wages. The respondent disputed that there was any loss of wages and made an offer of \$2 000, for distress caused which was accepted.

Religious discrimination

The complainant had applied for a position with the respondent, a church organisation. She was discouraged from proceeding with her application when she disclosed she was not of the same faith as the particular church.

When investigation of the complaint commenced, the respondent acknowledged that adherence to a particular faith was not an inherent requirement of the type of position that the complainant had applied for and that it had already altered its recruitment procedures to ensure an applicant's faith was not an impediment to employment. The complainant accepted this advice in resolution of her complaint.

Enquiries

All Commission offices and state agencies receive many enquiries by people who feel that they may have a human rights or discrimination complaint, and who are seeking advice and assistance.

Since the state equal opportunity commissions deal with enquiries in terms of their state legislation as well as federal law, the figures in the tables below are only for Commission offices which administer federal complaints legislation.

About two thirds of enquiries received by the Commission concern issues about which it may have some power to act under its complaint legislation. Where it appears that a complaint can be made, callers are sent the relevant information. Where it appears that the Commission cannot assist, every effort is made to refer the caller to another appropriate avenue of redress.

Written enquiries

People often write to the Commission with a grievance, but are unsure whether it is covered by any of the complaints legislation or do not specify the grievance in terms which attract the coverage of an Act. People also request information about the complaints process in general. The Commission advises of the coverage of the legislation and also provides advice about other possible methods to address their complaints where it appears that the complaint is not covered by Commission legislation.

Table 28: Total number of written enquiries received

| | Central office | NT | Tas | Total |
|-------------------|----------------|----|-----|------------|
| Written enquiries | 313 | 40 | 79 | 432 |

Table 29: Conclusion of written enquiries

| Conclusion | Central office | NT | Tas | Total |
|--|-----------------------|-----------|------------|--------------|
| Referred to Equal Opportunity Commission, Anti-Discrimination Board or the Commission | - | 1 | 2 | 3 |
| Referred elsewhere, alternate remedy | 7 | 5 | 4 | 16 |
| General information provided | 9 | 17 | 35 | 61 |
| Advised to lodge a complaint, complaints form and information package sent | 2 | - | 4 | 6 |
| Appointment made for interview with complaints officer | - | 4 | - | 4 |
| Community education to be provided | - | - | 3 | 3 |
| Complaint made, additional information form and information package sent | 13 | 1 | - | 14 |
| No grounds for complaint | 128 | - | 31 | 159 |
| Lost contact, inquiry withdrawn | 4 | - | - | 4 |
| Other | 65 | 3 | - | 68 |
| Total | 228 | 31 | 79 | 338 |

Table 30: Issues raised by written enquiries

| Issue | Central office | NT | Tas | Total |
|--|-----------------------|-----------|------------|--------------|
| Race | 20 | 2 | 5 | 27 |
| Race (racial hatred) | 14 | 1 | 1 | 16 |
| Race (social origin) | - | 1 | - | 1 |
| Sex | 7 | 1 | 8 | 16 |
| Sex harassment | 5 | - | 2 | 7 |
| Sex (marital status, family responsibilities or status, parental status) | 3 | 1 | 2 | 6 |
| Sex (pregnancy) | - | - | 2 | 2 |
| Disability (impairment) | 23 | - | 13 | 36 |
| Disability (medical condition, record, HIV/AIDS) | 3 | - | - | 3 |
| Disability (mental health) | 4 | 1 | 1 | 6 |
| Disability (other medical issues for example maltreatment) | 2 | - | 2 | 4 |
| Age (too old) | 2 | - | 2 | 4 |
| Sex preference, transgender, homosexuality, lawful sexual activity | 2 | 1 | 1 | 4 |
| Privacy, data protection | 2 | - | - | 2 |
| Neighbourhood issues | 2 | - | 1 | 3 |
| Personality conflicts, favouritism | 4 | - | - | 4 |
| Victimisation | 4 | 1 | - | 5 |
| Union, industrial activity | 1 | - | - | 1 |
| Unfair dismissal, other industrial issues | 8 | 2 | - | 10 |
| Advertising | 3 | - | 1 | 4 |
| Religion, religious organisations | 3 | 1 | - | 4 |
| Criminal record, conviction | 3 | - | 1 | 4 |
| Prisons, prisoners | 14 | 5 | 3 | 22 |
| Police | 5 | - | - | 5 |
| Court (family matters) | 6 | - | 3 | 9 |
| Court (other law matters) | 11 | - | - | 11 |
| Immigration | 9 | - | 1 | 10 |
| Political opinion | 1 | - | - | 1 |
| Local government (administration) | 4 | 1 | 2 | 7 |
| State government (administration) | 8 | 1 | 1 | 10 |
| Federal government (administration) | 16 | 1 | 2 | 19 |
| International Covenant on Civil and Political Rights | 5 | 2 | 2 | 9 |
| Declaration on the Rights of the Child | 1 | - | - | 1 |
| Declaration on the Rights of Disabled Persons | 1 | - | - | 1 |
| Convention on the Rights of the Child | 4 | 3 | - | 7 |
| Other human, civil rights | 21 | 3 | 7 | 31 |
| Human rights, other equal opportunity issues | 6 | 3 | 13 | 22 |
| Career status | - | - | 1 | 1 |
| Other | 106 | 23 | 2 | 131 |
| Total* | 333 | 54 | 79 | 466 |

*Enquiries may have multiple issues.

Table 31: Areas of written enquiries

| Area | Central office | NT | Tas | Total |
|---|-----------------------|-----------|------------|--------------|
| Employment or business | 66 | 4 | 24 | 94 |
| Education | 13 | - | 1 | 14 |
| Goods, services and facilities | 34 | 4 | 7 | 45 |
| Access to premises, place, facilities or vehicles | 3 | 1 | 2 | 6 |
| Land, housing or accommodation | 3 | - | 2 | 5 |
| Superannuation and insurance | - | - | 1 | 1 |
| Finance and credit | - | - | 1 | 1 |
| Equality before the law | 4 | 5 | 9 | 18 |
| Incitement to unlawful Acts | - | - | 2 | 2 |
| Acts or practices of the Commonwealth | 11 | 2 | 2 | 15 |
| Federal laws and programs | 15 | 3 | 3 | 21 |
| State laws and programs | 23 | 26 | 1 | 50 |
| Local government | 3 | 2 | 1 | 6 |
| Law enforcement agency | 6 | - | 1 | 7 |
| Clubs, incorporated associations | 4 | - | 2 | 6 |
| Sport | - | 1 | - | 1 |
| Trade unions, accrediting bodies, industrial organisations | 1 | - | - | 1 |
| Advertisements | - | - | 2 | 2 |
| Application forms, discriminatory requests for information or questions | - | 3 | 6 | 9 |
| Racial hatred (neighbourhood) | 1 | - | - | 1 |
| Racial hatred (personality conflict) | 1 | - | - | 1 |
| Racial hatred (public debate) | 4 | 2 | - | 6 |
| Racial hatred (media) | - | - | - | 0 |
| Immigration | 13 | 1 | - | 14 |
| Religious institutions | 2 | - | - | 2 |
| Family court matters | 5 | - | - | 5 |
| Court matters (other) | 14 | - | - | 14 |
| Welfare | 2 | - | 8 | 10 |
| Other | 117 | - | 4 | 121 |
| Total* | 345 | 54 | 79 | 478 |

*Enquiries may have multiple issues.

Cooperative arrangements

Until the expiry of the arrangements this year, the Commission operated the Queensland Anti-Discrimination Commission and the Australian Capital Territory Human Rights Office on behalf of the respective State and Territory Governments. Following the expiry of the old arrangements, Queensland and the Australian Capital Territory established their own independent agencies to receive and conciliate complaints of unlawful discrimination under their state/territory legislation. The closure of the previous joint offices saw the transfer of complaints under federal legislation to the Commission's central office and the development of new strategies to ensure adequate access for complainants under federal legislation.

Queensland

The Commission absorbed 158 federal complaints from Queensland.

This year's Annual Report contains complaint statistics for the Commission's Queensland office from July to November 1996 only.

During that period, the Queensland Commission received 6 515 telephone or personal enquiries of which 4 015 related to alleged discrimination. Of these, 515 were advised to lodge complaints.

From July to November 1996, under all of the federal complaint Acts administered, the Queensland Commission received 315 complaints and finalised 299.

The outcomes of finalised complaints are shown in Table 32.

Table 32: Outcomes of closed complaints in Queensland from July to November 1996

| | |
|--|------------|
| Conciliated | 96 |
| Referred for hearing | 55 |
| Declined, rejected or outside jurisdiction | 25 |
| Withdrawn by complainant | 68 |
| Contact lost with complainant | 55 |
| Total | 299 |

The Commission would like to thank its staff for their cooperation during the transition period. The Commission also welcomes the commitment of the Queensland Government to the new Queensland Anti-Discrimination Commission and looks forward to a fruitful working relationship with the new Commissioner, Ms Karen Walters.

Australian Capital Territory

As was the case in Queensland, the Commission managed the Australian Capital Territory Human Rights Office on behalf of the Territory's Government under cooperative arrangement. That arrangement ended on 19 December 1996 and the Territory's Government decided to set up its own Human Rights Office to receive and inquire into complaints under the Australian Capital Territory *Discrimination Act 1991*.

As a result, the Commission took over all open complaints under federal legislation from the Australian Capital Territory Office, while complaints under the Territory's Discrimination Act were transferred to the new Human Rights Office. The Commission received 52 open complaints from the Australian Capital Territory.

In the period from July to November 1996, the Australian Capital Territory Human Rights Office received 991 telephone and personal enquiries, of which 345 were requests for advice about alleged discrimination.

A total of 65 written complaints were received, 37 being made under the Territory's Discrimination Act. In the same period 77 complaints were finalised, 50 of these under the Discrimination Act. The outcomes of finalised complaints are shown in Table 33.

Table 33: Outcomes of closed complaints in the Australian Capital Territory from July to December 1996

| | |
|--|-----------|
| Conciliated | 24 |
| Referred for hearing | 1 |
| Declined, rejected or outside jurisdiction | 26 |
| Withdrawn by complainant | 26 |
| Total | 77 |

The transition from federal to territory management involved some dislocation for staff and the Commission wishes to thank all involved for their cooperation. The Commission also welcomes the Australian Capital Territory Discrimination Commissioner, Ms Rosemary Follett, and looks forward to working with the new Human Rights Office.

Victoria, South Australia and Western Australia

Although formal cooperative arrangements with the above states expired during the year, negotiations between the responsible Attorneys-General have resulted in a continuation of arrangements where the State Equal Opportunity Commissions receive and handle discrimination complaints under federal legislation.

State Commissions have developed their complaint handling practices under the legislation enacted by their states. Previous Annual Reports have pointed out the difficulties in simply comparing complaint statistics because of the different methods of counting complaints.

As part of the negotiations for ongoing cooperative arrangements, the Commission has initiated reviews of the complaint handling practices of state agencies to identify and develop a best practice regime to promote consistency between all agencies handling discrimination complaints. Given the legislative differences between the federal complaints Acts and the complications due to the co administration of state legislation, the Commission recognises that developing a standard best practice will be a difficult and long term project.

Legislative amendments currently before Parliament will result in a standard complaints procedure for federal discrimination legislation and the broader object of harmonising legislation between the Commonwealth, States and Territories is an agenda item of the Standing Committee of Attorneys-General. The Commission has contributed substantially to both processes.

As part of the ongoing cooperative arrangements, Victoria, South Australia and Western Australia were able to produce their annual report statistics using the same counting method as the Commission. The complaint numbers used in the following tables, therefore, are consistent between all the offices handling complaints under federal legislation.

Northern Territory

The Commission maintains a small office in Darwin and the complaint statistics from that office are included below.

In addition to complaint handling, the office responds to numerous requests for information and training. Commission staff provided private and public sector training and participated in public education programs.

Due to general budget cuts and that there is already a Northern Territory Anti-Discrimination Board in Darwin, the Commission is reviewing the future of its Northern Territory office.

Tasmania

While Tasmania has legislated in the area of sex discrimination, there is no comprehensive state anti-discrimination legislation. The Commission maintains a very active office in Hobart and their complaint handling role is covered below. The office also provides seminars and workshops for public and private sector organisations, trade unions, schools, colleges and the University. They also provided advice to employers and other organisations who were establishing equal employment opportunities and practices. The office also conducted public promotions, including many activities during Human Rights Week.

Legal Services

The primary responsibility of this section is to deal with complaints that cannot be conciliated and have been referred to the Commission for inquiry. In performing this function, 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. It is the responsibility of Legal Services to schedule and facilitate the Commission's inquiry into these matters, and its legal officers provide associate and/or counsel assistance to Hearing Commissioners.

The section assists the President in the handling of his statutory duties reviewing Commissioner decisions to decline complaints and in his consideration of applications for interim determinations. Legal Services is also responsible for the provision of legal advice to the Commission, for conducting Commission interventions in legal proceedings and for external litigation. The section also handles Freedom of Information Act applications on behalf of the Commission.

Amending legislation

As noted at the start of the Complaint handling section, legislation is currently before the Parliament to remove the determination of complaints from the Commission to the Federal Court. The amending legislation will impact on the work of Legal Services in the following ways:

- the review of declined complaints will no longer be performed by the President. Where inquiry into a complaint is declined by the Commission, the complainant will be able to go directly to the Federal Court; and
- interim determinations will no longer be granted by the Commission or the President. The Commission will be able to apply to the Federal Court for injunctions in complaints where it is appropriate.

Hearings and determinations by the Commission

Complaints which are unable to be settled by conciliation are referred for public hearing by the responsible Commissioner, in accordance with the requirements of the Racial, Sex and Disability Discrimination Acts.

There is no provision in the Human Rights and Equal Opportunity Commission Act for referral to public hearing of unconciliated complaints, but the Commission may report to the Attorney-General where conciliation cannot resolve the matter and where 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 fully inquire into the complaints. The number of enquiries are reported in the statistics below in the same way as public hearings under the Racial, Sex and Disability Discrimination Acts as they are relatively small in number and similar in process.

Role of the President

In addition to his work on the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, the President continued his work in the conduct of hearings, decline reviews and interim determinations.

During the reporting year, the President handed down six determinations of complaint matters, as well as presiding at hearings of complaints which did not proceed to determination. He also finalised 212 reviews of Commissioner decisions to decline complaints, and 62 applications for interim determinations.

Hearing Commissioners

In the 1996-97 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. The present part time Hearing Commissioners appointed by the Attorney-General are:

New South Wales

Mr John Basten QC
Ms Marion Brown
The Hon Elizabeth Evatt AC, AO
Professor Regina Graycar
Mr Graeme Innes, AM
The Hon John Nader QC

Victoria

Mr Aaron Castan QC
Ms Susan Crennan QC
Ms Rosemary Hunter
Associate Professor Jenny Morgan
Ms Moira Rayner
Dr Susan Kenny QC

Queensland

Ms Roslyn Atkinson
The Hon William Carter QC
Dr Mary Kalantzis
Mr Stephen Keim
Mr Stanley Jones QC

Tasmania

Ms Antonia Kohl
The Hon Robert Nettlefold
Mr Christopher Webster

Australian Capital Territory

Professor Hilary Charlesworth

South Australia

Ms Kathleen McEvoy

Western Australia

Ms Hanifa Dean
Mr Peter W Johnston

Northern Territory

Ms Susan Cox

Referrals for public hearing

The increasing volume of complaints received and handled by the Commission continues to translate into an increasing number of complaints referred for public hearing. During 1996-97, 256 new complaints were referred for hearing (including Human Rights and Equal Opportunity Commission Act matters) - 231 had been referred in 1995-96. During 1996-97, 244 complaints referred to hearing were finalised (including Human Rights and Equal Opportunity Commission Act matters) - 115 were finalised in 1995-96. Of the hearing matters (including Human Rights and Equal Opportunity Commission Act matters) finalised during 1996-97:

- 127 were conciliated prior to or during hearing (62 in 1995-96);
- 44 were substantiated after a hearing and formal decision (15 in 1995-96);
- 40 were dismissed after a hearing and formal decision (15 in 1995-96); and
- 33 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 (21 in 1995-96).

Table 34: Trends in numbers of matters referred for public hearing

| Year | 1992-93 | 1993-94 | 1994-95 | 1995-96 | 1996-97 |
|--------------|-----------|-----------|------------|------------|------------|
| Total | 48 | 52 | 120 | 231 | 256 |

Table 35: Complaints referred for public hearing during 1996-97 (with comparison to 1995-96) by location and Act

| Office | Total number | | HREOCA | | RDA | | SDA | | DDA | |
|------------------------------|--------------|------------|-----------|-----------|-----------|-----------|------------|------------|-----------|-----------|
| | 95-6 | 96-7 | 95-6 | 96-7 | 95-6 | 96-7 | 95-6 | 96-7 | 95-6 | 96-7 |
| New South Wales | 57 | 83 | 11 | 12 | 3 | 10 | 34 | 39 | 9 | 21 |
| Victoria | 108 | 101 | 13 | 2 | 12 | 16 | 62 | 42 | 21 | 41 |
| South Australia | 11 | 33 | - | - | 4 | 7 | 3 | 26 | 4 | 1 |
| Queensland | 33 | 16 | 3 | - | 14 | 11 | 12 | 1 | 4 | 4 |
| Western Australia | 9 | 5 | 1 | 1 | 1 | 1 | 5 | 1 | 2 | 2 |
| Northern Territory | 6 | 4 | 1 | - | 1 | 1 | 1 | 1 | 3 | 2 |
| Australian Capital Territory | 3 | 3 | 1 | - | - | - | - | - | 2 | 3 |
| Tasmania | 4 | 11 | - | - | - | 1 | 1 | 7 | 3 | 3 |
| Total | 231 | 256 | 30 | 15 | 35 | 47 | 118 | 117 | 48 | 77 |

| | |
|---------------|---|
| DDA | Disability Discrimination Act |
| HREOCA | Human Rights and Equal Opportunity Commission Act |
| RDA | Racial Discrimination Act |
| SDA | Sex Discrimination Act |

Under the Disability Discrimination Act, the statistics given here refer to the geographical location of the complaint, irrespective of the fact that other such complaints were often handled by the central office, as well as local offices. Under the Sex and the Racial Discrimination Acts, all investigation and conciliation work was generally undertaken by the office indicated in the table. Under the Human Rights and Equal Opportunity Commission Act, the higher figure for 1995-96 reflects a significant backlog of matters for referral in that year, rather than a significant change in the nature of the complaint load.

Decline decisions reviewed by the President

Under the Sex, Racial and Disability Discrimination Acts, decisions not to inquire into a complaint made by the relevant Commissioner, may be reviewed by the President if the complainant requires it. Again, the volume of complaints being handled by the Commissioners has translated into a greatly increased number of requests for review by the President.

The President (or his delegate in a small number of matters) reversed the Commissioner's decision (or part of that decision) in 43 matters out of the 230 review matters which were finalised in 1996-97. The extent of the increase in this type of work can be seen in Table 36.

Table 36: Trends in numbers of Commissioner decline decisions which were referred for review by the President

| Year | 1993-94 | 1994-95 | 1995-96 | 1996-97 |
|--------------|-----------|------------|------------|------------|
| Total | 11 | 125 | 205 | 245 |

Interim determinations

Complainants may apply to the Commission (or the President if it is 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 rate of applications for interim determination declined during 1996-97, although previous years showed substantial increases. Virtually all of these applications are dealt with by the President, with a very small number being handled over the past few years by the Commission or a delegate of the President. Table 37 sets out the growth in this type of work that has occurred over the past few years.

Table 37: Trends in numbers of interim determination applications made to the Commissioner or the President

| Year | 1993-94 | 1994-95 | 1995-96 | 1996-97 |
|--------------|----------|-----------|-----------|-----------|
| Total | 3 | 61 | 87 | 47 |

Commission interventions

The Commission may intervene in legal proceedings with the leave of the Court. The criteria under which the Commission considers intervention are that the proceedings must involve human rights or discrimination issues which are significant and central to the proceedings and the issues relevant to the proceedings are not being addressed by the parties to the proceedings.

Set out below are cases in which the Commission intervened.

Rodney Croome and Nicholas Toonen v The State of Tasmania - Constitutional matter: Alleged inconsistency between state and federal legislation

The case

These proceedings were instituted in the High Court in November 1995 by two Tasmanian men, Rodney Croome and Nicholas Toonen. They sought to establish that certain provisions of the Tasmania Criminal Code (which make certain types of sexual conduct criminal) were inconsistent with recent federal legislation guaranteeing privacy for sexual conduct between adults in private (the *Human Rights (Sexual Conduct) Act 1994* (Cth)). Therefore, under section 109 of the Constitution, they argued that the High Court should declare the relevant Criminal Code provisions to be invalid and inoperative to the extent of any inconsistency.

Several preliminary points were raised in the case at the application of the Tasmanian Government. These included a challenge to the plaintiffs' right to bring the proceedings on the grounds that (a) the plaintiffs had no standing to do so; (b) the issue was not justiciable, or capable of determination, by the High Court under the Constitution; and (c) the proceedings amounted to an abuse of process.

Human rights matters involved in the Court proceedings

Human rights are defined in section three of the Human Rights and Equal Opportunity Commission Act to mean the rights recognised in the International Covenant of Civil and Political Rights and in

certain declarations adopted by the United Nations General Assembly or in other international instruments declared to be relevant by the Attorney-General. Australia acceded to the First Optional Protocol to the International Covenant of Civil and Political Rights on 25 September 1991 and is internationally accountable for violations of the Covenant, including violation by federal, state and territory governments.

On 25 December 1991, Mr Toonen, the second plaintiff in this case, submitted a complaint (called a 'communication') to the United Nations Human Rights Committee in accordance with Rules and Procedures in the International Covenant of Civil and Political Rights and the First Optional Protocol to the Covenant. Mr Toonen complained that, because of sections 122(a) and (c) and 123 of the Tasmania Criminal Code, he was a victim of violations by Australia of his rights under certain Covenant Articles.

On 31 March 1994, the United Nations Human Rights Committee published its views on the case. In summary, these views were: that Australia was in breach of Article 17 of the Covenant; that Australia was in breach of Article 2.1 of the Covenant; and that an effective remedy would be the repeal of sections 122(a) and (c) and 123 of the Tasmanian Criminal Code.

In July 1994, on behalf of the Commission, the Human Rights Commissioner recommended in a report to the Attorney-General that the provisions should be immediately repealed by the Tasmanian Government and that, if this did not occur, then the relevant provisions of the Tasmanian legislation should be overridden by appropriate federal legislation.

As a result, the Human Rights (Sexual Conduct) Act was assented to and commenced operation on 19 December 1994. It states that it is an Act 'to implement Australia's international obligations under Article 17' of the Covenant.

The human rights involved in this case include the right to non-discrimination and an effective remedy if that right is violated, the right to privacy and the right to equality (Covenant Articles 2, 17 and 26 respectively).

Preliminary hearing before Brennan C.J.

In February 1996 the Commission resolved to apply for leave to intervene in this matter by written submissions on the preliminary question of standing (the Commission's submission was to the effect that the plaintiffs did have standing). The High Court subsequently advised that the application would have to be made orally to the Court.

After hearing the submissions of the parties, the Chief Justice granted the Commission leave to intervene. He referred the preliminary matters of justiciability and standing for hearing before the Full Court and set a timetable for the filing of submissions.

The Commission filed written submissions on the question of standing. Shortly prior to the Full Court hearing, the Solicitor-General for Tasmania advised the Court and the parties that the State of Tasmania would not be disputing the plaintiffs had standing to bring the proceedings. In view of this concession, the Commission did not appear before the Full Court on these preliminary issues. The hearing took place before the High Court on 12 September 1996.

Decision of the Full Court of the High Court

On 26 February 1997, the High Court delivered its decision and held that the plaintiffs' matter was justiciable under the Constitution and the Court also found, as the State of Tasmania had conceded, that the plaintiffs did indeed have standing to bring the proceedings.

Subsequent developments

Following further representations by the Human Rights Commissioner, the Tasmanian Parliament passed legislation in May 1997 repealing the provisions that were the subject of the plaintiffs' challenge in the High Court. The High Court proceedings have now been discontinued.

B v B - intervention in the Full Family Court in a 'relocation' test case on the operation of the Family Law Reform Act 1995

The case

The Commission successfully sought leave to intervene in this part-heard matter in the Full Family Court in May 1997.

The case involved an application by the mother of two girls, aged 10 and 11 years, for a variation of the contact 'access' orders allowing their father to have weekend contact with them. The parents of the girls had separated more than six years ago and since then the girls had resided with their mother in Cairns, where their father also lived. The mother was seeking the variation to enable her to relocate to Bendigo where her husband-to-be lives. The mother proposed that the father have holiday access to the girls instead.

In the hearing before the Family Court, the trial judge agreed to the mother's application on the basis that to allow the mother to relocate to Bendigo would promote the happiness of the mother, and that would be in the best interests of the children. Conversely, to deny her the opportunity to move would be extremely detrimental to her well being and therefore not in the best interests of the children.

The father appealed the decision of the trial judge, arguing that the judge had misapplied the law in the light of the newly enacted *Family Law Reform Act 1995* (Cth). The Reform Act specifically provides that children have a right of contact with both parents unless contact is not in their best interests. The father argued that the trial judge had not properly applied the Reform Act in that he had effectively allowed the mother to relocate, and thereby diminished the father's contact with his children. After part-hearing the appeal in February 1997, the Full Court of the Family Court invited the Attorney-General to make submissions on the operation of the Reform Act, treating this case as a 'test case' on the impact of the Reform Act.

The Commission intervened to argue the relevance of the Convention on the Rights of the Child to an interpretation of the Reform Act, including as authority for the continued paramountcy of the principle of the best interests of the child. The Commission also argued, that the Reform Act should be interpreted in a manner consistent with human rights, such as the right to freedom of movement, provided that those rights did not conflict with the best interests of the child. The Commission's submissions also dealt with the relevance of Convention on the Rights of the Child and the International Covenant on Civil and Political Rights to the interpretation of domestic legislation such as the Reform Act.

Decision of the Full Court of the Family Court

The decision of the Full Court of the Family Court was handed down on 9 July 1997, dismissing the father's appeal. It found that the Reform Act has not displaced the principle that the best interests of the child are paramount and that the right of contact must be read in accordance with that principle. It agreed with the trial judge that in this case it was in the children's best interests to allow the mother to relocate. However, the Full Family Court stressed that in each case the Court must make its own assessment, based on the facts before it, of the manner in which the best interests of the children would be served. In some cases it would not be in the best interests of the children to allow the relocation.

In the course of its decision, the Full Court stated that “the intervention of the Commission was of value in our consideration of some of the issues raised”. The thrust of the Full Court’s decision was in accordance with the Commission’s submissions. Although not strictly relevant to the appeal, the Full Court expressed its views on the relationship of international treaties and conventions to family law “as it was argued before us and the issues raised may be important in other cases”. It stated that the Convention on the Rights of the Child was relevant to the interpretation of the Reform Act; the fact that the Convention is appended to the Human Rights and Equal Opportunity Commission Act “may give it special significance in Australian law”; and that there is “little doubt that a general right of freedom of movement is a right recognised by Australian law”.

Qantas Airlines Limited v John Christie

The case

This matter involved an appeal to the High Court against a decision of the Full Bench of the Industrial Relations Court of Australia. The appeal concerned the termination of Captain John Christie’s employment as a pilot and captain of B747-400 planes on the ground of age. Qantas terminated his employment when he reached the age of sixty years to comply with international regulations which prevent a pilot over sixty years being in command of a plane.

The appeal concerned the interpretation and application of section 170DF(2) of the *Industrial Relations Act 1988* (Cth). Section 170DF provides that an employer must not terminate an employee’s employment on the grounds of their race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, *unless* the employee is unable to fulfil the inherent requirements of the particular position. The issue in the appeal was whether being under sixty years of age was an inherent requirement of the position of a pilot and captain of B747-400 planes.

The Commission was granted leave to intervene by way of a written submission. The matter was heard by the High Court on 3-4 June 1997.

Human rights and equal opportunity in employment issues

The relevant provisions of the Industrial Relations Act give effect to Australia’s obligations under the International Labour Organisation’s Convention Concerning Discrimination In Respect Of Employment and Occupation which is contained in Schedule 1 to the Human Rights and Equal Opportunity Commission Act.

The issue of compulsory retirement on the ground of age for airline pilots had also been the subject of a report to Parliament by the Human Rights Commissioner. In his report, the Commissioner considered complaints of age discrimination lodged by four Qantas pilots (flying the domestic routes) whose employment was terminated when they turned sixty years of age. The Commissioner found that the compulsory retirement policy was discriminatory.

The Commission’s submission focused on the interpretation of section 170DE of the Industrial Relations Act and the meaning of ‘inherent requirements’ of the particular position. The Commission argued that:

- section 170DF(2) be construed in a manner which gives effect to the objects of the Industrial Relations Act, which include the elimination and prevention of discrimination on the ground of age; and
- the terms of section 170DF(2) be construed in a manner which gives effect to its meaning in international law which in this case meant that the words ‘inherent requirements’ of the particular position should be interpreted narrowly to cover only essential or intrinsic requirements of the job.

The Court has reserved its decision.

Other external litigation

In addition to intervening in certain court matters, the Commission is also involved as a party in some 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 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 the decision maker) usually submits to the jurisdiction of the Court in these matters, leaving the substantive parties 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 attempted to assist the Court rather than act in a way that would appear contentious or adversarial.

Chapter 3: Aboriginal & Torres Strait Islander Social Justice

“Our hopes are raised by opportunities for unprecedented reform, and dashed by fear, hostility and resistance to change”.

Aboriginal and Torres Strait Islander Social Justice Commissioner

Mick Dodson is Australia's first Aboriginal and Torres Strait Islander Social Justice Commissioner, appointed on 27 April 1993.

The Aboriginal and Torres Strait Islander Social Justice Commissioner is appointed under the provisions of the *Human Rights and Equal Opportunity Legislation Amendment Act (No 2) 1992*. The position was created as a result of the Royal Commission into Aboriginal Deaths in Custody and the National Inquiry into Racist Violence.

The Commissioner's functions and responsibilities are set out in the *Human Rights and Equal Opportunity Commission Act 1986* and the *Native Title Act 1993*. The Commissioner is also responsible, on behalf of the Commission, for the implementation of two human rights education programs developed by the Federal Government in response to recommendations 211 and 212 of the Royal Commission into Aboriginal Deaths in Custody.

Mick Dodson was born in Katherine and educated in Katherine, Darwin and Victoria. He completed a Bachelor of Jurisprudence and Bachelor of Laws at Monash University.

Mick has worked with the Victorian Aboriginal Legal Service and the Northern Land Council. He was Counsel assisting the Royal Commission into Aboriginal Deaths in Custody, has been a member of the Victorian Equal Opportunity Advisory Council and Treasurer of the North Australian Legal Aid Service. He is currently Deputy Chair of the Institute of Aboriginal and Torres Strait Islander Studies, Chair of the National Aboriginal Youth Law Centre Advisory Board and Chair of the United Nations Advisory Group for the Voluntary Fund for the Decade of Indigenous Populations.

Statement from the Commissioner

In 1967, advocates for the human rights of Aboriginal and Torres Strait Islander people had their work cut out for them just getting Australians to show some interest in our affairs. The campaign leading to the 1967 referendum began by sculpting a place for our concerns on the nation's agenda. Thirty years ago, if we appeared in the media at all, it was more often as curiosities than as a national concern.

In 1997, thirty years later, not a day passes when you can open a newspaper and not be faced with news about Indigenous affairs.

Internationally, 'human rights', including the rights of Indigenous peoples, have become a mainstream issue. This interest reflects a heartening growth in common concern, and a recognition that human rights transcend national, racial and ethnic borders. Sadly, concern is not the sole motivation. The mainstreaming of Indigenous issues in this country is, to a large extent, due to the perception that recognition of our rights threatens non-Indigenous interests.

This apparent conflict has been most intensely concentrated on land and resources issues, particularly since the legal recognition of native title in 1992, and now the High Court's clarification on the question of the rights of native title holders whose lands are subject to pastoral leases. The formal recognition of coexistence has, unfortunately, intensified the perception that there is a competition between the interests of Indigenous and non-Indigenous Australians.

However, attention on the affairs of Indigenous people has been more generalised. Since the last election, our status within the non-Indigenous system has become an unprecedented political issue. Not because more Australians are concerned about discrimination or violation of our rights. Rather because some non-Indigenous Australians have associated their disadvantage with our alleged 'special treatment'.

This turn in the tide has been a source of grief for all those promoting the human rights of Indigenous Australians. Rather than all Australians seeing that it is in the national interest that we enjoy our human rights, it seems that the achievement of our rights has been pitted against the interests of other, non-Indigenous Australians. Programs to address historical discrimination and marginalisation are presented as discriminating against non-Indigenous Australians. Recognition of our distinct cultures is seen as divisive and in some way casting scorn on non-Indigenous culture.

The notion that Indigenous interests and non-Indigenous interests are somehow structurally in opposition and that social policy is a pendulum which must swing between them is not only socially divisive, it is incorrect.

The legislative response to *Wik* is a case in point. The High Court's decision provided the opportunity for coexistence to be addressed in a fair and just manner. Had the national atmosphere been one of mutual respect, I have no doubt that together the stakeholders could have achieved a package that both allayed people's fears and provided concrete recognition of the rights of all landed interests. Instead, a hostile atmosphere has precluded real negotiation. Fear, insecurity and greed have laid waste to social justice imperatives.

In fact, across the spectrum of Indigenous affairs, our hopes are raised by opportunities for unprecedented reform, and dashed by fear, hostility and resistance to change.

The Commission completed and released *Bringing them home*, the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. This report is undoubtedly amongst the most important documents ever published in this country. On the one hand, we can celebrate the fact that the Inquiry took place, the quality and depth of the

document, the immediate responses from state, territory and local governments and non-government organisations across the country, as well as the extraordinary support it has received from so many Australians. On the other, the response from the Federal Government to date has been less than encouraging.

The promised national summit on the Royal Commission into Aboriginal Deaths in Custody has been postponed, and the discussions leading up to it have been fraught with difficulties. Meanwhile, more Indigenous young people and adults are being locked up at unacceptably high rates, and we continue to mourn those who die in custody.

At the international level, the draft Declaration on the Rights of Indigenous Peoples was considered for the second time by a special working group of the United Nations Commission on Human Rights. The fact that Indigenous people from across the globe, including Aboriginal and Torres Strait Islander people, managed to secure a substantive place for ourselves in the deliberations is certainly an important achievement. Unfortunately, the outcomes to date indicate that some states will be working hard to minimise the rights articulated in the draft. The Australian Government, once a leading advocate for adequate recognition of Indigenous rights in the Declaration appears to have pulled back from this role.

The Australian Reconciliation Convention, though marred by conflict over the Government's reception of *Bringing them home* and the ten point plan on *Wik*, brought together people of all persuasions with a shared intention to take our nation forward towards reconciliation. Out of that Convention came a feeling that, irrespective of official positions, we now have a people's movement of such strength, that the reconciliation movement cannot be stifled.

This year, as we celebrate the 30th anniversary of the 1967 referendum that gave the federal power to make special laws for the Aboriginal race, we faced the prospect of this very power being used to pass legislation which will diminish and remove our rights.

All these events mark opportunities, not only to secure the exercise and enjoyment of human rights of Indigenous people, but also to establish a cohesive country. There is common agreement that it is in the national interest to achieve stability, justice and cultural, social and economic prosperity. These goals are best achieved, in fact they will only be achieved, if we establish a lasting accommodation of Indigenous and non-Indigenous aspirations.

Monitoring and reporting

Fourth Annual Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner

The Commissioner fulfills his monitoring and reporting functions by releasing an annual social justice report. In 1996, the Commissioner produced his Fourth Annual Report which covers the period 1 July 1995 to 30 June 1996.

The fourth report provides the following information: a detailed consideration of the proposed reform to the public housing industry and its impact on Indigenous tenants; an examination of options for diverting young Indigenous offenders from police custody and juvenile detention centres; and an analysis of the race debate in Australia and the Federal Government's Aboriginal and Torres Strait Islander Affairs policy; and a discussion of relevant international issues. It also includes discussion of the progress of the implementation of two projects, the National Aboriginal and Torres Strait Islander Community Education Project and the National Indigenous Legal Curriculum Development Project. The Commission is responsible for both projects and the Aboriginal and

Torres Strait Islander Social Justice Commissioner for their implementation. Specific chapters of the fourth report are outlined below.

Diversion from custody

This chapter of the Commissioner's report examines options for diverting young offenders from police custody and juvenile detention centres, including case studies of family conferencing in New Zealand and Australia.

Following the release of the report, the Commissioner received letters of support from the Judiciary and was approached by both the New South Wales and Queensland Ministers responsible for juvenile justice issues. Meetings between the Commissioner and the Ministers and their departmental officers enabled the Commissioner to promote various best practice options and models for diverting youth from custody. It also enabled the Commissioner to provide feedback to government on various initiatives, for example, the new accountability conferencing model in New South Wales and the movement towards community based diversion models in Queensland.

The Commissioner and his staff also participated in national forums to promote alternative diversionary models for young offenders. These included the National Juvenile Justice conference in Cairns, an annual youth worker conference in the Hunter region of New South Wales, and a conference organised by the Australian Aboriginal Youth Policy and Action Coalition in Melbourne.

The fourth report also discusses the Lake Tyers Koori Justice Worker Program (surfboard-making course), which has led to similar initiatives being set up in Coffs Harbour, New South Wales and Woolloongabba, Queensland.

Housing

The chapter on housing outlines current critiques of public housing and contains a detailed consideration of the proposed reform to the public housing industry. It specifically considers the impact of reform on Indigenous tenants and provides a case study of Homeswest, the public housing provider in Western Australia. It also outlines several examples of best practice in the area of housing and infrastructure policy.

The objectives of this chapter are to raise the level of awareness of housing issues relevant to Indigenous peoples, as well as to place several specific matters about Indigenous housing on the ongoing housing reform agenda. It also aims to present best practice models for Indigenous housing policy development and implementation.

After the report's release, the Commissioner was involved in correspondence with Federal Ministers to discuss the Government's commitment to Indigenous housing in the context of the United Nations Habitat II Conference. However, despite significant efforts, the Commissioner was unable to clarify the Federal Government's position on international standards for Indigenous housing.

As a result of research for this chapter, the Commissioner contributed several articles on Indigenous housing to non-government organisations. This raised general public awareness of housing issues for Indigenous people and reflected the broad community support which exists for the issues raised. The research also contributed to raising the profile of Indigenous housing issues on the non-government organisation agenda and presented an opportunity for relevant non-government organisations to lobby in this area.

The case study on Homeswest in the report was supported by an independent inquiry into the organisation and information given to the National Inquiry into the Separation of Aboriginal and

Torres Strait Islander Children from Their Families. It is the first time the Commission has been able to give significant consideration to the issue after many representations concerning Homewest's policies and practices.

The housing issues raised in the report also resulted in the Commissioner taking investigatory action into housing in the East Arnhem region. Relevant federal and territory departments were contacted, and general awareness raised about the provision of housing to remote communities.

National Community Education and National Indigenous Legal Curriculum Development Projects

The National Aboriginal and Torres Strait Islander Community Education Project and the National Indigenous Legal Curriculum Development Project aim to implement recommendations 211 and 212 of the Royal Commission into Aboriginal Deaths in Custody.

The fourth report contains a description of these projects, methodology used and a progress report on their implementation. The present status of the projects is outlined later in this chapter.

International issues

The report includes a discussion of international issues and an examination of matters like the Draft Declaration on the Rights of Indigenous Peoples, the Bio-Diversity Convention and its impact on Indigenous culture and heritage, and a consideration of the Human Genome Diversity (Vampire) Project. Report appendices include the United Nation Minimum Standard Rules for Non-Custodial Measures (Tokyo Rules) and an extract from Amnesty International's 1996 Report which specifically considered Indigenous deaths in custody.

Fifth Annual Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner

Commissioner Dodson will present his fifth (and final) annual report to the Federal Government later this year. It will cover the period 1 July 1996 to 30 June 1997.

The fifth report will provide an overview and analysis of political, media and public responses to Indigenous affairs over the last year, as well as a review of the past thirty years since the seminal 1967 referendum which gave the Federal Government constitutional power and responsibility for Indigenous affairs.

Reporting on the Native Title Act

The Commissioner's objectives in monitoring and reporting on the operation and human rights impact of the *Native Title Act 1993*, include to:

- provide and promote a human rights perspective on native title;
- assist in developing a more efficient claims process; and
- advocate a minimalist approach to extinguishment based on the compatibility of Indigenous and non-Indigenous land use.

Outcomes

During 1996, the work of the native title section focused on analysing and responding to broad ranging proposals to amend the Native Title Act. These proposals raised vital human rights issues for Indigenous people.

The Commissioner's *Native Title Report* for 1996 focused exclusively on the amendments outlined in the initial amendment bill and in the Government's discussion paper *Towards a More Workable Native Title Act*. A central theme of the report was that any amendments must not infringe the human rights of Indigenous people or be racially discriminatory. The report expressed particular concerns about amendments relating to the:

- Native Title Act's 'right to negotiate' process; and
- conversion of pastoral lease terms to permit expanded categories of land use without negotiation with native title holders.

The report also contained detailed analysis from a human rights perspective of proposed amendments to other areas. Proposals were put forward which promote the recognition of the native title rights of Aboriginal and Torres Strait Islander people.

In October 1996, the Government released a second set of amendments. These related primarily to the right to negotiate scheme, representative bodies, Indigenous Land Use Agreements, the registration test and transitional provisions. The Commissioner appeared before the Parliamentary Joint Committee on Native Title on two occasions during October, raising issues about the potential impact of these and earlier amendments on Indigenous human rights. The Joint Committee was also provided with written submissions.

The Commissioner has been analysing and responding to the High Court's decision in *Wik v Queensland* since it was handed down in December 1996. Staff attended a *Wik* Summit in January 1997. The summit was organised by the Cape York Land Council to provide an opportunity for Indigenous people, pastoralists, miners and other stakeholders to discuss the *Wik* decision and explore the potential for negotiated regional agreements.

Throughout 1996 and 1997, the Commissioner has continued, in light of his human rights responsibilities, to liaise with the National Indigenous Working Group on Native Title. The Working Group has attempted to inform the government of the views of Indigenous people about the proposed amendments to the Native Title Act and the response to the *Wik* decision. The Commissioner and other members of the Working Group have participated in meetings with the Prime Minister to discuss these issues.

Throughout his involvement in this process the Commissioner has stressed:

- the need for the Government to pursue a non-discriminatory policy in dealing with property rights;
- the Government's pre-election undertaking to respect the Racial Discrimination Act when amending the Native Title Act; and
- that the statutory extinguishment of native title would be racially discriminatory.

The Social Justice Commissioner is presently preparing its fourth *Native Title Report*.

Other monitoring and reporting activities

In addition to the material presented in his annual reports, the Commissioner monitors and reports on a range of other issues relevant to the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander people. This includes health, education, criminal justice, employment, cultural and intellectual rights, housing and infrastructure. The Commissioner also has a broad monitoring role in the implementation of recommendations of the Royal Commission into Aboriginal Deaths in Custody.

In February 1997, the Commissioner participated in the National Indigenous Deaths in Custody Summit in Canberra. He contributed to the development of a national Indigenous position for a proposed national summit on 4 July 1997.

Coronial Research Project

During 1996, the Commissioner completed a major report for the Aboriginal and Torres Strait Islander Commission which evaluated implementation of the Royal Commission into Aboriginal Deaths in Custody recommendations, relevant to each Indigenous death in custody occurring after the Royal Commission. The report examined the 96 Indigenous deaths in custody from 31 May 1989 to 31 May 1996, with case studies constructed largely from information obtained from coronial inquests. The report *Indigenous Deaths in Custody 1989-1996* was publicly released on 25 November 1996, by Commissioner Dodson and the then Aboriginal and Torres Strait Islander Commission Chairperson, Lois O'Donoghue.

The report made 76 recommendations and was timely in focusing attention on priority issues and reform recommendations in preparation for the National Summit Into Aboriginal Deaths in Custody.

Submissions to Government

The Commissioner uses formal review and committee processes to provide input and raise concerns about particular areas of law and policy relevant to Australia's Indigenous people. This year the Commissioner provided submissions to the:

- Senate Legal and Constitutional Committee on Legislation on the *Native Title Act 1993* and the *Hindmarsh Island Bridge Bill 1996*;
- Industrial Relations Commission on the Living Wage Submission Case ;
- Finance and Public Administration References Legislation Committee on the *Aboriginal and Torres Strait Islander Amendment Bill 1996* reviewing amendments to the *Aboriginal and Torres Strait Islander Commission Act 1989*;
- Australian Law Reform Commission (ALRC) regarding Indigenous peoples' access to Federal records for the ALRC's reference into the *Archives Act 1983*;
- ALRC and Human Rights and Equal Opportunity Commission joint submission on Children and the Legal Process; and
- New South Wales Attorney-General's Department on the Accountability Conferencing Scheme.

Contributions to print media

As part of his role in community education and raising awareness, the Commissioner made many contributions to journals, magazines and other publications during the year. These included articles on:

- housing for the *National Shelter* magazine;
- Human Rights for Indigenous people in the *Northern Analyst*;
- amendments to the Native Title Act for the Australian Institute of Aboriginal and Torres Strait Islander Studies;
- the *Wik* decision for *Impact*, the publication of Australian Council of Social Services;
- housing for *Parity* magazine, a publication of the Council to Homeless Persons in Victoria;
- citizenship and Indigenous people for the *Alternative Law Journal* and *Migration Action*;
- Indigenous people and the law for the *Adelaide Voices*;
- social justice and human rights for Indigenous Australians for the Australian Institute for A Just, Sustainable, Peaceful Future; and
- “Stopping the Grog” for the *International Journal of Discrimination and the Law*.

Speeches and presentations

During 1996-97, Commissioner Dodson attended numerous conferences, seminars and launches. At many of these he delivered speeches and presentations, raising public awareness on social justice and human rights issues affecting Indigenous people. The Commissioner and his staff also responded to an increasing number of enquiries and correspondence from members of the public, media, Indigenous and non-government organisations and other government and related agencies on issues such as the *Bringing them home* report, *Wik* and reconciliation.

A list of speeches made by Commissioner Dodson during 1996-97 is at Appendix 3.

International activities

Commissioner Dodson continues to play a major role in the international arena and at the interface between domestic law and policy and international human rights laws and standards. This is achieved by an examination of compliance of domestic law and policy with international benchmarks. Major areas considered this year have been housing and custodial issues in the Australian criminal justice systems.

An office representative attended the Working Group on Indigenous Population (Session 14), in Geneva and presented three interventions on behalf of the Commissioner. Topics included the definition of “Indigenous”, standard setting activities - protection of culture and heritage, Indigenous health, the Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, and proposed amendments to the Native Title Act and Aboriginal and Torres Strait Islander Commission Act.

The Commissioner is a vigorous advocate of the interests of the Indigenous peoples of the world at an international level. His most direct contribution has been in the preparation of text for the Draft Declaration on the Rights of Indigenous Peoples. The Declaration has left the Working Group on Indigenous Populations and will be presented to the General Assembly, and Commissioner Dodson will follow its passage through the United Nations system, endeavouring to preserve the integrity of the rights articulated in the Draft.

Commissioner Dodson serves as a member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations. This fund assists representatives of Indigenous communities and organisations to participate in the deliberations of the Working Group on Indigenous Populations. Commissioner Dodson is also Chair of the United Nations Advisory Group for the Voluntary Fund for the International Decade of the World's Indigenous People.

In January 1997, the Commissioner participated in the Diplomacy Training Program in Manila, where he gave a series of three lectures about Indigenous people and human rights to participants. In June 1997, the Commissioner presented a paper to the Second World Congress on Family Law and the Rights of Children and Youth in San Francisco.

National Indigenous Legal Curriculum Development Project

This project seeks to implement Recommendation 212 of the Royal Commission Into Aboriginal Deaths in Custody through the development of nationally accredited Indigenous legal education and training courses for Aboriginal and Torres Strait Islander Legal Field Officers.

Roles and strategies

The National Indigenous Legal Curriculum Development Project has two roles. The first is to increase the level of legal and human rights education and training for Aboriginal and Torres Strait Islander peoples. At a broader level, the second role is to increase access to information and resources which address human and legal rights for clientele of Aboriginal and Torres Strait Islander Legal Services.

Outcomes

Significant outcomes of the National Indigenous Legal Curriculum Development Project include:

- 1 successful development of nationally accredited Vocational Education and Training Sector Courses:
 - CNAIC 008 Certificate III in National Indigenous Legal Studies;
 - CNAIC 009 Certificate IV in National Indigenous Legal Studies;
 - CNAIC 010 Diploma of National Indigenous Legal Studies; and
 - the development of a Bachelor of Indigenous Legal Studies.
- 2 The development of an Indigenous Disability Resource Kit, which aims to provide communities with skills and competencies in advocacy rights for Indigenous Peoples with disabilities. The kit, which includes a facilitators' and a students' handbook, forms part of the course materials for the Certificates and Diploma of National Indigenous Legal Studies. The kit focusses on identifying disability discrimination and accessing the Disability Discrimination Act.
- 3 The National Coordinator has held discussions with a number of Indigenous education providers to promote Indigenous community controlled education and training bodies delivering the new courses. Tranby Aboriginal College in Sydney now offers the Diploma of National Indigenous Legal Studies to Aboriginal students from New South Wales. We hope this will occur in other states and territories.

The National Indigenous Legal Curriculum Development Project is substantially complete with some work still being done licensing the course products, further curriculum development and responding to general enquiries about the project.

National Aboriginal Community Education Program

This program seeks to implement Recommendation 211 of the Royal Commission into Aboriginal Deaths in Custody through the development of a resource package designed to inform Aboriginal

and Torres Strait Islander people about their rights and the protection available under anti-discrimination and other legislation.

The regionally developed National Community Education Project package will include a national video and training manual, a regionally produced resource package and accompanying 'train the trainer' manual, and an audio tape on different models of mediation and alternate dispute resolution.

The National Community Education Project will facilitate safer lives and offer people the tools to create this environment for themselves. It will offer people choices when they are confronted by systems and people that violate their human rights and their dignity as human beings. The project aims to give people, individuals and communities, access to information about how 'the system' around them works, to facilitate their active participation in this 'system', making them more able to protect and assert their rights.

The specific objectives of the project include to:

- inform Aboriginal and Torres Strait Islander people about their rights and the protection available under anti-discrimination and other legislation;
- divert Aboriginal and Torres Strait Islander people from custody;
- enable Aboriginal and Torres Strait Islander communities to establish and protect community standards for their human rights; and
- empower Aboriginal and Torres Strait Islander people to solve community relations problems at the local level through an understanding and assertion of their rights.

A number of strategies were pursued in 1996-97 including:

- a final meeting chaired by the Commissioner of the National Reference Committee, which oversaw development of this program;
- regular meetings between the Project Coordinator, members of the Reference Committee and the consultant to develop management plans and schedules for the program;
- meetings between the Project Coordinator, consultants, staff and Commissioners from the respective state and territory human rights agencies to discuss implementation and content;
- development of proposals by consultants to visit a range of Aboriginal and Torres Strait Islander communities in the Northern Territory and South Australia to promote discussion about the overall project and specific issues to be included in the package, and the most effective way to deliver the information;
- community visits to selected, representational communities for discussions about the content and format of the packages;
- ongoing development of an implementation strategy;
- distribution of newsletters to communities outlining project developments;
- ongoing development of a mediation strategy with assistance from the Council for Aboriginal Reconciliation;
- assessment of the draft Western Australian resource package and approval for production;
- discussion, assessment and redrafting of the video and resource training manuals; and
- meetings with various government departments to discuss strategies to implement the National Community Education Project through their networks or by utilising potential training resources.

Outcomes

The West Australian resource package has been printed and packaged with the video and audio tapes.

In the south east region, consultants have reported on the draft product in selected communities.

The Aboriginal Research Institute, University of South Australia has been heavily involved in discussions about the resource package with communities in the Northern Territory and South Australia. Areas visited include Darwin, Alice Springs, Katherine, Nhulunbuy, Jabiru, Kalkaringi, Dargaragu, Yirrkala, Millingimbi, Maningrida, Port Augusta, Adelaide, Ceduna, Coober Pedy, and the Pit Lands. The Project Coordinator has participated in a number of these consultations. A successful inter-agency meeting was held in Darwin to inform and seek ideas from a range of government departments and agencies.

The national video has been trialed in a number of communities and with some government departments. It has been very well received. The video training manual has been developed and a resource training manual has also been drafted.

Chapter 4: Disability Discrimination

“The right to belong in, contribute to and benefit from our society without discrimination cannot yet be taken for granted by people who have disabilities”.

Disability Discrimination Commissioner

Elizabeth Hastings took up her appointment with the Commission as Australia's first Disability Discrimination Commissioner in February 1993. Ms Hastings has long been an advocate in Australia for the rights of people with disabilities. She was a founding member of a number of major disability organisations and has also written a great deal on disability issues.

Ms Hastings has practised as a psychologist and psychotherapist for over twenty years and was a Commissioner with the original Human Rights Commission from 1981 until 1986. In 1981 she was a member of the Victorian Executive Committee for the International Year of Disabled Persons and a delegate to the inaugural Disabled Peoples International Congress in Singapore. She was also a founding member of the Victorian Consultative Committee on Disability and the Victorian Branch of Disabled Peoples International and was involved with the establishment of the Disability Resources Centre in Victoria.

Statement from the Commissioner

This is my fifth and last annual statement as my appointment as Australia's first Disability Discrimination Commissioner finishes in December 1997. Naturally my mind is drawn to an overview of achievements since the Disability Discrimination Act came into effect on 1 March 1993.

I am encouraged by the wide awareness and acceptance of the legislation that has been achieved in both the disability community and, importantly, in those who have responsibilities under the Act. There is a constant stream of enquiries from educators, local government, the building industry, and providers of goods, services and facilities of various kinds about how to comply with the Act. A growing number of enterprises are now engaged in the development of action plans to eliminate discrimination from their activities; the result, of course, will be a wider customer base with all the advantages that brings. It has long been recognised that good design for people who have disabilities is good design for the whole community, whether that be in physical access, clarity of notices and signs or effectiveness of communication and information.

The development of disability standards under the Act has continued to be a major focus, with the recently reconfirmed acceptance of the Accessible Transport Standard by the Australian Transport Council leading me to hope that this will soon be adopted nationally so that people who have disabilities will at last be able to move about freely: to work, to domestic and leisure activities, and to their duties as citizens.

There has also been much work and cooperation in the development of draft standards in employment, and I trust these, too, will soon be approved by the Attorney-General.

Access to premises is an area not currently included in the standards making provision of the Act, the Commission has therefore recently issued advisory notes to assist those in building design, construction and management to make informed decisions about the level of access they will provide. At the same time the Commission has been working closely with the Australian Building Codes Board to revise the Building Code of Australia to make it more consistent with the requirements of the Disability Discrimination Act and with equivalent state legislation.

In order to further assist those with responsibilities to eliminate discrimination on the ground of disability, I shall be recommending to the Commission the adoption of further guidelines to clarify provisions relating to insurance and superannuation, information and communication and certain other areas.

Many of these developments have been directly or indirectly the result of complaints received by the Commission, the conciliation of which has often led to significant changes in policy and practice. Some matters which have been referred to the Commission for formal hearing have also resulted in state or nation wide adjustments to eliminate the unlawful exclusion from public life of people who have disabilities.

In *Melvin v Northside Community Service Inc* a hearing decision for a complainant with a vision impairment unlawfully dismissed from her employment has clarified some aspects of the concept of "inherent requirements of the job", as will the matter of *X v ADF* which is currently under review in the Federal Court. *Kinsela v Queensland University of Technology*, resulting in a direction that Mr Kinsela's graduation ceremony be conducted at a venue where he could participate equally with and alongside his fellow students, emphasised that, despite there being a tradition and expectation of degree conferring ceremonies taking place at the inaccessible venue, "the legislation has changed, and the rights that are expected by and afforded to persons with disability have changed, and so expectations must themselves change".

At the same time, *McLean v Airlines of Tasmania* was dismissed in recognition that to provide equal access to some services for some people who have disabilities may be an unjustifiable hardship to the service provider.

These decisions in complaints under the Disability Discrimination Act, and the provisions set out in proposed disability standards, are slowly clarifying the requirements of the legislation.

The elimination of discrimination on the ground of disability depends upon this interweaving of functions: the capacity for people who have disabilities to bring complaints where they feel aggrieved so that through conciliation or determination non-discriminatory outcomes can be achieved; the establishment of standards to make clear the requirements of the Act; the education and assistance of those with responsibilities so they may experience the benefits of opening their activities to the whole community, as well as avoiding being the subject of a complaint; and the publishing of guidelines for the information of all parties. In these ways the four million or so Australians who have some form of disability can hope eventually to enjoy full participation in the civic life of this country.

It is a fact that the right to belong in, contribute to and benefit from our society without discrimination cannot yet be taken for granted by people who have disabilities. For almost the whole life of Australia since European settlement, people who have disabilities have been dealt with as recipients of charity or government welfare. This perception of people with disabilities as welfare recipients is embedded still in the general Australian imagination and understanding. The relatively short time since the enactment of the Disability Discrimination Act, despite my focused efforts and those of the staff of the Commission, has not yet been enough to redress that traditional and limiting perception; it continues to beleaguer and frustrate the legitimate aspirations of people with disabilities to participate in, enjoy and contribute to the ordinary life of Australia.

Having a specialised Disability Discrimination Act and a designated Commissioner has enabled people who have disabilities to exercise their rights as citizens more confidently and realise their value as equal Australians belonging among their fellow Australians.

This participation in the civic life of the nation is something that people who have disabilities will not relinquish.

Disability standards

The Disability Discrimination Act provides for standards to be made in certain areas to state in more detail what the law is and how it may be complied with. Standards are made by the Attorney-General and, subject to disallowance by Parliament, have the force of law. It is unlawful to contravene standards. Acts done in compliance with standards are not unlawful and hence standards also serve as defences against complaints of disability discrimination.

The Commission, the disability community and various industry sectors have recognised the desirability of effective standards and have devoted considerable efforts to their development.

While management of standards development rests with the Attorney-General's Department, the Commission has a statutory role under the Disability Discrimination Act to advise the Attorney-General about the making of standards. It contributes practical assistance in different ways to the various standards drafting processes now under way.

Transport

In July 1996 the Australian Transport Council, comprising federal and state transport ministers, approved in principle the draft Disability Discrimination Act standards for Accessible Public Transport. With that decision the Commission concluded a period of intensive involvement in the drafting of provisions and community consultation. The Council asked that a Regulatory Impact Statement be prepared. The Attorney-General's Department has carriage of the statement and a draft is expected to be released for public comment in mid 1997.

At their meeting in late May 1997, the Australian Transport Council once again affirmed their support for public transport standards. The Commissioner welcomed the ministers' statement. The Commission will be closely involved in examining the draft statement and will be advising the Attorney-General about making a standard in due course.

Employment

The Commission provides secretariat services to the Employment Disability Standards Subcommittee of the Committee on the Elimination of Discrimination in Employment, established under the Human

Rights and Equal Opportunity Commission Act. The Disability Discrimination Commissioner chairs the Subcommittee.

In August 1996, the Subcommittee released a draft employment standard for public discussion and comment. The period of comment was extended to February 1997 and a wide range of submissions were received. The disability community standards project, with the assistance of the Attorney-General's Department, conducted a series of successful video conferences that greatly increased the degree of participation in the process.

At its meeting in May 1997, the Subcommittee settled a number of principles for redrafting the standards and a revised draft is due for public release at the end of July.

Education

Early in 1995, the Ministerial Council on Education, Employment, Training and Youth Affairs established a taskforce to consider the development of disability standards in education. The taskforce consists of representatives from each State and Territory Education Department, two disability representatives, a representative of the Federal Attorney-General and a selection of University, TAFE and other representatives, including private sector providers of education.

During 1996 and 1997, the Commissioner maintained contact with the task force and delivered a policy statement to their meeting in September 1996. The discussion was useful in clarifying the provisions of the legislation and the relationship of standards to the provisions of the Act, and in sharing with the taskforce some of the Commissioner's experience in the development of other standards.

It is anticipated that the development of education disability standards will take some time due to the range and complexity of the issues. An exemplar document prepared by the taskforce is expected to be published in 1997.

Federal Government information and communications

A discussion paper on the development of Disability Discrimination Act standards to provide equal access to Federal Government information and communications was issued in late 1996 for public comment. The paper was prepared by the Commission for a working party chaired by the Attorney-General's Department. The discussion paper resulted in considerable comment, however work on drafting any standards has been put on hold by the Attorney-General's Department due to resource difficulties.

Action plans under the Disability Discrimination Act

The Disability Discrimination Act establishes a framework for preparation of voluntary 'action plans' which providers of services (including federal or state government departments or authorities) may give to the Commission. An action plan provides a structure for a service provider to develop and implement its own strategies to eliminate disability discrimination.

Commonwealth departments and authorities are required, under the Federal Disability Strategy adopted by Federal Cabinet in November 1994, to submit action plans by 1997.

During 1996-97, the number of action plans registered with the Commission increased significantly from five to 35, bringing the total number received to 40. This increase is mainly attributed to the Commonwealth Disability Strategy deadline, the release in 1995-96 of three additional sector specific

guidelines for action plan development, and to an increased emphasis by the Commissioner on encouraging this aspect of compliance with the Disability Discrimination Act.

The 35 action plans lodged this year came from a range of industry sectors, including non-government, schools, and business which had not been represented before. The first action plan from a small business was registered with the Commission in November 1996. It was from a suburban pharmacy in Melbourne. At the other end of the scale of service provision, the Commissioner was presented with the Telstra action plan at its launch on 3 December 1996.

Action plans lodged with the Commission under the Disability Discrimination Act

| Sector | 1995-96 | 1996-97 | Total |
|--|----------------|----------------|--------------|
| Tertiary education | 1 | 4 | 5 |
| State or territory government agencies | 2 | 3 | 5 |
| Federal government agencies | 1 | 9 | 10 |
| Local government | 1 | 8 | 9 |
| Non-government organisations | 0 | 7 | 7 |
| Business | 0 | 3 | 3 |
| Schools | 0 | 1 | 1 |
| Total | 5 | 35 | 40 |

A list of registered action plans is available on request. Specific guides for the non-government sector, state and territory government authorities, commonwealth government departments and authorities, the tertiary education sector and the business sector are available from the Commission. The guide for the local government sector is available from the Australian Local Government Association. All these will soon be available on the Commission's homepage on the Internet (<http://www.hreoc.gov.au>).

Promoting action plans

Previous work to promote the development and implementation of Disability Discrimination Act action plans concentrated on the production and distribution of the six sector-specific guides. To complement these 'how to' resources, promotional activity during 1996-97 has concentrated on providing direct assistance to industry leaders in the process of developing Disability Discrimination Act action plans. While the guides concentrate on the essential components of action plans, which are outlined in section 61 of the Disability Discrimination Act, the emphasis during 1996-97 has been on the connection between developing an action plan and its effectiveness in eliminating disability discrimination.

The promotional work has been conducted in two stages. The first stage consisted of meetings between the Commissioner and a number of organisations from the retail, banking, building, telecommunications, transport and sporting industries. The purpose of these meetings was to promote action plan development and implementation, and to offer Commission assistance in the process of development.

The meetings established valuable networks and in some cases Commission assistance helped generate action plans for specific industries. Advice was given on appropriate methods of developing action plans, organising focus groups of people with disabilities to identify service barriers, providing comment on draft action plans and referring people to relevant resources and organisations.

The second stage of promotional activity involved the development of a workshop and materials covering the most important aspects of developing an action plan: the structure and functions of an organisation; methods and models of consultation and evaluation; strategies to ensure implementation; and writing and structural issues.

The workshop is aimed at those engaged in the process of developing action plans, such as consultants, equal employment opportunity managers, customer service managers, access and equity officers and workplace relations managers.

The workshop and materials are currently being drafted; two pilot workshops will be conducted in the latter part of 1997.

Built environment and the Building Code of Australia

Throughout 1996-97, the Commission has continued to contribute to the review of the Building Code of Australia by the Australian Building Codes Board. The Board's intention is to develop a revised code which is more consistent with the Disability Discrimination Act by ensuring equitable access to and use of premises.

The Board released a discussion paper on a possible revised code in July 1996, and the Building Access Technical Advisory Committee met in April 1997 to analyse the responses and provide recommendations to the Building Access Policy Committee.

In May 1997, the Board decided to fast track the process and issued a *Regulation Document 97/01 - Provision for people with disabilities* (RD 97/01) for community consultation. The consultation period expires on 1 October 1997.

While RD 97/01 has a number of specific proposals relating to access to new buildings, it does not cover the full range of issues that need to be addressed to achieve compliance with section 23 of the Disability Discrimination Act Access to Premises. The Commission has identified four areas that need to be addressed to ensure equitable access to and use of premises.

- Those parts of buildings that the current code access provisions cover, such as sanitary facilities, controls and signs.
- Those parts of buildings that the current code access provisions do not cover, such as furniture, fittings and warnings.
- Those parts of the built environment outside buildings that the code access provisions do not cover such as parks, street furniture, pathways and transport systems.
- Management and maintenance issues that can have a significant effect on the use of premises.

Throughout 1996-97, the Board, the Property Council of Australia and the Australian Local Government Association have continued to express a desire to see the Disability Discrimination Act changed to include a provision for the development of a disability standard (under the Act) dealing with access to premises. The Commissioner has made submissions to the Attorney-General for appropriate amendment to the Disability Discrimination Act.

The Board would like to put forward a revised code, as part of a Disability Discrimination Act disability standard, should the legislative changes occur. If the Disability Discrimination Act is amended to allow a standard for access to premises, any submission by the Board would be subject to a further round of consultation and a Regulatory Impact Statement before the revised code could become part of a Disability Discrimination Act standard.

It is expected that the Building Access Policy Committee will meet later in 1997 to discuss how best to address outstanding issues.

Advisory notes on access to premises

During 1996-97, the Commission received many requests for information about the application of section 23 (Disability Discrimination Act) Access to Premises, and also about section 11, Unjustifiable Hardship. The Commission's response to these requests has been to give individual policy advice although, out of necessity, this has been limited in scope.

In October 1996, a specific request to develop guidelines on access to premises was received from the Australian Local Government Association and the Australian Building Codes Board. The Commission can do this under section 67(1)(k) of the Disability Discrimination Act. Guidelines should help people understand their responsibilities and rights under the Act, but they cannot propose responsibilities or rights beyond those currently stated in the legislation.

Between November 1996 and March 1997, the Commission undertook extensive consultation with all stakeholders, including people with disabilities, the Australian Building Codes Board, the Australian Local Government Association and the Property Council of Australia over the development of guidelines. In June 1997, the Commission adopted guidelines which were issued on an interim basis under the title *Advisory Notes on Access to Premises*.

The advisory notes aim to assist people responsible for premises to understand their current responsibilities and rights and to make decisions about levels of access based on a better understanding of the Disability Discrimination Act. They refer to existing Australian standards that the Commission believes provide a level of access in accord with the non-discriminatory requirements of the Disability Discrimination Act. The Commission also believes they underline the available defence of unjustifiable hardship where such a level of access may not reasonably be achieved.

Following negotiations with the Australian Building Codes Board, the advisory notes also specifically refer to the recently released *Regulation Document RD 97/01 - Provision for People with Disabilities* as a source to be considered when planning levels of access. The Board and the Commission distribute both documents.

The advisory notes will be reviewed in November 1997.

Insurance and superannuation

In the past year there has been an increasing number of complaints from people with disabilities about discrimination in the provision of superannuation and insurance. This has led the Commissioner to meet with the Insurance and Superannuation Commission, industry representative bodies and some of the disability community organisations that have been involved in complaints. From these discussions, complex issues about data collection and interpretation of the Disability Discrimination Act have emerged. In response, the Commissioner has decided to prepare draft guidelines to assist the insurance and superannuation industry to comply with their statutory obligations. The industry has recognised the need for change in this area. The Commissioner was invited to address industry members at a major annual forum and received a very encouraging response.

Abuse of people with disabilities in residential care facilities

As part of its broad responsibility for protection of human rights, the Commission supported work by the Disability Discrimination Commissioner in response to abuse of people with disabilities in residential care facilities throughout Australia.

It is widely recognised that people with disabilities do not have equal access to justice, particularly as complainants or as witnesses of abuse. People who are dependent upon others for residential and personal care, particularly in conglomerate care facilities, are vulnerable to abuse and neglect for many reasons.

January saw the release of a national report, *Abuse and Adults with Intellectual Disability Living in Residential Services*, by the National Council on Intellectual Disability and the Australian Society for the Study of Intellectual Disability. The report was the result of a meeting between the Commissioner and concerned organisations in 1993. In response to the report, the Commission organised a meeting in March of a number of advocacy groups, researchers and government agencies involved with issues of abuse of people with intellectual and other disabilities. The meeting aimed to work towards the elimination of abuse and to achieve a more coordinated response to abuse.

Work is in progress on a paper to define the nature of abuse and propose appropriate remedies. The Commission will also investigate the use of anti-discrimination law to redress abuse. The Commissioner has written to the relevant State Government Ministers about their response to the *Abuse and Adults with Intellectual Disability Living in Residential Services* report. The Commission believes that its most effective role in this area is to raise awareness and coordinate strategies for the prevention of this shocking treatment of people who have disabilities. There will be a further meeting in September 1997.

Medicare examination

Following the introduction of the *Health Insurance (1996-1997 General Medical Services Table) Regulations (No. 230 of 1996)*, the Commission received a number of representations about the effect of the regulations on people with psychiatric disabilities.

The regulations specify that the scheduled fee, and therefore the Medicare refund, for consultations with psychiatrists is reduced by 50 percent after the patient's 50th visit and for each visit thereafter. There is an exception in specific circumstances. It is alleged that the effect of the regulations is that people with psychiatric disabilities cannot afford appropriate health care.

As a result of these issues being raised, the Commission delegated to the Disability Discrimination Commissioner an examination of the regulations to determine whether they are inconsistent with or contrary to the objects of the Disability Discrimination Act. The results will be reported to the Federal Attorney-General in August 1997.

Education and promotion

Disability discrimination in schools

In April 1997 a report, *Disability Discrimination in Schools: students and parents speak out*, was released. The report was funded by an Australian Youth Foundation grant of \$50 000 awarded to the Commission and the National Children's and Youth Law Centre, for a joint outreach project on equal access to education for children and young people with disabilities.

This project was aimed at consumers in the school education system - children with disabilities and, in the case of very young children, their parents. Consultations included focus groups, surveys and a national phone-in. The project's two goals were: to inform the Commission and the Taskforce of the real issues confronting young people with disabilities seeking access to education; and to promote greater awareness of disability discrimination rights and laws, and of the education provisions of the Disability Discrimination Act.

At the same time, the Commissioner held a series of personal consultations with a large number of education providers, users and advocates in Brisbane, Melbourne, Adelaide, Canberra and Sydney; a total of 60 different groups and organisations. Key members of the Ministerial Council for Education, Employment, Training and Youth Affairs Taskforce from each of the five states were included. These consultations clarified the barriers preventing equal access to education at all levels for people with a disability, and assisted in the identification and development of ways to remove these barriers. This includes by contributing to the development of disability standards under the Disability Discrimination Act.

Disability Discrimination Act Resource and Training Project

This project involved the production of a number of resources for the legal, para-legal and advocacy sector over the last three years. The final publication, developed with funding from the Attorney-General's Department, is a facilitators' manual and student workbook on the Disability Discrimination Act for Indigenous legal and para-legal workers.

This is a joint project between the Disability Discrimination Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner. It provides resource material for the National Indigenous Legal Curriculum Development Project modules on disability discrimination.

The manual and workbook was completed in June 1997 and will be available as accredited course material or stand-alone training material.

Community liaison

The Commissioner maintained a program of regional visits, speeches and liaison activities designed to promote the objects of the Disability Discrimination Act throughout the year. This included extended visits to Mount Isa, Lismore and Grafton where discussions on compliance were held with the business, education and government sectors. Meetings also took place with people with disabilities, giving them the opportunity to develop a better understanding of their rights and the effect of the legislation.

During 1996-97, the Commissioner presented over 20 speeches to major industry associations, businesses, local government, organisations which have lodged action plans, disability sector conferences and the general community. Regular meetings were held between representatives from the national peak disability groups, the Disability Discrimination Act Legal Advocacy Service network and the Commission. The meetings were an opportunity to brief the community on developments in the administration of the Disability Discrimination Act and to discuss issues of concern.

Disability discrimination homepage - (<http://www.hreoc.gov.au>)

Anyone who's interested can now 'surf the net' for information on the Disability Discrimination Act and for links to decisions in disability discrimination hearings on the Internet. The Internet is a particularly effective way of communicating with the disability community as many people who have

difficulty handling or reading paper pages can use computers with a modified keyboard or with voice control. An increasing number of people with print disabilities use computers to convert text to braille or synthesised speech.

The Commission is committed to communicating effectively with people with disabilities, their families and the disability support sector. Providing information in formats other than printed paper enables more people to gain access to information and provides a direct means for the community to comment on issues of importance. The disability discrimination homepage is part of the Commission's website and can be found at <http://www.hreoc.gov.au>.

The homepage includes information about current projects, hearing decisions, the law, publications, media releases and speeches, and links to other relevant sites. There are contact phone numbers and users can send e-mail messages to the Disability Discrimination section. The Commissioner's newsletter, *Disability Discrimination Act News*, is published on the homepage and is also distributed by e-mail.

We will be focussing on improving our homepage in the coming year.

Exemptions

In the year under review, the Commission dealt with three exemption applications under the Disability Discrimination Act. Section 55 of the Act empowers the Commission to grant temporary exemptions for periods of up to five years, from some of the provisions dealing with unlawful discrimination. In all the cases outlined below consideration of the application included consultation with interested parties.

Women's Legal Service Inc

A Brisbane community legal centre was purchasing new premises. The building would, after renovation, have been accessible on the ground floor to people with disabilities. Access to the first floor would be by stairs and therefore not available to some people with disabilities. The applicant submitted the following: that making the whole building immediately accessible would impose unjustifiable hardship as funds were only available for the purchase of premises and basic renovations; full access would be provided to people with disabilities on the ground floor; and that there were at present no employees with disabilities.

The Commission accepted the Disability Discrimination Commissioner's recommendation and refused the application. The Commissioner said that unjustifiable hardship was the main defence available against future complaints and that it should be relied on rather than an application for exemption. Exemptions should only be granted in the public interest of advancing the objects of the Disability Discrimination Act and not as a shield against complaints. The Commissioner pointed out that the applicants could bolster their defence against a complaint by lodging a Disability Discrimination Act action plan setting out the way in which they intend to eliminate discrimination from delivery of their services. The plan must then be taken into account when a defence of unjustifiable hardship is raised.

South Australian Minister for Transport and others

The Minister and public transport authorities within her administration held an exemption that was due to expire. The exemption dealt with wheelchair access to buses and was conditional on implementation of a Disability Discrimination Act action plan called 'Access all the way'. The action

plan outlined implementation of a series of major changes to the public transport system that would greatly enhance its accessibility to wheelchair users over a twenty year period.

The applicants sought to extend the exemption to all services and to all access issues, not just those concerning wheelchair users, and to extend the period of exemption for a further five years. In support of the application, a detailed revised action plan called 'Access all the way - stage 2' was lodged with the Commission.

The Commission accepted the Disability Discrimination Commissioner's recommendation and granted the application for a period of two years on certain conditions. The Commissioner said that South Australia was to be commended for its action plan and the scale of change to be implemented. She observed that the plan dealt less effectively with sensory disabilities than it did with physical disabilities, that it was appropriate to limit the term of the exemption to two years, and that annual reports on improvements to the plan and its implementation would be required. The Commissioner also noted that an exemption will be unnecessary when accessible public transport standards are introduced nationally, and that South Australia is already well-advanced in meeting the proposed standards.

The exemption is due to expire on 18 March 1999 or on the day that Accessible Public Transport Standards made under the Disability Discrimination Act become law, whichever is the sooner.

Lutheran Church of Australia, Queensland District

The applicants operate a non-government school system. One of their aims is to provide a school environment free from discrimination. They were concerned that in undertaking special assessments to provide for the needs of students with disabilities, their schools may be open to complaint on the ground that the assessments are treatment different from that accorded other students and therefore discriminatory. The applicants asked the Commission to approve a process for resolving disputes, with the final stage of the process being an application for exemption from the Disability Discrimination Act if all else failed.

The Commission accepted the Disability Discrimination Commissioner's recommendation and refused the application. The Commissioner pointed out that however reasonable the proposed process may be, it was a matter entirely for the applicants to decide and the Commission had no power to approve it. Furthermore, there was no scope for the Commission to say that a person could or could not make an application for exemption. Applications are provided for under the Disability Discrimination Act and must be treated on their merits once received.

Chapter 5: Human Rights

“The year 1996-97 was one of paradox in human rights work”.

Human Rights Commissioner

Chris Sidoti commenced his five year appointment as Human Rights Commissioner on 14 August 1995. During his career, he has held the following positions - 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 New South Wales 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.

Statement from the Commissioner

The year 1996-97 was one of paradox in human rights work. In so many areas of our activity we accomplished much in protecting and promoting human rights. We received unsought recognition for our achievements as we marked the 10th anniversary of the Commission's establishment. Internationally, the Australian Human Rights and Equal Opportunity Commission was seen increasingly as a model commission and a resource to support developing and emerging commissions in the region. At the same time Australian Government announcements meant that the Commission's budget would be cut by 40 percent in nett terms over a three year period. A year of paradox indeed.

Many of the Commission's achievements over the year are evident in the comments of the President and other members of the Commission in this report. One which I shared with them is the completion of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. Without doubt this stands as the Commission's single most important undertaking not just this year but in its ten years of activity. The Inquiry's report is already described as a document of great significance. The support it has received has been without parallel. I remain confident that its recommendations will receive similar support.

In the areas of my particular responsibility too I can point to significant achievement including:

- the presentation to the Attorney-General and tabling in Parliament of the first reports on complaints under the *Human Rights and Equal Opportunity Commission Act 1986*, concerning age discrimination in employment;
- the elimination of backlogs in handling complaints under the Act and increased success rates in conciliation;
- successful advocacy for the repeal of offensive provisions in the Tasmanian Criminal Code that penalised consenting sexual relations between adult men;
- the commencement of a national study into the observance of freedom of religion in Australia;
- the completion and presentation to the Government of the draft national policy on discrimination in employment and occupation; and
- the commencement of an occasional papers series to increase awareness on particular human rights issues.

We were able to advance two other important projects. First, the National Inquiry into Children and the Legal Process, which we are undertaking jointly with the Australian Law Reform Commission, completed its public hearings phase and a draft recommendations paper was published. The Inquiry's final report will be presented to the Attorney-General for tabling in parliament early in the coming year. Second, Commission staff conducted a second inspection of the Port Hedland Immigration Reception and Processing Centre. The long expected report on the policy and conditions of detention of boat people will also be completed and presented to the Attorney-General for tabling in parliament early in the coming year.

The year saw a greatly increased demand for the Commission's views on human rights issues. Speaking invitations and requests from the media for comment reflected this. I was also invited by parliamentary committees more frequently than ever to make submissions, and to appear at their

hearings to advise them of the human rights implications of legislative proposals and other references.

Internationally the outstanding achievement was the establishment of the Asia Pacific Forum of National Human Rights Institutions. Our Commission and the New Zealand Human Rights Commission convened the first workshop of Asia Pacific commissions in Darwin in July 1996. The workshop saw commitment to increase the cooperation among the commissions to strengthen their own effectiveness and work, and to promote and assist the establishment of new commissions. The workshop agreed to form the forum as the vehicle for the five commissions' cooperative endeavours.

The establishment of the sixth commission in the region, in Sri Lanka in March 1997, was a welcome event that encouraged the forum in its work. We anticipate doubling our numbers within the next two or three years.

The Minister for Foreign Affairs, the Hon Alexander Downer MP, provided financial assistance for the Darwin workshop and for the forum secretariat which has been established within the Australian Commission for a three year period. During the year he has also funded a number of forum projects involving the Commissions of the Philippines, Indonesia and India. He showed his strong support for these activities in a very practical way.

The paradox is that amid all these achievements the Commission's budget will be cut so severely, \$6.6 million over the three year life of the current parliament. As a result of these cuts in my areas of responsibility I will have less than half the staff I currently have to handle our responsibilities in policy review and development relating to the human rights of:

- children and young people;
- older Australians and others affected by age discrimination;
- gay men, lesbians and identity of transgender people;
- refugees and asylum seekers;
- people with mental illness; and
- policy issues relating to civil and political rights, religious freedom and the national policy in discrimination in employment and occupation.

So you will understand why I say 1996-97 was a year of paradox in human rights work.

Public inquiries

Since its establishment in 1986, one of the Commission's most effective strategies has been undertaking inquiries into patterns of human rights violations. Complaint handling seeks to provide redress for individuals who allege violations of their human rights, but its ability to prevent violations or address systemic patterns of abuse is limited. It is especially limited in the Human Rights Commissioner's areas of responsibility where the legislation does not provide a judicially enforceable remedy to breaches of human rights or acts of discrimination in employment and occupation. Broader inquiries enable a comprehensive investigation into and response to more general experiences of human rights violations.

Inquiry into Children and the Legal Process

This joint Inquiry with the Australian Law Reform Commission examined problems facing children and young people in dealing with the legal system. Issues considered by the Inquiry included:

- legal processes in the education system;

- children's evidence in legal proceedings;
- family law and care and protection;
- legal representation and the litigation status of children;
- juvenile justice processes;
- advocacy of the rights of children;
- the appropriate rules of evidence for children;
- children as witnesses and as victims of crime; and
- children as consumers of government services.

The Inquiry conducted an extensive program of national consultation. The Inquiry team visited metropolitan and regional centres in Australia holding public hearings, seminars of legal practitioners and focus groups of young people. An Issues Paper titled *Speaking for Ourselves: Children and the Legal Process* was released in March 1996 for public comment and a large number of submissions were received in response. A paper of draft recommendations proposing measures to ensure that the legal system is made more responsive and sensitive to the needs of children and young people, was released in May 1997 for further public comment.

The Commissioner and the Australian Law Reform Commission appeared before the Parliamentary Human Rights Subcommittee in June 1997 to discuss the Inquiry and to receive comments from the subcommittee members on the draft recommendations.

The final report and recommendations will be forwarded to the Federal Attorney-General in September 1997 and will be tabled in Parliament soon after.

Promoting the observance and protection of human rights in Australia

The Commission has a mandate to promote compliance with the principles of the international human rights instruments which fall under the Human Rights and Equal Opportunity Commission Act.

Under sections 11, 14, 20 and 29 of the Human Rights and Equal Opportunity Commission Act, the Human Rights Commissioner can advise government and Parliament on matters relating to human rights, undertake research and promotional activities, examine enactments for consistency with human rights, intervene with leave in proceedings in court and publish guidelines to ensure acts or practices inconsistent with or contrary to human rights do not occur. In carrying out these functions, the Commissioner consults broadly with national government and non-government organisations.

Immigration and refugees

The Commission continues to express concern about certain issues within the immigration portfolio. Over the past year, the Commission has focused on Australia's treatment of unauthorised arrivals (boat people).

Detention of unauthorised arrivals

As reported in the 1995-96 Annual Report, the Commission is concerned that the long term detention of unauthorised arrivals is a violation of Australia's human rights treaty obligations. In March 1997, the Human Rights Commissioner provided an interim opinion to the Minister for Immigration and Multicultural Affairs. He stated that Australia's policy of mandatory detention of unauthorised boat arrivals is contrary to international human rights law, and breaches Australia's legal commitments to respect and ensure human rights for everyone within Australian territory and jurisdiction. In particular, the Commissioner expressed the view that the detention regime in the

Migration Act 1958 violates human rights under international law and under the Human Rights and Equal Opportunity Commission Act. Australia is obliged under Article 9 of the International Covenant of Civil and Political Rights to respect the right to liberty and to ensure that no one is subjected to arbitrary detention. If detention must be necessary, it must be a proportionate means to achieve a legitimate aim and it must be for a minimal period. In some instances, individuals detained under the Migration Act provisions have been held for more than five years.

On 14 May 1997, the United Nations Human Rights Committee found Australia in breach of its obligations under the International Covenant of Civil and Political Rights in relation to the detention of asylum seekers. The Committee found Australia in breach of Article 9.1 (arbitrary detention and right of review) and Article 9.4 (the right to take proceedings in a court to determine the lawfulness of detention). The Committee's decision confirmed the advice the Commission gave Parliament, the Minister and the Department of Immigration and Multicultural Affairs.

The Commission is also concerned about conditions in detention centres. During the reporting period, the Commission continued its inspection of various Department of Immigration and Multicultural Affairs detention centres. In February, March and May 1997 the Commission conducted site inspections of the Villawood, Perth and Port Hedland detention centres. During these visits the Commission met with detainees, members of the community and immigration officials. The site inspections will be discussed in a report to Parliament (under the Human Rights and Equal Opportunity Commission Act) later in 1997.

Communication with detainees

The 1995-96 Annual Report provided information on the Commission's successful Federal Court case *Human Rights and Equal Opportunity Commission and Anor v Secretary of the Department of Immigration and Multicultural Affairs* (unreported, Lindgren J, NG 268 of 1996) and the Government's proposed legislative response, the *Migration Legislation Amendment Bill (No.2) 1996*. The proposed legislation seeks to nullify the Federal Court decision by amending the Migration Act to ensure that the Commission or the Commonwealth Ombudsman cannot initiate communication with boat people held in incommunicado detention.

The Human Rights Commissioner opposed the Bill and initiated meetings with the Minister, the Secretary and senior officers of the Department of Immigration and Multicultural Affairs to establish an administrative protocol between the Commission and the Department, when dealing with complaints about boat people held in detention. The Commissioner argued that the Bill should not be passed by Parliament if a protocol could be successfully negotiated and implemented.

A draft administrative protocol has been developed between the Department of Immigration and Multicultural Affairs and the Commission. The Department has yet to endorse the protocol formally. In the interim further debate on the Bill in Parliament has been postponed and the Commission has implemented the draft protocol.

Migration Amendment Bill (No.3) 1996

The Human Rights Commissioner contributed to a Commission submission on the *Migration Amendment Bill (No.3) 1996*, focusing on amendments to the Australian Citizenship and Migration Acts on deprivation of citizenship. The Commissioner also gave evidence on 28 November 1996 to the Senate Legal and Constitutional Legislation Committee, which is examining the Bill.

Human rights and the justice system

Juvenile justice

The Commissioner has become increasingly concerned by many state and territory amendments to and proposals for juvenile justice legislation that place children and young people at risk of human rights violations.

On 6 September 1996, the Commissioner held a joint press conference with the President of the Australian Law Reform Commission drawing attention to the disturbing national trend for harsher juvenile justice regimes. Recently the governments of Queensland, the Northern Territory and New South Wales have increased police powers and penalties for juvenile offences.

The Commissioner appeared before the Queensland Parliament's Committee on Scrutiny of Legislation to raise concerns about proposed amendments to that State's juvenile justice laws which would breach Australia's obligations under the Convention on the Rights of the Child. The Commissioner also provided comments to the New South Wales Premier and Attorney-General on proposed legislation to increase police powers over young people in public places.

International transfer of prisoners

The Commissioner appeared before the House of Representatives Standing Committee on Legal and Constitutional Affairs to give evidence on the *International Transfer of Prisoners Bill 1996*. The Bill allows the transfer of prisoners to their country of origin to serve out their sentences. The Commissioner's submission to the Committee was strongly supportive of the Bill, while emphasising the need to ensure the eligibility for prison transfer of Indigenous people taken overseas and non-Indigenous people taken overseas as children. The Bill was subsequently passed by Parliament.

Legal aid

The Human Rights Commissioner contributed to a Commission submission to the Inquiry by the Senate Legal and Constitutional References Committee into the provision of legal aid. The submission stressed that the provision of legal aid in certain cases was inextricably linked to the concept of equality before the law and a fair trial and that the reduction of legal aid funds for civil matters would have a disproportionate impact on women and children.

Criminal DNA database

The Human Rights Commissioner and the Privacy Commissioner provided comments to the Institute of Forensic Science on human rights issues arising out of a proposal to establish a criminal DNA database.

Aged care

The Commissioner made a submission to the Senate Community Affairs References Committee examining proposed reforms to the system of aged care and the funding of nursing homes.

Parliamentary Human Rights Subcommittee

On 20 September, the President and Human Rights Commissioner were invited to appear before the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. The hearing covered a range of issues including the progress of the Stolen Generations

Inquiry, the High Court *Teoh* decision and the need for a Children's Commissioner. The Subcommittee then reported to Parliament, recommending that the Federal Government introduce legislation to incorporate the Convention on the Rights of the Child into domestic law and investigate the feasibility of establishing a Children's Commissioner within the Commission.

Promoting non-discrimination

The Human Rights Commissioner and the Commission have a duty to promote non-discrimination according to Australia's obligations under the International Covenant of Civil and Political Rights and International Labour Organisation Convention 111.

National Advisory Committee on Discrimination in Employment and Occupation

The Attorney-General established the National Advisory Committee on Discrimination in Employment and Occupation, under section 17 of the Human Rights and Equal Opportunity Commission Act, to advise the Commission on its role in promoting equal opportunity in employment and to recommend how Australia can comply with the provisions of the International Labour Organisation Convention 111. The Committee comprises representatives of the Commission, federal, state and territory governments, Australian Council of Trade Unions, Business Council of Australia, Australian Chamber of Commerce and Industry and community groups representing Aboriginal and Torres Strait Islander people, women, people with disabilities, people from non-English speaking backgrounds and gays and lesbians.

Under Article 2 of the International Labour Organisation Convention 111, Member States undertake to "declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination".

During the reporting period, the Committee developed a draft national policy on discrimination in employment and occupation. The Commission endorsed the draft policy and submitted it to the Attorney-General, recommending that the Government adopt the policy to fulfill Australia's obligation under Article 2 of the Convention.

Age discrimination

Reports to Parliament

On 30 August 1996, under section 31(b) of the Human Rights and Equal Opportunity Commission Act, the Commissioner sent a report to the Attorney-General detailing his inquiry into complaints of discrimination in employment and occupation based on compulsory age retirement practices. This was the first in an anticipated series of reports to the Attorney-General about complaints of discrimination and violations of human rights under the Act.

Following his appointment, the Commissioner commenced a review of current complaints lodged under the Human Rights and Equal Opportunity Commission Act and the conciliation attempts made in these cases. There were many complaints that had been active for some years. The respondents were unwilling to resolve them through conciliation and the complainants were committed to pursuing them.

Under the Act, the Commission has no power to make enforceable determinations in these complaints; it can only make a finding, outline recommendations and report to the Attorney-General, who is required to table the report in Parliament. The clear intention of the legislation is that

unconciliated complaints with substance should be dealt with in the political arena, not in the judicial arena. Different views can be expressed, argued and resolved in Parliament rather than in the courts. Because this process does not result in enforceable orders, the Commission seeks through every possible means to achieve a negotiated settlement between the parties. However, the inability to enforce hinders efforts to settle.

The Commissioner does not consider prolonged handling of complaints to be in the interests of either respondents or complainants. When it becomes clear that there is no reasonable prospect of conciliation, the conciliation process should cease. If there is no substance to the complaint, it is dismissed. If there is an act or practice that is either discriminatory or a breach of human rights within the terms of the Act, the inquiry process is finalised, a report made to the Attorney-General and then tabled in Parliament.

The report dealt with four complaints of age discrimination. The complaints were by four pilots who were compulsorily retired at age 60 from their employment with the former Australian Airlines, now part of Qantas Airways Limited (the respondent). The Commission received many similar complaints about compulsory retirement practices. Compulsory retirement has been abolished in a number of states and territories, however the practice continues in federal public sector employment. Many complaints of compulsory retirement have been lodged against federal public sector agencies as the *Public Service Act 1922* and many other federal laws require retirement at age 65. The respondent in these complaints pointed out that the Human Rights and Equal Opportunity Commission Act itself imposes a compulsory retirement age on Commissioners.

Compulsory retirement restricts equal employment opportunity on the basis of age. In the report the Commissioner recommended the repeal of compulsory retirement provisions in the Public Service Act and in other federal legislation. The Federal Government has accepted these recommendations and will amend legislation accordingly. The Commissioner also recommended that Qantas should pay each complainant compensation for loss of earnings and that one complainant should be re-employed. Qantas rejected the recommendations.

The Commissioner also prepared reports to Parliament on three complaints of compulsory retirement based on age in the Department of Defence. The Department commenced action in the Federal Court to prevent the reports being presented to the Attorney-General and tabled in Parliament. The Court had not decided the case at the end of this reporting year.

Other complaints of age discrimination raise broader issues of discrimination in employment and occupation in areas such as employees' compensation, superannuation, retirement benefits, redundancy and general working arrangements and practices. Complaints on these grounds will be the subject of later reports to the Attorney-General.

A clear pattern that emerges from the complaints is that discrimination on the ground of age falls in a gap of federal protections against discrimination. The federal protections under the *Workplace Relations Act 1996* (formerly the *Industrial Relations Act 1988*) are limited to federal awards and agreements. Despite laws prohibiting discrimination on the ground of age in many states and territories (but not all), the standard and scope of protection varies from state to state. This position is unacceptable. Every Australian is entitled to adequate protection against discrimination regardless of where he or she lives or works. Differences in protection result in inequality and confusion for employees, employers and businesses alike. Comprehensive national prohibition of discrimination on the ground of age, in all its forms and in all areas of public activity, remains a matter of pressing need.

These issues have been discussed at a policy level in the Federal Government for several years. Each of the major political parties took policies into the last federal election that expressed commitments

for action in this area. The Coalition committed itself to protect against age discrimination at least in the area of employment and occupation. The Australian Labor Party committed itself to the development of broad based legislation to prohibit discrimination on the ground of age. These commitments reflect a national consensus that age discrimination should be eliminated. Unfortunately, these commitments have not as yet been translated into national anti-discrimination legislation. This legislation is long overdue.

Industrial relations

The Human Rights Commissioner contributed to the Commission's submission on the proposed changes to federal industrial relations legislation and the "Living Wage Case" before the Federal Industrial Relations Commission. The Commissioner focused on Australia's obligations under the International Labour Organisation Discrimination (Employment and Occupation) Convention 1958 and the Human Rights and Equal Opportunity Commission Act in relation to freedom of association, age discrimination including junior rates, and sexual orientation discrimination.

Lesbian, gay and transgender rights

Anti-discrimination legislation

On 4 March 1997, the Commissioner released an occasional paper, *Human Rights for Australia's Gays and Lesbians*. The paper examines Australia's human rights obligations in relation to gays, lesbians and persons of trans-gender identity. The paper also discusses the extent of discrimination and the adequacy of existing legislative protections.

The Commissioner provided an extensive submission to the Inquiry by the Senate Legal and Constitutional References Committee into the need for federal legislation to prohibit discrimination on the ground of sexuality. On 7 August 1996, the Commissioner also gave oral evidence to the Committee.

Tasmanian Criminal Code

In 1994, the Commission examined the Tasmanian Criminal Code provisions which make some forms of consenting sexual activity between males and females and all forms of sexual intercourse between consenting adult men in private a criminal act.

In its report to the Federal Parliament, the Commission concluded that the Tasmanian Criminal Code provisions were inconsistent with Australia's human rights obligations under the International Covenant of Civil and Political Rights, and recommended that they should be repealed by the Tasmanian Parliament.

On 15 April 1997, the Commissioner addressed members of the Tasmania Legislative Council about proposed amendments to abolish the offending provisions. A majority of the Legislative Council voted to support the repeal of the provisions.

Religion

On 18 February the Commissioner launched a discussion paper, *Free to believe? The right to freedom of religion and belief in Australia*. The United Nations Special Rapporteur on Religious Tolerance, Mr Abdelfattah Amor, participated in the launch.

The discussion paper contains historical and demographic information; discussion about the extent the right to freedom of religion and belief is protected under existing Australian law; how the right to

freedom of religion and belief is protected under international human rights law; an explanation of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; and advice on how to conduct consultations dealing with domestic compliance with the Declaration.

Following a review of public submissions received in response to the discussion paper, the Commission will prepare a report for Parliament's consideration.

International activities

The Commission's international activities have two objectives.

First, the Commission seeks to assist countries to improve their own performance in complying with international human rights standards by supporting national human rights institutions. It does this through working with governments wanting to establish and strengthen national institutions; forming bilateral links with individual national human rights bodies; regional cooperation; and participation in international workshops of national institutions and in their international coordinating committee.

Second, the Commission seeks to assist in promoting the international human rights legal system. It does this through participation in major international human rights meetings and in negotiations for new, more effective international human rights instruments.

National institutions

First Asia Pacific Regional Workshop of National Institutions

From 8 to 10 July 1996, the Commission, in conjunction with the New Zealand Human Rights Commission, organised the First Asia Pacific Regional Workshop of National Institutions to promote the establishment and strengthening of national human rights institutions in the region. Held in Darwin, the workshop was attended by national human rights institutions from Australia, New Zealand, Indonesia and India, along with government observers from Papua New Guinea, Pakistan, Nepal, Thailand, Fiji, Mongolia, Solomon Islands, Australia, New Zealand and Sri Lanka. Several non-government organisations were present as observers, such as Amnesty International, Australian Council for Overseas Aid, LawAsia and the Coordinating Committee of Human Rights Organisations in Thailand.

The Darwin Workshop adopted the 'Larrakia Declaration' which reaffirmed the universality and indivisibility of human rights and asserted the value of national institutions as contributors to the promotion of human rights in the Asia Pacific region. The key feature of the declaration was the decision to set up the Asia Pacific Forum of National Human Rights Institutions. The forum's secretariat is being funded by the Australian Government over the next three years and is based in the Commission's central office. Following the Darwin meeting, the Philippines Commission for Human Rights became a full member of the forum and the recently established Sri Lankan Commission is expected to be admitted as a member at the second meeting of the forum to be held in New Delhi in September 1997. The governments of Papua New Guinea, Pakistan, Nepal and Mongolia all indicated that they were hopeful of establishing human rights commissions in the near future.

The forum opens up many avenues for advancing human rights in the region in constructive and non-confrontational ways. While the establishment of the forum is itself a significant development, it provides, more importantly, the opportunity to develop some practical programs to produce genuine improvements in the enjoyment of human rights by individuals and vulnerable groups in the region.

International Coordinating Committee of National Institutions

In April 1997, while at the 53rd session of the United Nations Commission for Human Rights in Geneva, the Commissioner participated in meetings of the International Coordinating Committee of National Institutions and of the Asia Pacific Forum. At the meeting, the second Asia Pacific Workshop of National Institutions was scheduled for New Delhi in September 1997 and the fourth international meeting of national institutions to be held in Mexico in December 1997.

Philippines

From 25 November to 12 December 1996, the Commission conducted a second study tour program for the Philippines Commission on Human Rights. The Chairperson of the Philippines Commission, Judge Aurora Recina Navarette, met with members of the Commission, Parliamentarians and representatives from government and non-government organisations. Five members of the Philippines Commission and two representatives from non-government human rights organisations participated in an intensive training program at the Commission.

From 18 November to 12 December 1996, the Commission, in conjunction with LawAsia, also conducted a study tour program for nine representatives from the Philippines to examine child welfare mechanisms and processes in Australia.

A representative of the Commission, Mr Bill Barker, visited the Philippines Commission on 17 and 20 January 1997 and met with Chairperson Recina and Commissioners Sibulo, Contreras and Marohomsalic to discuss project proposals for the Asia Pacific Forum.

Indonesia

On 27 January 1997, Mr Barker also visited the Indonesian Human Rights Commission to discuss potential projects for the Asia Pacific Forum. He met with Vice Chairperson Miriam Budiardjo, Commissioners Nababan, Himawan and Bahar and staff member Ms Roi Aswidah.

From 24 June to 2 July 1997, a delegation of senior representatives from the Indonesian Human Rights Commission visited the Commission under the framework of the Asia Pacific Human Rights Forum.

The delegation consisted of Professor Budiardjo, First Vice Chairperson, Mr Darusman, Second Vice Chairperson, Mr Amaral, East Timorese member of the Commission, Mr Soegiri, a former Chief Justice of the Indonesian Supreme Court and Ms Aswidah, senior Commission staff member.

The objectives of the visit were to strengthen the Indonesian Commission by:

- providing senior Commission members with practical and theoretical knowledge of the Australian Commission's activities and experiences in human rights and anti-discrimination legislation, so that they can consider its application in Indonesia;
- assisting the Indonesian Commission to assess its own development needs; and
- providing an opportunity for the delegation to obtain a broader understanding of Australia's institutional and community human rights framework.

During the visit, the delegation met with Ministers, Parliamentarians, government officials, representatives of the judiciary, non-government organisations, academics and Indigenous leaders.

New Zealand

The Commissioner met with the visiting Chief Commissioner of the New Zealand Human Rights Commission, Ms Pamela Jefferies, on 1 November to discuss the development of the Asia Pacific Forum and agenda items for the second Asia Pacific Workshop of National Institutions to be held in New Delhi.

From 25 February to 2 March 1997, the Commissioner visited New Zealand for meetings with their Human Rights Commission, the Children's Commissioner and the Department of Foreign Affairs. The visit concentrated on the role of the Australian and New Zealand Commissions in the region and the Asia Pacific Forum.

As part of a staff exchange program, the New Zealand Commission welcomed a senior member of staff from the Australian Commission for a three month period from May 1997. The Australian representative evaluated New Zealand legislation and government administration to assess their compliance with New Zealand's human rights requirements.

Vietnam

On 2 and 3 May 1997, the Commissioner gave lectures on international human rights law and philosophy at the Vietnam Research Centre for Human Rights, Ho Chi Minh National Academy of Political Sciences in Hanoi. Commission staff representative, Mr Kieren Fitzpatrick, also gave lectures on the role and functioning of national institutions and other domestic measures for the protection of human rights (7-13 May 1997). The visit was organised by the Centre for Asian and Pacific Law, University of Sydney, in cooperation with the Commission and was funded by AusAID. The objective was to provide information to a wide range of Vietnamese officials and academics whose work involves legal education, legal training and the development and application of human rights legislation (particularly international law, human rights instruments and national institutions). The Vietnam Research Centre also sent a delegation to examine institutional mechanisms for the protection of human rights (1-15 June 1997).

Papua New Guinea

At the request of the United Nations Centre for Human Rights, the Commissioner provided comments on the draft Constitutional Amendments and Organic Law to establish the Papua New Guinea Human Rights Commission.

International visitors

During the reporting period, the Commission met with government and non-government representatives who promote and protect human rights from the United States of America, Indonesia, Japan, South Korea, Malawi, New Zealand, South Africa and Sweden.

The Commission also met with representatives from LawAsia, the International Commission of Jurists, the United Nations, the Commonwealth Secretariat, the Westminster Foundation, Amnesty International, the United Kingdom Institute for Public Policy Research, the Indian National Human Rights Commission, the Hong Kong Equal Opportunity Commission and Danida, the Danish organisation for official development assistance.

Improving international human rights law

The Commission played a significant role in promoting and improving international human rights law and the mechanisms for its enforcement. It has been represented at many of the most important international forums and at the negotiation of new international human rights instruments.

Fifth United Nations Workshop on Human Rights Arrangements in the Asia Pacific Region

From 5 to 7 January 1997, the Commissioner participated in the Fifth Workshop on Regional Arrangements for the Promotion and Protection of Human Rights in the Asia Pacific Region in Amman, Jordan. The workshop was attended by representatives from over 35 countries stretching from the Middle East to the Pacific, including a number of international experts, representatives from three national human rights institutions (Australia, India and Indonesia), United Nations agencies and non-government organisations.

The workshop focused on practical measures that could be undertaken on an incremental basis to develop regional arrangements. The recommendations supported regional human rights arrangements, initially focused on supporting and reinforcing action at a national level, covering issues such as establishing and strengthening national institutions and the development of national action plans. The workshop also called for the formation of a specific United Nations Technical Cooperation Program to focus on the development of national institutions and regional arrangements in the Asia Pacific region.

53rd Session of the United Nations Commission on Human Rights

Since its establishment in 1986, the Commission has been represented at each ordinary session of the United Nations Commission on Human Rights, the pre-eminent international human rights forum.

The Commissioner attended the 53rd Session of the Commission in Geneva from 1 to 5 April, he participated in the negotiation of resolutions on national institutions and regional human rights arrangements. He also presented a formal statement to the UN Commission on the role of national institutions in United Nations meetings, the establishment of the Asia Pacific Forum and the activities of the Centre for Human Rights in support of national institutions.

Education and promotion

The Commission has functions to promote understanding and acceptance of the Act, and observe its provisions. To achieve these aims it can undertake research and educational programs to promote the Act's provisions. One of these initiatives is a series of occasional papers to inform and promote discussion in the public arena.

Housing as a human right - Occasional Paper No. 2

In October 1996, the Commissioner released the second in a series of occasional papers, highlighting the need for adequate housing in Australia and its basis in international human rights law.

Human rights and euthanasia - Occasional Paper No. 3

In December 1996, the Commissioner commissioned Associate Professor George Zdenkowski to write the third occasional paper on the issue of euthanasia. The paper was published to promote informed public discussion about the complex and controversial issues surrounding the legal

regulation of euthanasia in Australia and, in particular, the relevance of international human rights norms to that debate.

The international role of the Australian Human Rights and Equal Opportunity Commission - Occasional Paper No. 4

In January 1997, the Commissioner released the fourth occasional paper detailing the Commission's international role. The paper provides a history of the Commission's activities in this area and indicates its direction for future years.

Human rights for Australia's gays and lesbians - Occasional Paper No. 5

The Commissioner released the fifth occasional paper in February 1997. The paper was based on the Commission's submission to the Senate Legal and Constitutional References Committee Inquiry into the need to protect Australian citizens from discrimination and vilification on the grounds of their sexuality or transgender identity.

Discrimination in employment and occupation fact sheets

The Commissioner produced a fact sheet on the Commission's powers and functions under the International Labour Organisation Convention 111. The fact sheet was also translated into Chinese and Vietnamese.

Asia Pacific workshop of human rights educators

From 22 to 25 August 1996, the Australian Human Rights Information Centre and the Diplomacy Training Program hosted an Asia Pacific Workshop of human rights educators. The Commission provided the venue for the Workshop. The Workshop focussed on the tasks that need to be undertaken for the United Nations Decade for Human Rights Education in the region. The Commissioner, Mr Kieren Fitzpatrick and Ms Margie Cook (both staff members) addressed the Workshop.

Children's rights

The Commission hosted a seminar on children's rights on 21 November 1996. Speakers included Mr Vitit Muntarbhorn. Mr Vitit Muntarbhorn is Executive Director, Child Rights Asianet; Professor of Law, Chulalongkorn University Bangkok; and was formerly United Nations Special Rapporteur on Trafficking in Children. On 6 December 1996, the Commission co-hosted a seminar on juvenile justice with the United Nations Association of Australia at New South Wales Parliament House.

Chapter 6: Privacy

"I am confident we can develop a scheme for Australia which both achieves adequate privacy standards and minimises red tape for business".

Privacy Commissioner

Moira Scollay was appointed for a five year term commencing February 1997 as Australia's second Privacy Commissioner. She replaces Kevin O'Connor whose term finished at the end of December 1996.

Ms Scollay has extensive experience as a senior federal public servant, most recently as Second Commissioner of Taxation. Prior to her period at the Tax Office, Ms Scollay held senior positions on the Public Service Board and at the Australian Institute of Aboriginal and Torres Strait Islander Studies. Her early career was in the academic sector, where she held positions at the University of Canberra and the Australian National University.

Ms Scollay has tertiary qualifications in the Arts, Education and Executive Management. This includes a Bachelor of Arts and LittB from the Australian National University; a DipEd (CCAEd); and a Graduate Diploma in Executive Management (Qld).

Statement from the Commissioner

I came to the role of Privacy Commissioner late in the reporting year from my position as Second Commissioner for Taxation. My predecessor, Kevin O'Connor, Australia's first Privacy Commissioner, completed an eight year term of office in December 1996.

I wish to pay tribute to Kevin O'Connor who was very successful in gaining an acceptance and respect for privacy principles in areas subject to his jurisdiction. I intend to build on his good work in carrying out the statutory functions of the role, and in working towards improved protections in the private sector.

The aim of privacy protection in Australia should be to ensure that individuals are informed about what is happening to information about them, and are able to participate in decisions about what is collected, who collects it, and why. There is an increasing concern for privacy of personal information in the electronic age. For Australians to be certain that their privacy is protected, all government agencies, private businesses, non-government organisations, community groups and other organisations that handle personal information, need to do so fairly and responsibly.

In Australia, the *Privacy Act 1988* only applies to personal information held by the Federal and Australian Capital Territory Governments, credit reporting and tax file numbers. At the time I took up my appointment in February, there was an expectation that privacy controls would soon be extended to protect the privacy of personal information in the private sector. However, in March, the Prime Minister announced that there would be no such extension, instead, offering the services of my office to assist business to develop voluntary codes of conduct to meet privacy standards. His decision was based on government concerns that proposed legislative controls could impose an unreasonable burden on business. The Prime Minister also asked state and territory governments to refrain from legislating to cover the private sector as many businesses had expressed concern about complying with what could be a patchwork of different arrangements.

Over many years my office has devoted considerable effort to assisting those business and industry sectors which have taken steps to introduce good privacy practices on a voluntary basis. There have been some successes which I would now like to build on. While there are concerns about compliance costs for business, I would like to explore this issue further. There are already companies implementing good privacy practices, both here and overseas, for whom the benefits are seen to outweigh any costs incurred. I am confident we can develop a scheme for Australia which both achieves adequate privacy standards and minimises red tape for business.

I have commenced a consultative process with industry groups and will be working with their representatives and others to develop appropriate guidelines for good practice. My aim is to gain consensus around a set of privacy principles, together with compliance and complaint mechanisms and remedies. While the scheme would be developed for voluntary application and self regulation in the first instance, it must in my view, be of a standard equivalent to international best practice

(including being able to meet the terms of the European Union's Directive), and able to be given statutory effect if, at a later stage, the Government were to pursue this route.

The discussion paper on privacy protection in the private sector, issued by the Attorney-General's Department in September 1996, generated a lot of discussion and thought about what these principles could look like. My staff are reviewing the responses to that paper to identify the points of agreement and disagreement. A new draft set of principles, with mechanisms, will be issued in August 1997 as the basis for a further process of consultation.

I have also taken the opportunity to meet with privacy advocacy and consumer protection groups to hear their concerns and to discuss with them my approach to the role of Privacy Commissioner. I look forward to holding future meetings of this kind.

In relation to the existing coverage of the Privacy Act, new arrangements for service delivery by government are putting pressure on the existing structure of the law. The Information Privacy Principles themselves have proved very robust and can be applied to most arrangements. The difficulties arise more from the way the Act applies the Information Privacy Principles to 'agencies', and differentiates between collector and record keeper. This conceptual framework operates satisfactorily within a static organisational structure of departments with clearly defined areas of responsibility. But it lacks flexibility when confronted by frequent changes in administrative arrangements, the growth of cross program and joint service delivery, and the increasing use of contract and agency arrangements for service delivery by private companies, non-government organisations, and other public bodies.

To ensure that existing privacy protections are not watered down as a result of the contracting out of government services, the Government has announced its intention to extend the Privacy Act to cover contractors handling personal information on behalf of government. This will mean an expansion of my role in terms of advice, education and compliance monitoring.

These new forms of service delivery will continue to provide a challenge for the application of the Act, and it may be that some change will be appropriate in the future. I will keep these developments under review.

I have also been given a number of other new functions, either under legislation or by the Government. These include:

- development of privacy guidelines for the new Services Delivery Agency, as announced by the Minister for Social Security on 26 March 1997;
- development of privacy codes under the new telecommunications regime. The new Telecommunications Act requires that the Privacy Commissioner must be consulted in the development of privacy codes. The Act has also given the Commissioner additional functions in monitoring compliance with new disclosure provisions;
- development of principles for private health funds regarding the acquisition, storage, security, use and disclosure of personal information. The principles are to be issued by the Minister for Health as binding and disallowable instruments under the *Private Health Insurance Incentives Act 1997*;
- development of an updated version of the tax file number guidelines to reflect recent changes to superannuation law. The tax file number guidelines are issued by the Privacy Commissioner under the Privacy Act and are legally binding; and
- advisory, training and compliance monitoring work related to the Employment Placement Enterprises, and the new company replacing the Australian Government Health Service.

These new functions, together with the prospective extension of the Act to cover contractors, coincide with a significant reduction in resources available to the Commission. This will make it difficult to sustain a desirable level of activity across all my functions. My response to the mismatch between resources and workload is twofold.

Firstly, where I have been given functions under legislation other than the Privacy Act or by the Government, I will be approaching the portfolio departments concerned for additional funding. Since many of these new functions are associated with cost saving efficiency initiatives, it seems reasonable that the cost of maintaining privacy protection should be borne by the areas that stand to make the savings. In respect of the proposed amendments to the Privacy Act to cover contractors, I will similarly be requesting financial support from the agencies which are responsible for implementation of outsourcing.

Secondly, I will be prioritising the competing demands on my resources. Clearly mandatory statutory functions, such as complaint investigation and the issuing of specific guidelines, must receive top priority. I will endeavour to maintain other functions to the greatest extent possible.

Policy and regulatory advice and development

The private sector

In September 1996, the Attorney-General's Department issued a discussion paper, *Privacy Protection in the Private Sector*, canvassing various options. The paper was generally supportive of an extension of statutory protection, but outlined some concerns in relation to translating the application of the Information Privacy Principles in their entirety to the private sector. The Privacy Commissioner submitted a response to the Attorney-General.

The Prime Minister announced in March 1997 that the Government would not be extending statutory protection to the private sector, preferring instead a self regulatory approach involving voluntary codes. In response to this decision, the Commissioner has commenced consultations with peak industry bodies and others on a voluntary national privacy code.

The Privacy branch has continued to provide information and assistance to the private sector. For example, in May 1997 a series of information sheets for business were published, and advice has been given on a number of sectoral and in-house voluntary codes.

Streamlining of federal administration - privacy issues

'One stop shops' for federal services

The establishment of the Commonwealth Services Delivery Agency in July 1997 marks a significant change in the way the Federal Government provides information, advice and income support payments to the community. Initially, the agency will provide services on behalf of the Department of Social Security, Department of Employment Education Training and Youth Affairs and the Department of Health and Family Services.

In February 1997, the Commissioner made a submission to the Senate Community Affairs Legislation Committee which reviewed the legislation proposing the establishment of the agency. Her submission recognised that the initiative is clearly desirable in improving service delivery and administrative efficiency, but drew the Committee's attention to some fundamental privacy issues that the creation of the agency raises. These issues include:

- that information about more aspects of an individual's affairs will now be held and managed by the one agency;
- the greater potential for information to be used or disclosed for purposes other than those for which it was originally collected either because the information is more valuable as part of a consolidated record or because the fact of collocation of information suggests additional uses;
- the potential for a unique identification number issued by the agency to be used to bring together information about different aspects of a person's affairs or to become widely (if unofficially) used in the community as a unique identifier;
- the potential for information about an individual to be duplicated in a number of agencies, because agencies such as the Department of Social Security and the Department of Employment, Education, Training and Youth Affairs have policy, evaluation, monitoring and compliance roles in relation to programs that will be delivered by the agency; and
- the difficulty individuals will have, because of the number of bodies involved and the complexity of the relationships between them, in knowing about or controlling information distribution about themselves.

The Committee did not recommend any changes to the proposed legislation. However, the Minister responsible for the agency, Senator the Hon. Jocelyn Newman, gave a public commitment in the Senate to ensure that the establishment of the agency would not result in a lessening of compliance with the principles of the Privacy Act. Senator Newman stated that the Departments involved and the agency will consult with the Privacy Commissioner in the development of privacy guidelines. She also stated that she will direct the Board of the Agency to follow these guidelines. The Commissioner is currently having discussions with agency staff about the nature of the guidelines.

Privacy for job seekers

The Commissioner made a submission to the Senate Community Affairs Legislation Committee on the *Reform of Employment Services Bill 1996* and the *Reform of Employment Services (Consequential Provisions) Bill 1996*. The Bills raise privacy issues because they propose to continue the involvement (though under different arrangements) of a range of private sector and community bodies in the provision of employment services to the long term unemployed.

The Commissioner said in her submission that the involvement of private sector and community bodies in this area raises certain privacy issues. The fact that these bodies will be required to comply with the Privacy Act in their provision of federal government services is a positive step. However, the Commissioner does have concerns about the extent to which these community and private sector bodies, with their diverse level of experience, resources and training, will be able to meet the standards set in the Privacy Act. The Commissioner is continuing to work with the Department of Employment, Education, Training and Youth Affairs on the privacy issues that will need to be addressed as the new arrangements are implemented.

Extended use of tax file numbers

In the 1996 Federal Budget, the Government announced the introduction of a surcharge on the superannuation contributions of high income earners. Proposals to administer the surcharge relied heavily on the use of tax file numbers to bring together within the Australian Taxation Office, the information necessary to assess whether an individual would be liable for the surcharge. The legislation introducing the surcharge was referred to the Senate Select Committee on Superannuation for further consideration.

In her submission to the Committee, the Commissioner said she saw the proposed surcharge legislation as marking a significant extension in the use of tax file numbers. She is concerned that all individuals will be asked to quote their tax file number regardless of whether they are liable for the

surcharge. The Government estimates that 355 000 people will be affected by the surcharge, yet the superannuation funds will need to provide details to the Australian Tax Office on *all* of their accounts. This is around 16 million accounts, including multiple account holders.

The Commissioner noted that the tax file number is such a powerful identifier that Parliament sought to limit and control its use not only by incorporating relevant provisions in the Taxation Administration Act, but also by including specific tax file number guidelines. The guidelines cover the collection, storage, use and security of tax file number information and are a schedule to the *Privacy Act 1988*. The Commissioner has the power to issue revised guidelines under section 17 of the Privacy Act.

The purposes for which tax file numbers may be used have been extended several times since 1988. Tax file numbers were initially to be used only in the taxation arena, then subsequently for purposes set out in other legislation administered by the Commissioner for Taxation, including child support, higher education contributions and taxation on superannuation payouts. The number can now also be requested by assistance agencies (which may refuse to provide benefits if the number is not quoted), and is used to verify income and detect fraud. The *Taxation Laws Amendment Act 1996* extended the use of tax file numbers to the superannuation industry as part of a range of strategies to deal with the so called "small superannuation accounts" and "lost member" problems.

Each time tax file number usage has been broadened, the Commissioner has worked with the relevant government departments to ensure that the voluntary quotation principle is maintained as far as possible, and that the existing safeguards apply in the new setting. At the same time, the Commissioner has recognised that the balance between the public interest in restricting the use of tax file numbers, and the public interest in efficient government administration, is ultimately determined by the Parliament.

In May 1997 the package of legislation introducing the surcharge was passed into law.

Outsourcing

The privacy implications of the Government's plans to outsource its information technology infrastructure were the subject of much public debate during the year. The Government intends to amend the Privacy Act to cover contractors; it has not yet made it clear whether this will be all contractors or only those involved in providing the Federal Government with information technology services.

The Senate Finance and Public Administration Committee has been conducting an Inquiry into the contracting out of government services and the Privacy Commissioner gave evidence to the Committee at a public hearing on 20 May 1997. The Senate has asked the Committee to report by 25 August 1997 on the outsourcing of information technology requirements, and particularly on the privacy implications. The Committee convened a workshop at Parliament House on 4 July 1997 to discuss the issues further. The Commissioner was represented by Head of the Privacy Branch, Mr Nigel Waters. The Senate Legal and Constitutional Legislation Committee asked a number of questions about the privacy implications of outsourcing at Additional Estimates Hearings on 12 May 1997.

Medical Records

Providing patient access

In April 1997, the Commissioner appeared before the Senate Community Affairs References Committee in their inquiry into access to medical records. She strongly supported individuals having

a right to access their own medical information, while acknowledging that there may need to be limitations or special arrangements in some circumstances; for example, where access is likely to prejudice the individual's or another person's health or where the material contains information about other people or information obtained in confidence. There is currently a lack of consistency in the privacy protections, and in access rights in particular, that apply to personal health information. In *Breen v Williams*, the High Court concluded that a right of patient access to their medical records could only be achieved through a change in legislation. The Commissioner emphasised the need for a scheme that provides the full range of privacy protections, including rights of access, to maximise the control that health consumers have over their information. In light of the Government's decision not to pursue comprehensive privacy legislation, the Commissioner's preferred approach is for the Federal Government to enact privacy laws covering health information.

The Senate Committee recently recommended that the Federal Government move expeditiously to draft national legislation for access to medical and other health records through the creation of extended privacy legislation to cover the health sector. This followed discussions with all stakeholders in the States and Territories. However, the Government Senators on the Committee did not totally endorse the majority report, and in a minority statement suggested that the Minister for Health and Family Services's initiative, to develop a voluntary code of practice for the health sector, be given time to work.

Information technology and telemedicine

The House of Representatives Standing Committee on Family and Community Affairs is conducting two Inquiries which address or raise privacy issues in the health sector. The Commissioner made combined submissions to the Inquiry into Health Information Management and Telemedicine and the Inquiry into Concession Card Availability and Eligibility. The first Inquiry is looking at the potential of developments in information management and information technology in the health sector to improve health care delivery and to increase Australia's international competitiveness. Its terms of reference include: *the ethical, privacy and legal issues which may arise with wide application of this technology and transfer of confidential patient information.*

The Commissioner's submission drew attention to the pressure advances in information and communications technology placed on traditional notions of, and mechanisms of ensuring, "confidentiality" of personal health information. The Commissioner particularly noted the increased demand for secondary uses of health information.

He argued that in this environment privacy will be best protected if:

- consent is the usual basis for disclosures. If public interest arguments are put in favour of release of information without consent, this should only occur after there has been informed, community wide debate and there should be legally binding and detailed safeguards;
- people have an enforceable right of access to their own health information; and
- there is increased openness about who will have access to health information and circumstances in which this might occur.

He also raised the need for adequate consideration of security and audit controls, avenues of complaint about misuse of health information and penalties for misuse of information.

Coordinated care trials

The Commissioner has been consulted by the Department of Health and Family Services about trial projects that aim to coordinate the delivery of health services to people who have a continuing need for high level service. All twelve trials are being conducted on the basis of informed consent, so that

the uses and disclosure of personal information involved are consistent with the Information Privacy Principles in the Privacy Act. However, to deliver coordinated care would mean the centralisation of health related information that is currently held in separate locations. If the trials, scheduled to finish in 1999, are successful it is likely that measures will be considered to extend care coordination more broadly throughout the community, and not necessarily on the basis of consent. This would obviously raise significant privacy issues. The Commissioner will continue to monitor developments and argue for strong privacy protections in this area.

Disclosure of detailed medical records to private health funds

Early in 1997, the media reported the Commissioner's concerns about hospitals and doctors disclosing detailed patient records to health funds in the course of audits or contractual disputes. In June 1997, the Commissioner issued a statement outlining her concerns about this issue. There is some confusion about whether these disclosures are being made on the basis of statutory authority, contractual obligations or patient consent. While at least one fund has confirmed that the patient's consent will be sought, it appears that other funds may interpret "consent" to include a "general authority to disclose" obtained on forms signed by all fund members. The Commissioner believes that a fund member's general consent for disclosure of their detailed medical record in unspecified circumstances, as a condition of membership, does not meet the test of "free and informed consent". Balancing the interests of funds in uncovering fraud against intrusion into the personal privacy of fund members is difficult. The Commissioner invites serious public discussion on the circumstances in which health funds need to have access to medical records containing detailed and sensitive information. If there are such cases, guidelines should be drawn up with appropriate safeguards to minimise the privacy intrusion involved.

Encryption

A meeting of the Organisation for Economic Development Group of Experts on Security, Confidentiality and Privacy in the Global Information Infrastructure was held in Paris in January 1997. The meeting finalised cryptography policy guidelines for approval by the Organisation for Economic Development Council. Australia, represented by the Attorney-General's Department, has been chairing the Committee. The Commissioner has been closely involved in ensuring that privacy rights are properly balanced against law enforcement interests, which seek access to encrypted communications for intelligence and investigative purposes. Privacy branch staff attended a briefing by a United States Government delegation on the Clinton administration's approach. This subject will require close monitoring and further work in 1997.

Camera surveillance in public places

This issue continues to attract a great deal of attention. The Commissioner gave evidence on 2 September 1996 to an Australian Capital Territory Assembly Committee which was considering a proposal for cameras in the centre of Canberra. The Committee's final report advised against the installation of cameras at this stage. Mr Nigel Waters, Head Privacy Branch, has continued to give a number of media interviews about the paper on street surveillance and privacy that he delivered last year to a New Zealand conference.

Telecommunications legislation

The Government's decision not to extend privacy laws to the private sector increases the significance of the package of post-1997 telecommunications regulatory measures recently passed by both houses of Parliament. The measures include significant new consumer protections, notably the provision for codes of conduct to be established in the telecommunications sector which deal with a range of

issues, including privacy. While the codes are voluntary in the first instance, failure to observe a code, or failure to develop a code in an area where one is considered warranted, could result in the Australian Communications Authority issuing a legally binding standard. The Commissioner must be consulted in relation to any privacy codes.

From a privacy perspective, among the more controversial aspects of the new legislation are provisions designed to allow disclosure of personal information by carriers and service providers to law enforcement and public revenue protection authorities. While the Telecommunications Act 1991 had provisions allowing such disclosures under certain circumstances, the new legislation allows disclosures where the requesting authority certifies it is necessary for the purpose of law enforcement or public revenue protection. The Commissioner expressed concerns about this shift in the onus of decisionmaking away from the holder of the information to the body requesting the information.

The “certification scheme” for law enforcement/public revenue protection disclosures has a range of safeguards. For example, it establishes a new role for the Commissioner monitoring records made and kept under the scheme. The form of certification itself must be determined by the Australian Communications Authority in consultation with the Commissioner.

Another area of potential concern was the way the legislation dealt with ‘content’ of communications information. The Privacy Commissioner drew attention to the fact that, unless modified, the proposed legislation might create a regime for the use and disclosure of certain types of content information, such as e-mail messages transmitted over the Internet, or messages left in paging system databanks, from the regime existing under the *Telecommunications (Interception) Act 1979*. An amendment was subsequently made to the Bill and it appears to have partially resolved this anomaly.

Amendments reflecting privacy principles were made to a wide range of other provisions of the draft Bills. Throughout the course of the legislation’s development, the Department of Communications and the Arts regularly consulted the Privacy Commissioner’s office. In January 1997, the Commissioner was invited to appear before the Senate Committee Inquiry into the Telecom-Telecommunications Bill. As a result, the Department of Communications and the Arts was requested to meet with the Commissioner to resolve outstanding privacy considerations.

Privacy implications of the Financial Systems Inquiry (Wallis Inquiry)

During January 1997, the Commissioner made a submission to the Financial System Inquiry (the Wallis Inquiry), followed up by discussions with Inquiry staff. Among other things, the submission argued that a “positive reporting” regime (a form of continual financial surveillance) would disadvantage consumers. In contrast to this, the finance sector ran a strong campaign in its favour. “Positive reporting” would involve the centralised collection and reporting of information, including all known details of an individual’s credit commitments, and would include details of payments made each month, the balance owing on each account and its status. Parliament rejected arguments for “positive reporting” in 1990, during debates about extending the Privacy Act to cover consumer credit reporting activities.

The Wallis Inquiry report was released in April 1997. Recommendation 99 supports the establishment of a working party comprising representatives of consumer groups, privacy advocates, the financial services industry and credit reference associations to review the credit provisions of the Privacy Act. Recommendation 100 seeks to facilitate information sharing between entities within corporations, and Recommendation 101 puts forward a number of principles to be considered in the expected extension of the Privacy Act to cover the private sector. The report was written at a time when it was widely expected that there would be an extension of privacy controls to the private sector.

Genetic testing and privacy

In September 1996, the Commissioner, released a paper on the privacy implications of genetic testing. The previous government asked the Commissioner to prepare the paper as part of its response to *Genetic Manipulation: the threat or the glory?*, a report of the House of Representatives Standing Committee on Industry, Science and Technology. The Commissioner's information paper attracted considerable media attention and has been frequently referred to in the continuing public debate on these issues. The Privacy Commissioner's current work on a self-regulatory privacy scheme for the private sector may provide a framework for further consideration of genetics and information privacy.

Intergovernment liaison

The Commissioner and staff participated in a number of meetings of state and territory governments and international counterparts. These meetings ensure that the office keeps informed about parallel developments and issues, and helps to promote adoption of privacy principles in the wider community.

Education and promotion

Private sector

The Compliance section held a number of training seminars during the year for private sector companies in regional centres on complying with the credit reporting and tax file number responsibilities under the Privacy Act. A training program was also prepared (on a partial cost recovery consultancy basis) for a market research company to: establish the specific privacy issues for the company; tailor a training program to meet those needs; and train a senior staff member to present the program on privacy issues.

Public sector

Services Delivery Agency

At the request of the Services Delivery Agency, which commenced operation on 1 May 1997, Privacy branch staff attended sessions in all capital cities (except Darwin) to identify privacy issues arising from the agency's creation, and to discuss the content and format of Agency training material on privacy issues. Privacy branch staff presented formal training sessions as part of each meeting, and then participated in the policy discussions which followed.

Privacy Contact Officers

Each agency that is subject to the Information Privacy Principles of the Privacy Act appoints an officer who is responsible for information privacy. Privacy Contact Officers can have a range of responsibilities, including to provide advice on privacy issues within the agency, develop manuals and procedures, provide training and to ensure that agencies comply with the Privacy Act. At present, there are 130 Privacy Contact Officers, at head office level, representing Federal and Australian Capital Territory agencies. They form part of a network which meets regularly to exchange information and training ideas. The Privacy branch organised three Privacy Contact Officer Network meetings in the past reporting year, and prepared and distributed the *Privacy Link* newsletter to network members.

Plain English guidelines

On 13 November 1996, the Commissioner launched *Plain English Guidelines to Information Privacy Principles 8-11*. These principles govern the use and disclosure of information by government agencies and, over the years, they have generated much of the advising work of the Privacy branch.

Aboriginal and Torres Strait Islander Privacy Awareness project

As a result of a consultant's report prepared for the Commissioner, workshops were held with staff of federal departments in Alice Springs and Darwin to discuss privacy issues affecting Indigenous clients and to develop the basis for draft guidelines on these issues. The next stage of the project, scheduled for August 1997, is to conduct consultative meetings or workshops with Indigenous people and federal organisations in the Northern Territory to finalise the guidelines. These will be included in the National Community Education Program materials to train Aboriginal and Torres Strait Islander peoples in their rights. They will also be offered for adoption as internal procedural guidelines by federal agencies.

Privacy Advisory Committee

The Privacy Advisory Committee is a statutory body set up under the Privacy Act to advise the Commissioner and to assist with community education and the development of guidelines. The Act specifies that it must comprise representatives from various community sectors, including trade unions, civil liberties, information technology, social welfare and public or private sector management. The Committee met three times during the year. The civil liberties and information technology positions were vacant at the end of the reporting year, pending a decision on replacements by the Attorney-General.

Publications

Publications produced during 1996-97 are listed below.

Information Sheet 2 Privacy Protection in Australia, August 1996 [IS 2]

Information Sheet 3 The European Data Protection Directive, December 1996 [IS 3]

Information Sheet 4 Principles for good privacy practice in your business - An introduction, May 1997 [IS 4]

Information Sheet 5 Principles for good privacy practice in your business - Data collection and quality, May 1997 [IS 5]

Information Sheet 6 Principles for good privacy practice in your business - Access and correction, May 1997 [IS 6]

Information Sheet 7 Principles for good privacy practice in your business - Security, May 1997 [IS 7]

Information Sheet 8 Principles for good privacy practice in your business - Customer notification and consent, May 1997 [IS 8]

Plain English Guidelines to Information Privacy Principles 8-11 Advice to Agencies about using and disclosing Personal Information, November 1996 [GL 12]

Response to discussion paper issued by the Attorney-General, *Privacy Protection in the Private Sector*, December 1996 [SUB 15]

Privacy Commissioner's response to the report by the Administrative Review Council into the contracting out of government services, April 1997 [SUB 21]

Report of an Investigation: Loss of personal information contained on hard disk drives stolen from the Callam Offices, Woden: ACT Government Service - Family Services, August 1996 [IR 6]

Determination 1997 No 1 of the Privacy Act 1988, section.11B(1)(b)(v)(B), concerning assignees. Reasons for Determination [CD1997-1]

Financial System Inquiry (Wallis Inquiry), Submissions, September 1996 and January 1997 [SUB 18]

The Privacy Implications of Genetic Testing Information Paper No. 5, September 1996 (\$12.00) [IP 5]

House of Representatives Standing Committee on Family and Community Affairs, Inquiry into Health Information Management and Telemedicine, Submission, September 1996 [SUB 16]

House of Representatives Standing Committee on Family and Community Affairs, Inquiries into: Health Information Management and Telemedicine; and Concession Card Availability and Eligibility for Concessions. Supplementary Submission, October 1996 [SUB 17]

Inquiry into amendments to the *Health Insurance Amendment Bill (No.2) 1996* proposed by Senator Neal - First Submission, February 1997 [SUB 19]

Inquiry into amendments to the *Health Insurance Amendment Bill (No.2) 1996* proposed by Senator Neal - Second Submission, April 1997 [SUB 20]

Monitoring the Commonwealth's data-matching program

One of the functions of the Information Technology Standards Section of the Privacy Branch, is to monitor compliance with the privacy safeguards of the *Data-matching Program (Assistance and Tax) Act 1990*. The safeguards are designed to ensure that individuals are not unfairly disadvantaged by the results of automated comparisons, given the considerable scope for error. The agencies participating in this legislated data-matching program are the Australian Taxation Office, Department of Employment, Education and Youth Affairs, Department of Health and Family Services, Department of Social Security and the Department of Veterans' Affairs. The Commonwealth Services Delivery Agency has recently been added to the legislation as a participating agency.

The Data-matching Program Act, which among other things set up the Data-Matching Agency within the Department of Social Security, was passed by Parliament in December 1990 and received Royal Assent on 23 January 1991. Since the commencement of the Act, its period of operation has been limited by a sunset clause, initially to take effect on 22 January 1993. Parliament has extended this sunset clause three times, with the most recent extension scheduled to take effect on 22 January 1999.

To make the Commonwealth Services Delivery Agency responsible for this function from 1 July 1997, the necessary legislative changes have already been passed by Parliament. In 1996-97, the

Matching Agency completed four matching cycles. In each of these cycles, 85 million records of individuals were matched. Of these there were 109 000 payment matches (individual's potentially receiving payments to which they weren't entitled); 758 000 income matches (individual's income too high to receive the payment; and 12 000 overpayment matches (individual receiving a benefit from one agency while owing a debt to another).

Payment matches are designed to check that individuals receive only the benefits to which they are entitled. For example an individual may not receive Austudy payments and unemployment benefits at the same time. Income matches check for discrepancies between the income an individual declares to an assistance agency and the income they declare to the Australian Taxation Office. The matches check that an individual's income is within the qualifying income limits. Overpayment matches allow assistance agencies to check if a person who has an outstanding debt with the agency is in receipt of a benefit with another agency.

After the three year period that ends on 30 June 1998, each agency participating in the program must provide their Minister with a report for presentation to Parliament. The required content of the reports is detailed in the Guidelines issued by the Commissioner under section 12 of the Data-matching Act.

The Privacy branch have continued to inspect the procedures and practices for investigating data-matching discrepancies in state, area and regional offices of the participating agencies. This year staff inspected 46 offices. The agencies have implemented changes in procedures recommended by the Commissioner.

Other monitoring activities undertaken this year include:

- checks of the computer code used in the matching program to ensure it complies with the matching rules specified in the Technical Standards Report; and
- inspections of data-matching cases dealt with under the voluntary data-matching guidelines issued by the Commissioner in the publication *Data-matching in Commonwealth Administration*.

Complaints handling and enquiries

During the year over 15 000 telephone and 499 written enquiries were received on issues ranging from general privacy concerns to specific complaints under the Privacy Act. Of the written enquiries, 95 were assessed as a potential "interference with privacy" (under section 13 of the Act) and were accepted as complaints.

Complaints by category were:

| | |
|--------------------------------|----|
| Credit reporting | 39 |
| Information Privacy Principles | 54 |
| Tax file number information | 1 |
| Spent convictions | 1 |
| Data-matching | 0 |

One hundred and fifty six complaints were resolved during the year, including a significant number which arose before the beginning of this reporting year. In all cases where a complaint was well founded, it was resolved by negotiation after the respondent conceded there had been a breach of the Act and undertook remedial action. The Commissioner was not required to exercise formal determination powers under section 52 during the reporting year.

During the year, compensation of \$52 139 was paid in 14 cases with amounts ranging from \$1 500 to \$10 000 for breaches of Information Privacy Principles, and up to \$1 000 for breaches of the credit reporting provisions of the Act. No compensation was paid in relation to complaints about tax file number information, spent convictions or data-matching.

Compliance activities

Audit program

Twenty eight formal audits were conducted: 11 on compliance with the Information Privacy Principles which involved 17 federal agencies; 14 on compliance with the credit reporting provisions; and three on contracted case managers. During the year, there were no audits undertaken on compliance with the tax file number information guidelines. Most of the credit information audits were conducted by consultants under the direction of the Privacy branch. A summary of the audits undertaken on government agencies, findings, recommendations and agency responses in relation to the Information Privacy Principle audits may be found in the *Ninth Annual Report on the Operation of the Privacy Act*.

To assist in improving compliance in the private sector, the Privacy branch held a number of credit and tax file number information seminars in regions throughout Australia. Seminars were conducted in Darwin and Alice Springs; Albany and Bunbury; Hobart and Launceston; Townsville and Rockhampton; Geelong; and Mount Gambier.

Investigations

A number of matters relating to Information Privacy Principles, consumer credit and tax file number information were investigated. The Commissioner was satisfied with action taken by the record keepers which included instituting procedures to prevent recurrence.

In August 1996, the Commissioner issued a report on a major investigation into the loss of personal information on hard disk drives stolen from the Family Services Bureau of the Australian Capital Territory Government Service. The investigation also included a review of the Local Area Network which held a backup of the data contained on the stolen hard disk drives. The Commissioner found that there was a lack of reasonable physical and logical computer security safeguards, in breach of Information Privacy Principle 4, in the Bureau.

Personal Information Digests

In accordance with Information Privacy Principle 5, the Commissioner arranged for the *1996 Federal and Australian Capital Territory Government Service Digests* to be published and distributed in the Commonwealth Manager's Toolbox. The digests contain: descriptions of the personal information held by the agencies covered by the Privacy Act; where it is held, why and who sees it; and how individuals can get access to records containing information about themselves. The 1996 Digests are expected to be included in the August 1997 issue of the Commonwealth Manager's Toolbox. Agencies hold copies of the records they provide to the Commissioner for inclusion in the Digests, and the Commissioner maintains a copy for people who don't have access to the Toolbox.

Chapter 7: Race Discrimination

“At some points throughout the year, it seemed as if the entire population was asking the question: Are we racist”?

Race Discrimination Commissioner

Ms Zita Antonios was appointed Race Discrimination Commissioner in September 1994. She has been closely involved for many years in a variety of roles dealing with issues involving race discrimination, particularly those affecting people from non-English speaking backgrounds. She holds a first class honours degree in social studies from the University of Sydney.

From 1990 to the end of 1994, Ms Antonios worked for the Immigration Review Tribunal (New South Wales) as a full time member hearing cases on appeal concerning decisions made in the Department of Immigration and Ethnic Affairs. Before that, she spent three years at the Human Rights and Equal Opportunity Commission, two years of which were in the position of Chief Conciliator.

Statement from the Commissioner

It has been a tough year for race relations in Australia and it has been the most challenging year of my term to date. In the past twelve months, racism remained a contentious political issue and race discrimination Australian style continued to dominate the landscape, featuring daily in local, national and even international media.

Our significant migrant presence, the policy of multiculturalism and the immigration intake, especially from Asia, came under attack. The vulnerability of native title, the forcible removal of Indigenous children, the continuing appalling indicators on Aboriginal health, Aboriginal imprisonment and the pressing need for reconciliation were all issues which confronted us directly this past year and forced us to ask questions about our history and identity.

At some points throughout the year, it seemed as if the entire population was asking the questions: Are we racist? If we are, how racist are we? Are we less racist than we used to be or more so? How do we compare with others? Surely others are more racist than we are?

Our preoccupation with relativity is notable and, I believe in some cases, quite worrying. There has been a tendency for some to be comfortable with, perhaps even accepting of, racism in Australia if it is possible to conclude that our racist behaviour is not as severe as others. This complacency is wrong. Comparing our situation with other countries is futile in shedding useful light on ourselves. We are not exonerated simply because others may be as racist as we are or even more so. A mature community looks at itself without inappropriate self flagellation, acknowledges what is not right according to its own values, and then takes the necessary and practical steps to achieve positive change.

Another preoccupation this year has been with numbers and the issue of just how many people are affected by racist behaviour. For various reasons, formal complaints statistics are notoriously unreliable indicators of the many forms of racism in our community (see the complaint handling section on page 33 for discussion). This has not prevented some people from using the statistics incorrectly to make direct links between the number of complaints, relative to the total population, and the extent or seriousness of the problem. It is clearly invalid to measure the worth of legislation simply by how frequently it is used. There are numerous examples of statutes invoked in only the rarest situation and we do not hear calls for their abolition. Legislation exists as a critical standard or

benchmark within our community. Laws send a powerful message about what we deem acceptable and unacceptable. We do not and should not measure harm or unacceptable behaviour only by the number of people affected. Rather, we must also evaluate the intrinsic harm done to each person. To do otherwise is to believe wrongly that it is no cause for grief at all if, for example, only thirty lives are lost in floods in rural Australia because, on the scale of disasters, there were thousands lost in Bangladeshi floods.

Another trend this year has been the rise in telephone calls and personal approaches I have received from Australians reporting their fears and anxieties as a result of their own or their children's direct experiences of overt racist behaviour. Many others have not experienced racism themselves but have contacted me to speak of abhorrent behaviour they had witnessed. For some, it was impossible to pursue a remedy because they could not identify the perpetrator. Others who could identify a respondent chose to take no action with the police or the Commission for fear of further victimisation or a lack of confidence in themselves in handling complaints mechanisms. However, the overwhelming majority were less concerned with remedies than with the very strong need for others to simply believe that the behaviour had occurred and to be sure that someone who understood knew about it. Racism is inevitably characterised by denial and the denial, either individually or collectively, only serves to compound the hurt.

If there was confusion, hurt and anger from those who spoke to me of their racist experiences, these emotions seemed to be common chords across the community in general. According to a number of social surveys this year, the extent of this generalised grievance is strong and perhaps underestimated. Substantial changes have indeed taken place in the last twenty years. Unemployment is high. Older Australians report feelings of loss due to the rapid pace of economic, social and technological change. For rural people there have been the additional factors of withdrawal of regional services, drought and flood. Young people report they are confused, uncertain, even disillusioned about the future. History shows that this is fertile ground to sow the seeds of prejudice and racial hatred.

Within this uncertainty, confusion and anger, it is easy to perpetuate misinformation and to use racist stereotyping to scapegoat those we fear are 'too' different, those who stand out. Clearly, it is not difference itself which divides us. It is our attitude to difference. Those who fear or loathe difference fail to see the many positives diversity has given us and can continue to give.

It is not uncommon to hear "I cannot be a racist because I believe that everyone should be treated exactly the same". As I said last year, treating people the same does not mean one is being fair. The facts of systemic discrimination experienced by Aboriginal, refugee and certain non-English speaking background Australians are indisputable. Addressing the disadvantage requires positive targeted action. When this action occurs, it is disturbing that a number of Australians still persist in denying reality and defining such measures as privileges or unfair advantages.

For the rational among us, such refusal to face the facts can be extremely frustrating. Since racism is inherently irrational, to tackle it with logic and facts is essential but limited in its impact. Such strategies must be bolstered by action which moves people emotionally and triggers recognition that any negative attitudes to 'difference' are far outweighed by our substantial common attributes and aspirations.

There has been much this past year to provoke those who reject racial discrimination in all of its myriad forms. No matter how strongly provoked we are, there is no justification for personal attacks, threats, verbal or physical abuse of those who disagree with us. In countering racist speech, we must focus on the speech not the speaker. It is entirely counter productive and morally unacceptable to condemn those who hold objectionable views because of their lack of education,

poor literacy skills, gender, occupation or socio-economic status. Nothing can be gained from such encounters but much ground can be lost.

With the indefatigable support of the staff of the Race Discrimination section and the invaluable cooperation and goodwill of many others within and outside the Commission, I am pleased to report some significant achievements this year. The summary of our work outlined below speaks for itself and I extend my thanks and appreciation to all who contributed to the results which are all the more satisfying given the sometimes hostile and even threatening environment in which we have had to work recently.

In the face of these issues, it has been heartening to watch many thousands of Australians around the country this year speaking out against racism through well attended, peaceful public rallies, forming new community anti-racism organisations and networks, contributing support to anti-racist strategies initiated by schools and universities, religious groups, non-government organisations and governments at various levels.

It has been particularly pleasing to see the strong anti-racist leadership by the business sector this year, but a note of caution is warranted. There is a high risk of a detrimental impact on Australia's overseas economic interests given recent events, but we must strive at all times to highlight the moral imperatives in rejecting racism rather than focus solely on the financial costs. Our message is significantly devalued if the moral reasons for our actions are unclear or unstated and our motives are defined by others as being driven merely by self interest.

As Australians we have been proud of our commitment to respect and accept all regardless of race and ethnicity. Like many other nations of the world, we signed the Convention on the Elimination of All Forms of Racial Discrimination, established after the atrocities of the Second World War. It is time now to reaffirm our commitment to the convention and to our domestic law, the Racial Discrimination Act, by the actions we take and the values we espouse. With our enviable democratic system and diversity, we can keep on building a great nation. We simply need the will, the honesty and the courage to make it happen.

Research and policy

The Race Discrimination Commissioner has the functions of developing, conducting and fostering research programs to promote the provisions and purpose of the Racial Discrimination Act.

This year, the Commissioner made public information and education work a high priority and this inevitably diminished the resources available for research and policy. Nevertheless, some significant results have been achieved, and the following sets out progress in key areas. In addition to these, staff of the Race Discrimination section provided policy advice and support to other sections of the Commission on a range of matters including the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. The Commissioner also worked collaboratively with government departments and organisations such as the Australian Bureau of Statistics, the Australian Defence Force, the Australian Sports Commission, the National Police Ethnic Advisory Bureau and the former Bureau of Immigration, Multiculturalism and Population Research.

The Commissioner was also represented this year on a number of interdepartmental committees, including the Department of Immigration and Multicultural Affairs's Interdepartmental Working Group on Anti-Racism Education, its Interdepartmental Access and Equity Committee and the New South Wales Ethnic Affairs Commission's Interdepartmental Committee on Racism.

Alcohol

The Commissioner's 1995 *Alcohol Report* affirmed the right of Aboriginal communities to demand restrictions on the distribution of alcohol for the benefit of their communities. The Commissioner continued this year to promote restrictions on the sale of alcohol where it was the expressed wish of Aboriginal communities, and to monitor the operation of 'special measures' certificates in a number of communities. The results were highly successful.

Curtain Springs

In December 1996, the communities of the Pitjantjarra homelands and the proprietors of the Curtin Springs Roadhouse reached an historical agreement restricting the sale of alcohol to Indigenous people. The agreement, for a trial period of twelve months, was personally conciliated by the Commissioner who, soon after, issued the communities with special measures certificates. Within weeks, the Northern Territory Liquor Commissioner amalgamated most terms of the agreement into conditions of the licence granted to the roadhouse. Since the trial began in January 1997, there have been reports of a significant reduction in problems caused by alcohol, including reductions in deaths by road accidents, domestic violence and arrests of Indigenous people in the area. The Commissioner continues to work cooperatively with all the parties to develop effective monitoring mechanisms on the use of special measures certificates and alcohol agreements.

Wiluna

The Aboriginal community in Wiluna, Western Australia has reported excellent results at the end of the first year of restricted alcohol distribution, sanctioned by the special measures certificate. Compared with the same period in 1996, the 1997 figures indicate a 71 percent reduction in the number of Indigenous people charged with assault; a 41 percent reduction in the number of Indigenous people detained for alcohol related incidents; and a 34.6 percent reduction in the number of Indigenous people seen for alcohol related trauma. Given these results, the community has asked that the measures be continued for another year and this has been granted.

Measures to restrict the sale of alcohol can be enforced in a potentially discriminatory, punitive and inflammatory manner if there is no consultation with, or direct involvement of, Aboriginal people in the development of measures. Therefore, following consultation with the Commissioner, it is pleasing to report, for example, the preventative steps taken by Melbourne City Council to develop a 'Strategy for Communications with Indigenous peoples within the City of Melbourne', in conjunction with the implementation of the *Consumption of Liquor on Roads and Public Places Local Law 1996*. The law will be monitored carefully in the next twelve months and reviewed in consultation with the local Indigenous community.

In Townsville, the Commission, in collaboration with the Queensland Anti-Discrimination Commission, brokered a meeting between relevant parties about the potential discriminatory impact of the City Council's Local Law 51 on the Indigenous people associated with Hanran Park. A key result was the joint agreement to a 12 point plan which included the employment of Aboriginal Liaison Officers and the building of diversionary centres.

Employment guidelines

Complaints related to employment continue to constitute the clear majority of formal race complaints. Moreover, there has been a dearth of information explaining both the rights and responsibilities of employers as set out by the Racial Discrimination Act. For this reason, the Commissioner this year continued to work on *Guidelines for Employers on the Racial Discrimination Act*. A working draft was produced and distributed to over 800 employer

organisations. The response so far has been very positive and written submissions have been received from a cross section of employer and other interested groups. The Commissioner also conducted a series of consultations across Australia with employer and other relevant organisations. In response to requests, further consultations on the guidelines and related issues for employer groups will be made. The final version is expected to be completed around October 1997.

The Racial Discrimination Act and native title

The Commissioner worked collaboratively with the native title section of the Commission on research and policy work relating to the significance of the Racial Discrimination Act in the proposed amendments to the *Native Title Act 1993*.

The public discussion of the High Court's *Wik* decision resulted in the Commissioner being inundated with requests for information about the relevance of the Racial Discrimination Act to the *Wik* decision and native title issues. Given these requests, and the Commission's statutory functions to promote an understanding and acceptance of the Racial Discrimination Act as well as compliance with its provisions, a booklet was produced called *The RDA and native title The implications of statutory extinguishment Some questions and answers*. All federal and state parliamentarians, relevant non-government organisations and individuals as requested, received a copy of the booklet. Two thousand copies have been distributed to date.

1996 State of the Nation

In the latter half of 1996, staff of the Race Discrimination section conducted extensive consultations throughout Australia with non-English speaking background communities. The feedback, especially from Australian Asian communities, was that despite experiences of racism on a daily basis, the majority of people do not lodge formal complaints. This is because they either do not know about the Racial Discrimination Act or do not understand how it operates. Those who do make complaints expressed concern about the difficulty involved in the process and the need for information that is clear, concise and avoids 'legalism'.

The 1996 *State of the Nation* report, which was tabled in Parliament in February 1997, briefly outlined the key findings of the consultations and made several recommendations for legislative amendments. The report contained a clear and concise explanation of the Racial Discrimination Act's complaints sections and provided a number of case studies which outlined the complaint handling process.

Community Development Employment Program

The Inquiry into the Community Development Employment Program continued this year, but the final report was delayed because of other urgent priorities and the need for further discussions with relevant stakeholders due to policy changes that occurred during the Inquiry.

The Inquiry was undertaken in response to Aboriginal and Torres Strait Islander community concern about alleged financial disadvantages experienced by participants in the Community Development Employment Program scheme, compared to other low income earners. The aim of the Inquiry is to examine this issue in light of the proscription of racial discrimination under the Racial Discrimination Act. The revised date of completion is December 1997.

Cross cultural training - best practice models

The Commissioner has been concerned about the need to develop standards in cross cultural training and for regular evaluation and monitoring. To address this, in November 1996, the Commissioner held a one day national conference in Sydney, 'The Uniqueness of Australian Cross Cultural Training Best Practice Models', attended by 120 professional practitioners, academics and anti-discrimination workers. Emeritus Professor Geert Hofstede from the Netherlands, an international expert in the area, was the keynote speaker.

Key results of this successful conference included proposals for strategies to assist national standards, the development of evaluation processes and the establishment of a national professional association of cross cultural trainers. Conference proceedings were distributed to all participants and other interested parties to contribute to the debate on cross cultural issues. A book on best practice models and the work of the conference is being finalised, including contributions from key speakers at the conference.

Recognition of overseas skills

The Commissioner continues to receive complaints claiming discrimination in the lack of recognition of overseas qualifications. There has been a constant need for a substantial and rigorous information base on which to address these issues within the Commission. Accordingly, the Commissioner this year entered into a partnership with the Committee for Economic Development in Australia and the Workplace Studies Centre of the Victoria University to study 'The Effectiveness of Reforms in the Recognition of Overseas Skills'. An application has been made to the Australian Research Council for additional funds to undertake the project which, if successful, will commence towards the end of 1997.

Filipino Women's Report

The Commissioner launched the publication *Violence against Filipino Women* at the New South Wales State Library in November 1996. The study, about the incidence of spousal homicide involving Filipino women as victims, was initiated by the Commissioner in 1994 in response to concerns expressed by Filipino women in Australia. Given the need for specialist criminological expertise, the study was passed on to the Institute of Criminology to prepare the final report using, among others, material gathered by the Commissioner.

The report looked carefully at individual case studies and also related them to the broader issues of sponsorship, migration and access to justice. The report highlighted the increasing role being played by the Internet, which now represents perhaps the most significant mechanism through which women, and particularly Filipino women, are marketed and exploited at the international level.

Mornington Island

In February 1997, the Queensland Government provided a 'Whole of Government' response to two reports published by the Commissioner, *Mornington* (1993) and the *Mornington Island Review Report* (1995). The Queensland Government took welcome action based on the report's recommendations. The key results include planning for a new hospital which will incorporate a culturally appropriate birthing centre; the provision of appropriate housing and schooling for those who live away from the main population centre of Gununa, and the successful training of Aboriginal Justices of the Peace on the Island. The Commissioner will continue discussions with the Queensland Government on a number of other issues yet to be addressed, including Island banking facilities and community policing.

Education and promotion

The Commissioner has the function of:

- promoting understanding and acceptance of and observing provisions of the Racial Discrimination Act; and
- developing, conducting and fostering educational programs and other programs to promote the provisions of the Act.

During the year, the Commissioner and her staff gave numerous formal speeches and informal presentations in a variety of settings, including conferences, seminars, meetings, symposiums, conventions, colloquiums, panels and specific training events (see Appendix 3 for a list of speeches given by the Commissioner during 1996-97). The Commissioner also gave countless interviews with the press and electronic media.

Racial hatred

Following the enactment of the Racial Hatred Act in late 1995, the Commissioner commenced planning for a national community education and public information strategy, which was implemented this reporting year. The aims were to:

- raise public awareness about rights and responsibilities under the racial hatred amendments in addition to promoting racial tolerance in the wider community; and
- address fears that racial hatred legislation constitutes a significant constraint on free speech.

Various sections of the community were targeted including those listed below.

Non-English speaking background communities

On 9 August 1996, the Hon Philip Ruddock, Minister for Immigration and Multicultural Affairs launched a national campaign, developed by the Commission's central office, to make members of Australia's ethnic minority communities more aware of their rights and responsibilities under the new amendments. The launch was supported by the production of information sheets in English and fourteen community languages (5 000 sheets for each language), and the training of community information and liaison representatives from the identified communities. Extensive press and radio coverage was conducted in the non-English media. One result of the campaign was an immediate increase in enquiries received by the Commission regarding the racial hatred legislation, specifically from people who could not speak English.

Aboriginal and Torres Strait Islander communities

Through the National Community Education Project conducted by the Aboriginal and Torres Strait Islander Social Justice section of the Commission, material was developed about racial hatred as part of a broader range produced for Indigenous communities about their human rights. Resources have been tailored to individual states, with a national video and training package also available.

The media and racial hatred

A campaign targeting the media about the racial hatred amendments and race related issues began in October 1996. *The Racial Hatred Act A guide for people working in the Australian media* was produced and 5 000 copies were distributed to individual media personnel and media outlets across

Australia. The guide details the specific responsibilities and exemptions under the amendments and it raises a number of broader issues relating to the reporting of race. The guide was used as the basis for a series of media briefings conducted by the Commissioner in Sydney, Canberra, Melbourne, Adelaide, Brisbane, Cairns and Perth. Over 100 journalists, senior editors, producers and media managers have attended briefings held so far, and as a result of the interest shown, the Commissioner has conducted a number of in house training sessions for individual media outlets.

The guide has also been extensively distributed to universities with communications courses to assist lecturers and trainee journalists. It was also distributed to participants of the annual conference of the Journalism Educators Association and it has been included in a CD-Rom on 'Racism and the media' produced by the Australian Centre for Independent Journalism.

The Commissioner continues to engage in extensive media and community liaison about the racial hatred amendments - giving interviews, preparing fact sheets, writing articles, delivering speeches and conducting seminars.

The general public: *Face the facts*

In response to the myths and misinformation about race related issues which have emerged so publicly during the last year, the Commissioner produced a booklet titled Face the facts Some questions and answers about immigration, refugees and Indigenous affairs. The aim of the booklet was to address common questions about these critical areas and to address the myths underpinning much of the increase in racial intolerance. The booklet was distributed to all federal and state parliamentarians, national media outlets, many community and non-governmental organisations and all secondary schools in Australia through the state and territory Departments of Education.

Face the facts has received extensive favourable media coverage and, from many accounts, it is playing an important role in refuting the sweeping generalisations and stereotypes being circulated by some this year. There have been numerous examples of how the booklet is being used in the community to tackle racist beliefs. These include a university in Western Australia reprinting 10 000 copies for distribution to all students on enrolment next year and a local government in Victoria deciding to issue a page of the document to all employees with each fortnightly payslip. An initial print run of 15 000 was exhausted within a few weeks, requiring two more reprints of 20 000 each. Fifty thousand copies have now been distributed.

Youth: *Takin' A Stand*

To counteract racist abuse in schools and highlight the rights and responsibilities of Australian youth, an eight page colour comic was designed and distributed nationally. The comic emphasized that racial abuse and harassment is not acceptable in schools and that children do not have to cope alone with racist abuse. One hundred thousand copies have initially been printed and distributed to schools and youth organisations throughout Australia. The comic was launched at JJ Cahill High School in Sydney with the support of the New South Wales Department of School Education, and sporting and entertainment personalities on 26 June 1997.

Youth: CD-Rom

The Commissioner contributed funding for the drafting of a component on the Racial Discrimination Act and the Racial Hatred Act to be included in the CD-Rom, 'The Making of Multicultural Australia', by the University of Technology, Sydney. The CD-Rom will be available to tertiary students throughout the country and covers the development of policies relating to multiculturalism and immigration.

Sport

With assistance from the Commissioner, the New South Wales Rugby League adopted rules which provide that players and officials can be disciplined for racial and religious vilification through the Judiciary Committee of the Board of Directors for the New South Wales Rugby League. This year, the Commissioner continued to work with the Victorian Equal Opportunity Commission in support of initiatives taken by the Australian Football League to combat racism. Discussions were also held with the National Institute of Sport about the possibility of developing similar initiatives to address racism across all sports and the possibility, in the next year, of preparing a set of anti-racism guidelines in sport.

Police service: dealing with racist violence

The Commissioner provided assistance to the New South Wales Police Service this year to develop training modules for new recruits and in-service trainees at the Police Academy. These modules are based on the Commission's 'Dealing with Racist Violence Kit'. The kit was updated in response to calls from organisations for materials to assist them when dealing with victims of racist violence.

Community harmony project

Countering racism through projects that promote community harmony and positive ways of promoting social cohesion are critically important. To this end, the Commissioner has entered into a partnership with the Ethnic Affairs Commission of New South Wales to fund a community harmony project that will provide a model for similar projects in other parts of Australia. Community groups and organisations, the media and education institutions were invited to submit proposals for consideration and a decision is expected by October 1997.

Anti-racism education campaign

The Race Discrimination Commissioner, on behalf of the Commission, prepared a comprehensive submission to the Minister for Immigration, Multiculturalism and Ethnic Affairs for funding as part of the Government's proposed national anti-racism education program.

Legislative reform and assessment

Review of the Racial Discrimination Act

The review of the Racial Discrimination Act, initiated by the Commissioner on the Act's twentieth anniversary, continues. The review was prompted by the fact that, while ad hoc amendments have been made to the Act, a comprehensive evaluation of its effectiveness has not been undertaken. The aim is to make the Racial Discrimination Act a more workable, effective and accessible means of challenging racial discrimination in contemporary Australia.

Extensive consultations with communities commenced in July 1996. These were conducted in every state and territory including regional, urban and remote areas. There were thirty consultations in all. The results of the consultations were twofold. They provided useful feedback to the review and also provided an opportunity to conduct considerable community education about the Racial Discrimination Act at an important time in race relations in Australia. The feedback received was consistent across all communities and focussed mostly on access and operational issues in relation to the Act and the complaint handling process.

As part of the review, the Commission also called for public submissions on the Racial Discrimination Act, through advertisements in national, state, territory and targeted ethnic and Indigenous newspapers. Eighty five submissions were received. As well as canvassing the views of legal practitioners, academics and those in public policy, the submission process provided an opportunity for organisations, representing our core respondent groups, to raise issues of compliance and elaborate on the changes which they believe could provide a more workable piece of legislation.

Government submissions and hearings

Submissions on legislative reform made specifically by the Commissioner in this reporting year include submissions to the Northern Territory Liquor Commission about the *Northern Territory Liquor Act 1978*; the Senate Legal and Constitutional Legislation Committee's Inquiry into the *Hindmarsh Island Bridge Bill 1996*; and the Senate Legal and Constitutional Legislation Committee's Inquiry into the *Migration Legislation Amendment Bill No. 3 1996*.

Chapter 8: Sex Discrimination

“I look forward to meeting the challenge of continuing to provide an effective service to the community”.

Acting Sex Discrimination Commissioner

Moira Scollay is currently Acting Sex Discrimination Commissioner ending 1 March 1998. She is also the Privacy Commissioner.

Ms Scollay has extensive experience as a senior federal public servant, most recently as Second Commissioner of Taxation. Prior to her period at the Tax Office, Ms Scollay held senior positions at the Public Service Board and the Australian Institute of Aboriginal and Torres Strait Islander Studies. Her early career was in the academic sector, where she held positions at the University of Canberra and the Australian National University.

Ms Scollay has tertiary qualifications in the Arts, Education and Executive Management. This includes a Bachelor of Arts and LittB from the Australian National University; a DipEd (CCAEE); and a Graduate Diploma in Executive Management (Qld).

Statement from the Acting Commissioner

I was appointed Acting Sex Discrimination Commissioner for three months on 2 June 1997, which has since been extended to 1 March 1998. This followed the resignation of Ms Sue Walpole who was the Commissioner from February 1993 to February 1997. My role as Acting Sex Discrimination Commissioner is in addition to my substantive position as Privacy Commissioner which I took up in February 1997.

I would in the first instance like to pay tribute to the work done by Ms Walpole as Sex Discrimination Commissioner. Ms Walpole and her staff worked tirelessly to achieve significant outcomes for women, particularly in the area of industrial relations. Reports such as the *Flexible Working Hours* report, *Stretching flexibility Enterprise bargaining, women workers and changes to working hours*, *Glass Ceilings and Sticky Floors Barriers to women working in the Australian finance industry*, all published last year, are examples of the high quality research projects undertaken by Ms Walpole.

Ms Walpole's understanding of the vital role employers play in eliminating discrimination and harassment from the workplace, resulted in *Sexual Harassment A Code of Conduct*. This has been one of the most popular publications ever produced by the Commission.

The improved complaint handling processes within the Commission and the complaints reporting mechanisms now in place owe, much to Sue's commitment in ensuring a link between complaints received and actions taken by the Commission in addressing discrimination issues. Another initiative was a video she commissioned to provide information to Aboriginal and Torres Strait Islander women about how they can access the provisions of the Sex Discrimination Act. One hundred thousand pamphlets about women's rights under the Sex Discrimination Act were also produced and distributed in four community languages.

Ms Walpole's energy and commitment were much appreciated by both the Commission and the community generally, and I wish her well in her new endeavours.

Since being appointed as the Acting Sex Discrimination Commissioner, I have continued to address the issues of discrimination and harassment highlighted by Ms Walpole during her term as Commissioner.

I look forward to meeting the challenge of continuing to provide an effective service to the community, particularly in the areas of part time and casual work and in the provision of services to rural women, Indigenous women, and women from non-English speaking backgrounds.

Education and promotion

Aboriginal and Torres Strait Islander Women's Project

A review of complaints received under the Sex Discrimination Act revealed a very low number of complaints from Aboriginal and Torres Strait Islander women. To find out the reasons for the low level of complaints, the Commissioner set up a reference group of women from the Aboriginal and Torres Strait Islander communities, to report back to the Commission.

The group looked at ways in which the Sex Discrimination Act could assist Indigenous women in addressing discrimination in the workplace and other areas. The result of the reference group's work was the production of a video explaining unlawful sex discrimination and the role of the Act. The video will be released in October 1997. Education sessions on the role the Act can play in the elimination of discrimination for Aboriginal and Torres Strait Islander women will also be held.

Enterprise Bargaining Manual

A manual on enterprise bargaining issues for women has been produced to assist managers, workers and trade unions. The manual offers practical suggestions on how to develop both non-discriminatory workplace agreements and agreements that will help workers balance their working life with their family responsibilities.

Superannuation

The Sex Discrimination section, over the last two years, has been examining the role that the Sex Discrimination Act can play in removing barriers to women's longer term economic independence. Access to non-discriminatory superannuation is a key part of women's economic independence, and the section has been working with industry bodies to eliminate unlawful discrimination and improve

women's access to superannuation. A number of conference papers have been given in the last year and research into areas such as actuarial data continues to be a focus for the section.

A brochure explaining the superannuation options for women will be produced in the 1997-98 financial year, so that legislative changes to superannuation late in 1996-97 can be analysed for their impact on women.

Fair Enough

The training package 'Fair Enough' has been adapted for one off training programs in particular work environments. For example, the Sex Discrimination section made specific adaptations to the training package to develop a program for Defence Force lawyers. Advice is also provided to organisations on the generic use of the training package.

Pregnancy brochure

A brochure titled *The Sex Discrimination Act and the rights of pregnant workers* has been published to provide a basic guide for women on their rights as pregnant workers. This follows an increase in the number of complaints of discrimination brought by pregnant women under the Sex Discrimination Act. The brochure explains the discrimination provisions and complaint handling mechanisms in the Sex Discrimination Act relating to pregnancy and potential pregnancy discrimination, and workers' rights to maternity leave. The brochure has been translated into Chinese, Arabic and Vietnamese.

Agender

The fourth newsletter from the Commissioner came out in November 1996. This edition concentrated on the issue of part time and casual work. The fifth newsletter will be produced after the appointment of the new Commissioner.

Training for Australian Defence Force legal officers

In May 1997, the Sex Discrimination section provided a two day training course in Sydney for Australian Defence Force lawyers on the Sex Discrimination Act and its implications for the Australian Defence Force. Staff from the Commission's Legal and Complaint handling sections assisted with the training.

The course resulted from a request by the new Defence Equity Organisation of the Australian Defence Force for training to assist Australian Defence Force lawyers when giving legal advice in discrimination complaints and to aim for early resolution, rather than escalation of, the complaint.

Twenty-one legal officers from all three defence services and the Director of the Equity Organisation attended the courses which covered: the international context of Australian anti-discrimination law; the Sex Discrimination Act, including its early history and subsequent amendments; and the complaint process. Activities included group work on sexual harassment and indirect discrimination case studies, and a role play of a conciliation conference.

Feedback from the participants was very positive. Many legal officers applied for the course and not all were selected by the Defence Force to attend. It seems likely there will be another course to accommodate those interested.

Research and policy

The Commissioner undertakes research to promote the objects of the Sex Discrimination Act. During 1996-97, the Commissioner focused on part time and casual work.

Part time and Casual Work Project

The Commissioner has selected Part time and Casual Work as its key project area for 1997-98. This is in response to the increased participation of women in the Australian labour market, the huge growth in part time and casual employment and the increasing evidence that this work option masks significant levels of underemployment of women. The Commissioner expects to investigate the issues listed below.

- 1 To what extent the full time/part time segmentation is a division between primary labour market jobs (high waged, decent conditions, skills intensive and good career prospects) and secondary labour market jobs (low skilled, low waged, poor conditions and limited career prospects).
- 2 To what extent the growth in part time and casual employment is due to demand side factors (such as employers' desire for workforce flexibility) and to supply side factors (such as women's desire to combine work and family responsibilities).
- 3 To what extent part time and casual workers receive fair access to and benefits from government programs and other entitlements (child care, labour market programs and superannuation).
- 4 What role sex discrimination legislation can play in ensuring fair treatment for part time and casual workers.

The Commissioner intends to research these issues by investigation of: industries and occupations where part time and casual work predominates; analysis of trends in the labour market; the treatment of these workers in other jurisdictions; and case/decisions at both national and international level. The Commissioner will examine the impact of the Workplace Relations Act and test case decisions on conditions of part time and casual workers in areas such as child care, and the interaction of tax, social security, superannuation and other laws to ensure there is no systemic bias against these workers. It will aim to identify the possible role, benefits and limitations of anti-discrimination legislation in addressing these issues.

The Commissioner is conducting a study, to be completed by June 1998, of the impact of contracting out/national competition policy on the growth of casual and part time work in the government sector. Investigation of women's experiences in part time and casual work is conducted through focus groups and in consultation with organisations and individuals who are undertaking similar or related work. A literature review and annotated bibliography on the project is ongoing and should be completed by June 1998.

Tenth Anniversary Projects

To mark the 10th anniversary of the Sex Discrimination Act in 1994, a number of joint projects were announced. These include the following two projects.

Equality for women in finance sector

The Commission and Westpac made a joint commitment to examine the status of women in the finance sector. The report by Leonie Still *Glass Ceilings and Sticky Floors Barriers to the careers of women in the Australian finance industry* documents the experiences of women working in the finance sector. The report found that women are concentrated in part time, lower grade work with limited opportunities for training and advancement. Despite massive restructuring over the last few years, career and promotional opportunities continue to reflect traditional male models.

Flexible working hours project

This project considered the effect of enterprise bargaining and the introduction of flexible working hours on women workers. A steering group was established to oversee the research and consultant Sara Charlesworth was commissioned to undertake the project.

The project's report, *Stretching Flexibility Enterprise bargaining, women workers and changes to working hours*, was launched jointly by the Commission and the Australian Council of Trade Unions in November 1996.

The research examines six case studies in a number of industries: finance; food processing; personal goods retailing; community services; and textile manufacturing. The case studies look at the enterprise bargaining process, including consultation with women workers, the outcomes of negotiations, and implementation of agreements. A number of recommendations came out of the report, directed at the Government, the Australian Council of Trade Unions, the Industrial Relations Commission and the Commission.

IVF

As a result of recent Commission and Queensland Equal Opportunity Tribunal decisions, a paper was prepared for Commissioners on the implications of marital status discrimination and IVF procedures.

New Zealand exchange

A senior policy officer was on exchange at the New Zealand Human Rights Commission for three months from May 1997. The officer was involved in two major projects outlined below.

Consistency 2000

Consistency 2000 is an examination by the Human Rights Commission of all New Zealand's legislation and the policies and practices of the New Zealand Government. It aims to identify and determine conflicts with the *Human Rights Act 1993* and is a statutory duty required by the Act. The New Zealand Human Rights Commission must present a report on the results of this examination to the Minister of Justice by 31 December 1998.

The exchange officer is responsible for the identification of inconsistencies on the grounds of sex, marital status, religious belief, ethical belief, ethnic origin, disability, age, political opinion, employment status, family status and sexual orientation in relation to income support and the development of broader policy for the Human Rights Commission. The officer is also undertaking project work on the impact of micro-economic reform on women's employment and service delivery to women.

The objectives of this New Zealand based project are to:

- 1 Identify significant changes in employment policy and service delivery, caused by competitive tendering and privatisation of employment services (labour market programs) and community services (for example, home care services), where direct and potential indirect sex discrimination is apparent.
- 2 Examine the impact on employment conditions, training and morale of women employees in these two industries as a result of contracting out. In particular, assess the extent to which policy or service delivery changes are likely to contribute to labour market changes which encourage greater casualisation or the extension of part time work.
- 3 Assess the likely impact on access to and the quality of these services for women, recognising the specific impact on women from non-English speaking backgrounds, and in particular the implications for women who are employed on a casual or part time basis.
- 4 Assess the links between greater casualisation of employment in these service areas and the quality of services received by women.
- 5 Produce a number of case studies of experiences in New Zealand for inclusion in the Part time and Casual Work Project.

The results of this research and the case studies will be incorporated into the Commissioner's broader project on part time and casual work.

Sport

Discrimination in sport is apparent in a number of areas, such as access to sporting facilities by women, and, more generally, in the under representation of women in sport. Exemptions in the Sex Discrimination Act make some issues of discrimination lawful, but the Commissioner continues to work with women's sports groups to promote equality in sport. Policy advice has been prepared for the Women and Sport Unit of the Australian Sports Commission on complex and technical issues of sex discrimination and sexual harassment.

Notions of dependency in government policy and practice

In September 1996, a seminar, devised by the Commission and the Department of Social Security and sponsored by the Institute of Public Administration, was held on dependency notions in sex discrimination. Papers were presented by the Commission, the Association of Superannuation Funds of Australia, the Economic Policy Advisory Committee, the Attorney-General's Department, the Department of Social Security and the Department of Employment, Education and Training. These papers dealt with notions of dependency which have informed policy development and which may constitute marital status discrimination and indirect sex discrimination under the Sex Discrimination Act. Focus was particularly given to the social security and student assistance schemes, taxation and superannuation portfolio areas. Papers were distributed to all participants and on request. Participants, mainly from federal agencies, were encouraged to identify such notions in the legislation, policy and practices they administer and work towards consistency across portfolio areas.

A steering committee established by the Minister for Social Security has been overseeing a review of notions of dependency within the Social Security Act. This was recommended by the Steering Committee which reviewed the operation of subsection 40(2) and (3) of the Sex Discrimination Act. The Minister for Social Security and the Attorney-General are due to report to Parliament on this issue in June 1997. The Ministers will also be recommending appropriate action regarding paragraph 40(2)(h) of the Sex Discrimination Act.

Legislative review

The Commissioner may review proposed and existing legislation to assess consistency with the provisions of the Sex Discrimination Act, and recommend to the Attorney-General improvements to federal legislation, policy and practices in addressing discrimination issues.

Social Security Act

See section on notions of dependency in government policy and practice above.

Senate Inquiry into the Workplace Relations Bill

The Sex Discrimination Commissioner, on behalf of the Commission, made a submission to the Senate Economic References Committee Inquiry into the *Workplace Relations and Other Legislation Amendment Bill 1996*. The Commissioner appeared before the Senate Committee on 31 July 1996 in Canberra. A number of recommendations made by the Commission were adopted.

The Workplace Relations Act came into effect in 1996. The Commissioner continues to monitor developments and policy issues arising from the legislation that may affect women in employment.

Future amendments to permanent exemptions

Superannuation exemption for actuarial and statistical data

Research into sex based actuarial data is continuing. The Association of Super Funds of Australia is sponsoring the project which is being undertaken by post graduate researchers at Macquarie University. The research is extremely important as it examines whether exemptions in the Sex Discrimination Act should be removed. The exemptions relate to discrimination in superannuation and insurance schemes based on actuarial and statistical data.

The Commissioner will continue to research the "reasonableness" of sex based actuarial data used extensively in superannuation and insurance.

Superannuation exemption for vesting

The Commissioner will continue to work on a proposal to allow the removal of the exemption in the Sex Discrimination Act for discrimination in the vesting of superannuation entitlements.

Defence forces

The Commission held a training course for the Australian Defence Force on sex discrimination and sexual harassment on 12 and 13 May 1997. The course encouraged discussion of recent amendments and the possible removal of the remaining exemption for direct combat duties in the Australian Defence Force.

Review to simplify the Sex Discrimination Act and remove existing anomalies

Due to impending changes to federal anti-discrimination legislation (foreshadowed by the Attorney-General), this project has been held over until the impact of the legislation can be examined.

Senate Legal and Constitutional References Committee Submission to the Inquiry into Legal Aid in Australia

The Sex Discrimination section contributed to and assisted in the coordination of the Commission's written submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Legal Aid. The submission was presented to the Senate Committee in January 1997. The Commissioner also appeared before the Committee on 20 February 1997 to provide oral submissions on behalf of the Commission.

The submission focused on the responsibility of the Commonwealth, states and territories to ensure equality of access to justice for all people in Australia and on Australia's obligations under international law. The Commission's submission highlighted Australia's international commitments under human rights treaties which require the implementation of all necessary measures to eliminate discrimination, to guarantee equal protection of the law and equality before the courts, and to observe procedural guarantees in civil and criminal trials.

It was also noted that at a domestic level, under federal legislation, governments have a legally enforceable obligation to ensure that people are not discriminated against in the provision of government services, including legal services, on the basis of race, sex or disability.

The submission provided detailed explanation, with supporting data, of the disproportionate impact legal aid funding cuts are likely to have upon people from groups who constitute the primary targets of human rights and anti-discrimination legislation. The adequacy of funding for these groups is of particular concern to the Commission.

Australian Public Service review

In January 1997, the Commission responded to a discussion paper by the Federal Minister for Industrial Relations, outlining the Federal Government's proposals for reforms to the Australian Public Service to meet its legislative responsibilities to prevent and eliminate discrimination in employment at the federal level. The Commission did not comment on all aspects of the Government's discussion paper, but concentrated on proposed amendments to the Australian Public Service employment framework.

The Commission endorsed the Government's aim of striking a balance between the centralised setting of service wide standards, terms and conditions of employment, performance indicators and accountability mechanisms and discretionary action at the agency or workplace level to enable the efficient performance of work according to the particular agency/workplace needs. The Commission endorsed an Australian Public Service employment framework which facilitates the coexistence of equity for all service employees with productivity and excellence in service delivery.

The Commission submission recognised that the Federal Government is committed to a decentralised and deregulated employment framework where the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level. However, the Commission submitted that these aims must not and need not be achieved at the expense of equal employment opportunities and outcomes for employees.

The Commission argued that discriminatory work environments cost money and reduce efficiency and performance. As such, preventing and eliminating discrimination must be a central tenet of a serious reform agenda.

Migration Legislation Amendment Bill

The Sex Discrimination Commissioner contributed to the Commission's submission to the Senate Committee dealing with Migration Bill No 3. The Bill allows regulations to be made which discriminate against de facto couples applying for visas. The Bill has been passed and the marital status discrimination remains.

Guidelines and codes of practice

Sexual Harassment Code of Practice

Sexual Harassment A Code of Practice, for employers, was launched on 29 October 1996 at the Women Lawyers Conference. The purpose of the code is to: provide employers with practical guidance on the sexual harassment provisions in the Sex Discrimination Act; and assist employers to develop and implement policies and procedures to prevent sexual harassment at work.

The code is aimed at both public and private sector employers of all sizes, with a specific section devoted to small business. Compliance with the code is voluntary.

In order to evaluate its effectiveness, the code includes a questionnaire, and formal consultations with users will be conducted after a trial period. Responses have been overwhelmingly positive, and the code continues to be in high demand.

Since the release of the code, the Commissioner has been working closely with the Real Estate Institute of New South Wales to develop model sexual harassment policies and procedures for member organisations, and has also advised the Office of the Status of Women on the prevalence of sexual harassment in small business.

Sexual harassment guidelines for educational institutions

A new publication, *Sexual harassment and educational institutions A guide to the Federal Sex Discrimination Act*, was released in August 1996. The guidelines contain numerous case studies and are designed for use in all sectors of education. They cover issues such as:

- definitions and concepts relating to sexual harassment;
- application of the Sex Discrimination Act to students and staff in all sectors of education;
- liability of education institutions;
- developing a sexual harassment policy;
- implementing sexual harassment grievance procedures;
- guidelines for investigating a complaint in accordance with the principles of natural justice;
- defamation, record keeping and terminating employment; and
- complaint procedures under the Sex Discrimination Act.

The Equal Pay Handbook

The *Equal Pay Handbook* will be published in October 1997. The handbook is designed to help employers meet their obligations under federal industrial and anti-discrimination legislation. It contains essential equal remuneration principles, equal remuneration audit methodology, explanatory material, case law and case studies. It will contribute to employers' understanding of pay equity and the implementation of equal remuneration in the workplace.

Interventions

Living Wage Case

The Commission made a submission to the “Living Wage” claim, heard by the Industrial Relations Commission in 1996. The Commission supported the principles inherent in the claim to maintain the historic role of the Industrial Relations Commission in promoting fairness, equity and the needs of the low paid in the industrial system, but made no submissions on amounts to be awarded by the Industrial Relations Commission to the low paid.

Appendix 1: International instruments observed under the Human Rights & Equal Opportunity Commission Act

The Human Rights and Equal Opportunity Commission Act established the Commission, provides for its administration and gives effect to seven international instruments ratified by Australia. The instruments are listed below.

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;
- vote and be elected by equal suffrage; and
- 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; and
- 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; and
- 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; and
- review of procedures which may deny them these rights.

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); and
- impairment (including HIV/AIDS status).

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.

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 or morals or the fundamental rights and freedoms of others.

Appendix 2: Commission publications released during 1996-97

General

Bringing them home A guide to the findings and recommendations of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families

Bringing them home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. Copies are available from the Australian Government Publishing Service on 132 447.

Human Rights and Equal Opportunity Commission *Annual Report 1995-96*

Aboriginal and Torres Strait Islander Social Justice Commissioner

Fourth Annual Report 1995-96

*Native Title Report 1996***Human rights**

A quick guide to discrimination in employment and occupation under the Human Rights and Equal Opportunity Commission Act

Compulsory age retirement Report of the Inquiry into complaints of discrimination in employment and occupation Report number 1

Free to believe? The right to freedom of religion and belief in Australia Discussion paper number 1

Housing as a human right Occasional paper number 2

Human rights and euthanasia Occasional paper number 3

The international role of the Australian Human Rights and Equal Opportunity Commission Occasional paper number 4

Human rights for Australia's gays and lesbians Occasional paper number 5

Sex discrimination

Enterprise bargaining A manual for women in the workplace

Glass ceilings and sticky floors Barriers to the careers of women in the Australian finance industry

Sexual Harassment A Code of Practice

Stretching flexibility Enterprise bargaining, women workers and changes to working hours Report of the Flexible Working Hours and Women Project

Race discrimination

Face the facts Some questions and answers about immigration, refugees and Indigenous affairs

State of the Nation report 1996

Takin' a stand comic on racial discrimination. Copies are available from Streetwise Comics on (02) 9560 3244

The RDA and native title The implications of statutory extinguishment Some questions and answers

The Racial Hatred Act A guide for people working in the Australian media

Appendix 3: Commissioners' speeches**Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner**

7 July 1996: 'Indigenous peoples in the global peace movement', International Research Association's National Conference, Queensland University of Technology, Brisbane

9 July 1996: 'Popular myths and Indigenous realities: Australia the peaceful society', International Peace Research Association Biennial Conference, Brisbane

23 July 1996: 'Justice for Indigenous Australians', address at public meeting in Melbourne

16 August 1996: 'Land rights - human rights' at the Martung Upah A Just and Proper Settlement Conference, Canberra

23 August 1996: 'Indigenous knowledge as a human right', Science and Other Knowledge Traditions Conference, James Cook University, Cairns

28 August 1996: 'Assessing the social justice impact of the new native title legislation', Native Title Conference, Commercial Realities of the Coalitions Change, Darwin

29 August 1996: 'Aboriginal peoples and the right to legal aid', National Community Legal Centres Conference, Melbourne

- 5 September 1996: 'Assimilation versus self determination: no contest', H.C. (Nugget) Coombs Inaugural Lecture, Northern Australian Research Unit, Darwin
- 9 September 1996: 'Social justice implications of current proposals to amend the Native Title Act', Murdoch Students Law Society in Perth
- 30 September 1996: 'Culture and citizenship', Culture and Citizenship Inaugural Conference, Australian Key Centre for Cultural and Media Policy at Griffith University, Brisbane
- 3 October 1996: 'Reconciliation and social justice - a vision and a challenge', Aboriginal Studies Conference, Aboriginal Studies Association, University of New South Wales, Sydney
- 16 November 1996: 'Aboriginal reconciliation - where to now?', Rainbow Alliance Annual Dinner, Melbourne
- 21 November 1996: 'Undermining Aboriginal justice', Public Interest Law Clearing House, Melbourne
- 22 November 1996: 'Reconciliation - is it in peril?', Politics in the Pub, Harold Park Hotel, Sydney
- 6 December 1996: 'Aboriginality and multiculturalism', Canberra Grammar School, Canberra
- 21 February 1997: 'Discrimination, special measures and the right to negotiate', Humanities Research Centre, Canberra
- 21 February 1997: 'Is racism un-Australian?: the revitalisation of Australian discourses of race and pain', Australian Institute of Aboriginal and Torres Strait Islander Studies Conference, Canberra
- 24 February 1997: 'Aboriginal education and social justice: a tertiary perspective', University of South Australia, Adelaide
- 5 March 1997: 'Social justice, equity and local government in Australia', keynote address at the Local Government Aboriginal Network's Conference Dinner in Sydney
- 9 March 1997: 'Doing business with Aboriginal communities', Western Mining Corporation Conference Centre, Western Australia School of Mines, Kalgoorlie
- 17 March 1997: 'Human rights: the impact of colonisation', University of Southern Queensland, Toowoomba
- 19 March 1997: '*Wik* decision', Law Students Society, Australian National University, Canberra
- 20 March 1997: The Commissioner addressed Year 12 General English Students at Trinity Grammar School, Sydney
- 5 April 1997: 'Children's rights: the next step', Australasian Conference on Children's Rights in Brisbane
- 7 May 1997: 'A globalisation of rights', Globalisation and Citizenship Conference, Melbourne
- 27 May 1997: Launch of *Bringing them home* Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Australian Reconciliation Convention, Melbourne
- 3 June 1997: The Commissioner addressed the Second World Congress on Family Law and the Rights of Children and Youth with 'Black families - white law' in San Francisco

Elizabeth Hastings, Disability Discrimination Commissioner

- July 1996: 'The Disability Discrimination Act and you', South Grafton Ex-Servicemen's Club, South Grafton
- July 1996: 'The Disability Discrimination Act and you', Lismore Workers Club, Lismore

- July 1996: 'The Disability Discrimination Act: its meaning for business and employers', South Grafton
- July 1996: 'The Disability Discrimination Act: its meaning for business and employers', Lismore
- July 1996: 'The Disability Discrimination Act and local government', South Grafton
- July 1996: 'The Disability Discrimination Act and local government', Lismore
- 27 August 1996: 'Urban transport: coming to terms with disability discrimination law', Urban Transport '96 Conference, Sydney
- September 1996: 'The Disability Discrimination Act and local government', Hobart
- September 1996: 'The Disability Discrimination Act, local government and business: service and responsibility', Australian Association for Special Education Conference, Hobart and Launceston
- October 1996: 'The Disability Discrimination Act: a strong Act behind me and a strong friend beside me', Northern Residential Support Group Annual General Meeting, Launceston
- 12 November 1996: 'Access on the agenda: no longer an afterthought', Creating Accessible Communities Conference, Fremantle
- 15 November 1996: 'Tribute to Dame Roma Mitchell', National Foundation for Australian Young Women/Young Women's Christian Association, Adelaide
- 1 May 1997: 'Launch of the ABC action plan', Ultimo Centre, Sydney
- 23 May 1997: 'Understanding disability discrimination', Life Investment and Superannuation Association of Australia Second Annual Summit, Canberra
- 28 May 1997: 'Access to premises under the Disability Discrimination Act', Property Council of Australia Professional Education Program Lunch, Canberra

Chris Sidoti, Human Rights Commissioner

- 25 July 1996: 'Recovery: rethinking the community response to people who experience psychiatric disability', VicServ Conference on mental illness, Melbourne
- 2 August 1996: National Conciliators' Conference, Brisbane
- 5 August 1996: Australian Country Women's Association Annual Conference, Sydney
- 6 August 1996: 'Missing persons and their families', Missing Persons Week seminar, Sydney
- 9 August 1996: Annual Dinner of the Fitzroy Legal Service, Melbourne
- 4 September 1996: 'Australian trends and perspectives on homelessness', Council of Homeless Persons Annual Conference, Melbourne
- 9 September 1996: 'Human rights and social action', Macquarie University, Sydney
- 11 September 1996: 'Freedom, power and human rights', University of Western Sydney (Hawkesbury), Sydney
- 1 October 1996: Lifeline Anniversary Conference, Sydney
- 22 October 1996: 'Public and private: the person in society', Newman lecture, Mannix College, Melbourne
- 23 October 1996: 'Children's rights: our responsibilities', Red Cross Seminar on international humanitarian law, Sydney
- 31 October 1996: 'Coordinating care to benefit the aged. Access and equity: politics, race, location and culture', Aged care conference on monitoring and standards in services, Sydney

- 13 November 1996: 'Juvenile justice in Australia: current trends', Annual General Meeting of the Youth Affairs Council of South Australia, Adelaide
- 14 November 1996: 'The national agenda for children', Fifth Annual Conference of the National Association for the Prevention of Child Abuse and Neglect, Adelaide
- 18 November 1996: 'Equity as a human rights issue', South West Sydney Area Health Service seminar on equity in health service delivery, Sydney
- 8 February 1997: Retreating from the Refugee Convention, Northern Territory University, Darwin
- 10 February 1997: Mission Australia First National Conference, Canberra
- 13 February 1997: 'Human rights and mental illness', National Conference on Mental Health Services, Newcastle
- 17 February 1997: 'Australia's children: the need for a national commitment', New South Wales Child Protection Council State Conference, Newcastle
- 18 February 1997: Launched *Free to believe? The right to freedom of religion and belief in Australia* in Sydney
- 4 March 1997: Launched *Human rights for Australia's gays and lesbians* in Sydney
- 13 March 1997: Launched the 'Ecumenical Housing Policy' in Melbourne
- 13 March 1997: 'Human rights and access to justice for all Australians', National Conference on Families, the Law and Access to Justice, Melbourne
- 3 April 1997: Statement from the Commissioner to the 53rd session of the United Nations Commission on Human Rights in Geneva
- 8 May 1997: 'Peace in the Community', World Red Cross Red Crescent Day Address at Red Cross House in Sydney
- 30 May 1997: 'It takes a village to raise a child', Australian Capital Territory Children's Services Conference, Canberra
- 4 June 1997: 'Poverty and the environment: a human rights perspective' in Melbourne
- 5 June 1997: PLAN Australia in Melbourne
- 6 June 1997: 'Immigrant justice: courts, tribunals and the rule of law' in Sydney
- 19 June 1997: 'Young people's access to housing', at the launch of the National Youth Coalition for Housing report

Moira Scollay, Privacy Commissioner

- 12 August 1996: 'The tightening of European privacy laws: what are the implications for Australia?', IIR Information Privacy Conference, Sydney
- 20 August 1996: 'Privacy issues arising as information technology happens', HIC'96 Conference Making IT Happen, Melbourne
- 30 August 1996: 'Information privacy and the law', Retail Banking and Credit Law How the New Laws and Latest Technologies will Affect, Gold Coast
- 17 September 1996: 'Relating privacy laws to genetic issues', Privacy Laws and Business Seventh Data Protection Commissioners Authorities/Privacy Commissioners' Workshop Data Protection Law and Genetics in Ottawa
- 19 September 1996: 'Privacy solutions: legislation and other options', Eighteenth International Privacy and Data Protection Conference, Ottawa

6 October 1996: 'Privacy and the caring professions: medical records', Third National Conference of the Australian Association for Professional and Applied Ethics, Wagga Wagga

31 October 1996: 'Applying privacy law and policies', Privacy in the Private Sector Seminar, Insurance Council of Australia Ltd, Sydney

18 December 1996: 'Recent privacy initiatives in the Asia Pacific region', Hong Kong/Australia Chamber of Commerce, Hong Kong

19 February 1997: 'Roles of a Privacy Commissioner', Communications Law Centre Conference, Sydney

21 May 1997: 'What are the existing challenges and new tasks for the New Privacy Commissioner?', Commonwealth Heads of Agencies Meeting in Jabiru, Northern Territory

23 May 1997: 'Developments in privacy related reforms: how will these impact on the life insurance and superannuation industry', Second Annual Summit of the Life Insurance and Superannuation Association, Canberra

Zita Antonios, Race Discrimination Commissioner

10 July 1996: 'Anti-racism strategies in higher education', 1996 Equal Opportunity and Participation of Higher Education in Australia Biennial Conference, Byron Bay

26 July 1996: 'Capitalising on diversity', Attorney-General's Leadership Conference, Wollongong

1 August 1996: 'The Racial Hatred Act', National Conciliators Conference, Brisbane

8 August 1996: 'Operation of the racial hatred provisions' in a forum with Eldred Tabachnik QC to B'nai Brith and the Jewish Lawyers Association in Sydney

23 August 1996: 'Crossing over from school to work/tertiary education' to Year 12 students at Bethlehem College in Ashfield

26 August 1996: 'Embracing diversity in the SUPS program' sponsored by the New South Wales Association of Children's Services Resource and Support Committee Incorporate in Sydney

28 August 1996: 'Anti-discrimination legislation and higher education: international students and racism', University of Western Sydney, Richmond

29 August 1996: 'Migrant women and the Racial Discrimination Act', Annual General Meeting of the New South Wales Working Women's Centre, Parramatta

6 September 1996: 'Community solutions: barriers facing people from non-English speaking backgrounds to education and the role that community based adult learning can play in reducing these barriers', New South Wales Board of Adult and Community Education Conference, Sydney

13 September 1996: After dinner address to the National Conference of Australian Tribunal Members in Canberra

17 September 1996: Addressed the leadership of the New South Wales Jewish Board of Deputies in Sydney

18 October 1996: Addressed the JNFY Silver Patrons Luncheon in Melbourne

1 November 1996: Launch of *Filipino Women's Report* at Parliament House in Sydney

6 November 1996: 'Racism in Australia', Australian Institute of Administrative Law (Incorporated) Queensland Chapter, Brisbane

3 December 1996: Launch of 'Human Rights Week 1996' and presentation of the Human Rights Awards in Hobart

- 7 December 1996: 'A challenging multicultural Australia: cohesion or conflict?', Federation of Ethnic Communities Council of Australia Fourth National Congress, Adelaide
- 30 January 1997: Addressed the recipients of the Vincent Fairfax Ethics in Leadership Awards in Canberra
- 6 February 1997: 'The migrant experience', The First Generation Looks Ahead National Conference on the Vietnamese community in Australia, Melbourne
- 20 February 1997: 'The multicultural quilt', Multicultural Neighbourhood Centre, Newcastle
- 27 February 1997: Launched *Face the facts Some questions and answers about immigration, refugees and Indigenous affairs* in Sydney
- 3 March 1997: 'Racial violence', Australian Institute of Criminology: Second National Outlook Symposium, Canberra
- 7 March 1997: Addressed the Public Service and Merit Protection Commission, Department of Finance and the Department of Industrial Relations luncheon for International Women's Day in Sydney
- 19 March 1997: 'Reaching our peaks: the representation of non-English speaking background women within peak ethnic organisations', Ethnic Communities Council of Victoria's Forum on Immigrant Women's Issues, Melbourne
- 20 March 1997: 'Racial discrimination policy: the national context', Victorian branch of Equal Opportunity and Participation of Higher Education in Australia, University of Melbourne
- 25 March 1997: Addressed Western Australians for Racial Equality in Perth
- 26 March 1997: 'Racial discrimination policy: the national context', Equal Opportunity Practitioners in Higher Education, Western Australia Branch, University of Western Australia, Perth
- 6 May 1997: Addressed Sydney Institute of Technology graduating students in degree and diploma courses on Child Care Studies in Sydney
- 18 May 1997: '21st century: a new era', Symposium hosted by the Women's Internationalist Zionist Organisation State Council of Victoria, Melbourne
- 19 May 1997: 'The current race debate and amendments to the Racial Discrimination Act', Victorian Equal Opportunity Commission's Practitioners Partnership Program, Melbourne
- 23 May 1997: 'Our strength is our health', Women's Health Conference, Northern Territory Health Services, Operations Central Australia Region, Alice Springs
- 27 May 1997: 'Reconciliation and constitutional issues: constitutional preamble', Australian Reconciliation Convention, Melbourne
- 30 May 1997: 'Local diversity: local solutions', Department of Premier and Cabinet Conference, Melbourne
- 4 June 1997: 'Racism and the work of the Commissioner', New South Wales Department of Gaming and Racing Women's Lunchtime Forum, Sydney
- 16 June 1997: 'Strategies against racism', Ethnic Communities' Council of New South Wales Forum, Sydney
- 24 June 1997: Addressed the Bureau of Ethnic Affairs Network in Brisbane

Sue Walpole, Sex Discrimination Commissioner (until February 97)

- 10 July 1996: 'Anti-discrimination and the Industrial Relations Act', Equal Opportunity Practitioners in Higher Education Biennial Conference, Byron Bay

- 25 July 1996: 'Affirmative Action: 1996-2006', Labour Management Studies Macquarie, Hilton Hotel, Sydney
- 1 August 1996: Council Opening Address, National Status of Women, Melbourne
- 2 August 1996: 'Discrimination: the Commission's role, approach to super, current matters and future trends', Business Law Education Centre Superannuation seminar, Melbourne
- 7 August 1996: 'Codes of Practice: guidelines on special measures', Leo Cussen Institute Continuing Legal Education Program lunchtime seminar, Melbourne
- 14 August 1996: Lunchtime guest speaker at the Rotary Club of Melbourne
- 15 August 1996: 'Discrimination: the Commission's role, approach to super, current matters and future trends', Business Law Education Centre Superannuation seminar, Sydney
- 21 August 1996: 'Issues for management in the legal industry' at Minter Ellison in Sydney
- 11 September 1996: 'Government discrimination in the administration of Commonwealth laws and programs in the context of section 26 of the Sex Discrimination Act', Women's Barristers Association, Melbourne
- 19 September 1996: 'The Sex Discrimination Act and the political parties', Women into Politics, Political Equality for Women Symposium at Parliament House, Canberra
- 3 October 1996: 'Women in leadership: gender and pay equity issues impact of the budget statement and structural barriers to women's progress', University of New England, Armidale
- 4 October 1996: 'Major challenges facing sex discrimination at a federal level', Centre for Research on Employment and Work at Griffith University, Brisbane
- 22 October 1996: Occasional address at the graduation ceremony of law faculties of Professional Studies and Law and Board of Studies in Taxation, University of New South Wales
- 6 November 1996: 'Anti-discrimination: law and practice update', Law Society of New South Wales, Sydney
- 25 November 1996: 'Citizen's rights: a bill of rights', Victorian Commercial Teachers Association Comview Conference 1996, Latrobe University, Bundoora
- 2 December 1996: 'Equal employment opportunity and management', Deakin University, Victoria
- 9 February 1997: Opening keynote address 'The national importance of social justice, equity and access', National Rural Health Alliance, Perth

Appendix 4: Addresses of Commission offices and agents throughout Australia

Addresses and contact details of Commission offices are provided below. Teletypewriters (TTY) for hearing and speech impaired callers have been installed.

Central office

Human Rights and Equal Opportunity Commission
 Level 8, Piccadilly Tower
 133 Castlereagh Street
 Sydney NSW 2000

GPO Box 5218
 Sydney NSW 1042

phone: (02) 9284 9600
 toll free: 1800 021 199

tty: 1800 620 241
facsimile: (02) 9284 9611
homepage: <http://www.hreoc.gov.au>
e-mail: hreoc@hreoc.gov.au

Regional office

Human Rights and Equal Opportunity Commission
AMP Society Building
27 Elizabeth Street
Hobart TAS 7000

GPO Box 197
Hobart TAS 7001

phone: (03) 6234 3599
toll free: 1800 001 222
facsimile: (03) 6231 0773

State Equal Opportunity Commissions

Victoria Equal Opportunity Commission
3rd floor
380 Lonsdale Street
Melbourne VIC 3000

phone: (03) 9281 7111
toll free: 1800 134 142 (Vic only)
tty: (03) 9281 7110
facsimile: (03) 9281 7171

homepage: <http://www.eoc.vic.gov.au>
e-mail: eoc@vicnet.net.au

South Australia Equal Opportunity Commission
Second floor, Mercantile Mutual Building
45 Pirie Street
Adelaide SA 5000

phone: (08) 8207 1977
toll free: 1800 188 163
tty: (08) 8207 1911
facsimile: (08) 8207 2090

homepage: <http://www.eoc.sa.gov.au>
e-mail: eocsa@www.eoc.sa.gov.au

Western Australia Equal Opportunity Commission
2nd floor, Westralia Square
141 St Georges Terrace
Perth WA 6000

PO Box 7370, Cloisters Square
Perth WA 6850

phone: (08) 9264 1930
toll free: 1800 198 149
facsimile: (08) 9264 1960

Appendix 5: Freedom of Information

The Freedom of Information Act gives the general public legal access to government documents.

Functions of the Commission are broadly outlined in the introduction and detailed in individual program chapters. Decision making generally rests with the Commission (as a collegiate body) or individual Commissioners and senior managers. The Commission undertakes broad community and industry consultation in its policy development, which is discussed in each program chapter. External consultation in administrative practices is satisfied through organisational review, interchange with community and other government bodies, and union representation and involvement.

Freedom of Information statistics

During 1996-97, the Commission received 55 requests for access to documents under the Freedom of Information Act. Of these:

- 46 requested access to documents relating to complaints;
- 6 related to research matters; and
- 3 related to research.

A total of 39 applications were processed, including the resolution of applications from 1995-96.

Categories of documents

Documents held by the Commission relate to:

- administration matters including personnel and recruitment, accounts, purchasing, registers, registry and 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 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 enquiries 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 to cover some of the administrative costs in providing the information;
- 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.

Information available on request

General

Legislation - *Human Rights Legislation Amendment Act 1995*

Legal exemptions

Other Commission information

Social justice and equity

Equal employment opportunity in appointments

Social justice

Access and equity

Equal employment opportunity

Equal employment opportunity resources and consultative mechanisms

Equal employment opportunity in appointments

Status of women

Staffing matters

Performance pay

Training and staff development

Interchange program

Financial matters

Claims and losses

Purchasing

Information technology purchasing agreements

Payment of accounts

Consultancy services

Capital works management

Internal and external scrutiny

Fraud control

Reports by the Auditor-General

Inquiries by parliamentary committees

Comments by the Ombudsman

Decisions of courts and tribunals

Privacy

Environmental matters

Environmental issues

Energy issues general, building, transport and equipment

Other matters

Property usage
Business regulations

Appendix 6: Public Affairs

The Public Affairs section was established in early 1996 to replace the former Education and Promotion Unit. Public Affairs manages all media work for the Commission as well as the organisation of special events; management and distribution of publications; external corporate training; organisation of the Human Rights Medal and Awards; specialised training; project development and support; provision of seminars and advice to visiting delegations; development and management of Internet based communications and publications; provision of strategic advice and support to other sections of the organisation; and media support to individual Commissioners.

Since the closure of the Secretariat of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, management of all Inquiry functions including the arrangement for publication, release and promotion of the Report of the Inquiry, have been coordinated by Public Affairs.

Media

The Public Affairs section has extensive liaison with the Australian media, through media releases, news conferences, interviews and special events. Requests for media interviews average well over 100 per week.

Publications

The Public Affairs section manages a very busy distribution office with a listing of 92 publications. The high demand for publications is a result of phone, fax and mail enquiries from members of the public, corporate sector, government departments, community organisations and educational institutions. Many of the information requests are from school students. The top three publications over the past year have been *Sexual Harassment A Code of Practice*; *Face the facts Some questions and answers about immigration, refugees and Indigenous affairs*; and *Bringing them home A guide to the findings and recommendations of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. At its peak, there were more than 1 500 requests per week for this publication.

A *Publications Procedures Manual* was issued in 1996, and a publications module is currently being trialed which will enhance the statistical record keeping functions of the Commission.

Marketing and promotions

The Commission continues to provide high level training in workplace anti-discrimination policy development and management practices to the corporate and government sectors. The training is based on the Commission's packages 'Eliminating Sexual Harassment from the Workplace' and 'Best Person for the Job'. Some 800 people attended these training sessions.

Consultancy services were provided to organisations to assist in the preparation of policies and procedures to deal with harassment in the workplace. Further resources will be allocated in 1997-98 to satisfy the number of requests for training.

Library and Information Service

The Library and Information Service provides a high quality, responsive information and research service to the Commissioners and Commission staff, utilising both internal and external resources in a variety of formats.

Staff undertake both online and CD-Rom searching in response to client requests. This service has continued to experience significant growth during 1996-97, with an increase of 65 percent in the number of searches performed compared with the previous financial year.

Development and maintenance of the library collection is another major area of responsibility. Selection and review of resources is undertaken in liaison with our stakeholders to ensure that the collection fulfils the information needs of our clients. Principal subject areas of the collection are human rights and discrimination, including relevant legal material. There is also a separate collection which relates to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.

The Library Committee, chaired by Elizabeth Hastings, Disability Discrimination Commissioner, provides the Library and Information Services Manager with valuable user feedback concerning current services and policies and offers advice on proposed developments or changes from the clients' perspective.

Training and staff development

The 1996-97 year has seen a reduction in external training courses for the enhancement of knowledge and skills in favour of the internal development of teams and contracting experts where needed. Training and development of Commission staff in the financial year can be divided into four broad categories listed below.

Team development

Working with teams to improve performance and address team skills needs, focussing on service delivery; improving problem solving and decision making; development of the Commission Management Team; and planning and better management of external relationships.

General knowledge and skills enhancement

Policy development; speech writing and delivery skills; and participation in various Public Sector Merit Protection Commission, Department of Industrial Relations and Department of Finance courses, seminars and events.

Specific skills development

Service delivery; managing difficult situations in our contact with clients; time management; and the internet and other computer training.

Studies assistance

There was a general tightening of the scheme to ensure that the limited resources are targeted better, distributed more equitably and more in line with operational requirements.

Occupational health and safety

An occupational health and safety committee forms part of the Commission's 'Occupational Health and Safety Policy and Agreement'. The committee comprises management and staff representatives and meets to discuss occupational health and safety issues as they arise. The Personnel Manager and

elected health and safety representatives are the contact officers if staff have concerns relating to occupational health and safety in the workplace.

During 1996-97:

- first aid officers were trained to ensure a suitable number of qualified staff in the workplace;
- the Commission's Rehabilitation Advisors provided ongoing advice and assistance to staff on occupational health and safety issues and ergonomic assessments of; and
- the Employee Assistance Program provided a free, confidential counselling service to staff and their families.

Equal employment opportunity

The Executive Director has overall responsibility for equal employment opportunity matters within the Commission. The Personnel Manager is responsible for equal employment opportunity coordination and grievance handling within the Commission.

Within its resources, the Commission assists other federal and state agencies, professional bodies and private companies with training on race, sex and disability discrimination, cultural diversity in the workplace and equal employment opportunity requirements for managers and supervisors.

Major achievements and work in progress during 1996-97 included the following.

- The Commission's Disability Action Plan was launched by the Disability Discrimination Commissioner on 10 June 1997.
- A staff survey on equal employment opportunity in the workplace was conducted. The findings will be used in the development of the Commission's 1997-2000 Equal Employment Opportunity Plan. Work on the plan is still in progress at the time of this report. The Commission will continue to have an Aboriginal and Torres Strait Islander Recruitment Strategy as an integral part of the plan.
- An Aboriginal trainee successfully completed the Public Administration Trainee Scheme and was accepted into the Law program at the University of New South Wales.

Industrial democracy

The Commission's policy on industrial democracy is to ensure that staff are fully able to contribute to the efficient operation of the Commission. It asserts that staff will enjoy a better quality of working life if they are involved in the decision making process. In this way the Commission can provide a more effective service to the public. The Commission is aware of its responsibilities under the *Workplace Relations Act 1996* to involve all staff in decision making processes and is firmly committed to this.

The Assistant Secretary Management is responsible for implementing industrial democracy principles and practices in the workplace. Consultative mechanisms to meet the requirements of the Workplace Relations Act are still being put in place but include the following.

- Regular staff meetings with senior management to discuss matters of Commission wide significance or impact, and provide the opportunity for staff contribution.
- A weekly staff notice, which informs staff of personnel matters and other items of interest, circulated to all staff via the Commission's electronic mail system.
- Additional bulletins concerning significant Commission matters, and requiring staff comment, circulated as required.

- Access to senior management for union delegates to discuss significant industrial matters.
- Staff access to Commission meeting discussion papers, minutes and action plans, except for items of a confidential or sensitive nature, via the computer network.
- Branch, section and regional office meetings where staff are involved in developing relevant work practices.
- Specific projects, for example the development of the Equal Employment Opportunity Plan 1997-1998, where staff are invited and encouraged to contribute to the process.

The Commission has information sites on its network to keep staff informed of developments with the Workplace Relations Act, Enterprise Agreements in the Australian Public Service and the review of the *Public Service Act 1922*.

Staffing overview

An overview of the Commission's staffing profile as at 30 June 1997 is summarised in the following tables.

Staffing overview as at 30 June 1997

| Classification | Male | Female | Full time | Part time | Temp | NSW | ACT | NT | Tas |
|-------------------------|-----------|------------|------------|-----------|-----------|------------|----------|----------|----------|
| Statutory office holder | 2 | 3 | 5 | - | - | 5 | - | - | - |
| SES Band 2 | - | 1 | 1 | - | - | 1 | - | - | - |
| SES Band 1 | 4 | - | 4 | - | - | 4 | - | - | - |
| SPAO 1 | - | 1 | 1 | - | - | 1 | - | - | - |
| SOG B | 6 | 8 | 14 | - | 1 | 13 | 1 | - | - |
| Legal 2 | 1 | - | 1 | - | - | 1 | - | - | - |
| SOG C | 12 | 13 | 25 | - | 1 | 23 | - | 1 | 1 |
| Legal 1 | 2 | 6 | 6 | 2 | 1 | 8 | - | - | - |
| ASO 6 | 12 | 27 | 37 | 2 | 6 | 38 | - | 1 | - |
| PO 2 | - | 1 | 1 | - | 1 | 1 | - | - | - |
| ITO 2 | 3 | - | 3 | - | - | 2 | 1 | - | - |
| ASO 5 | 5 | 5 | 10 | - | - | 10 | - | - | - |
| ITO 1 | 1 | - | 1 | - | - | 1 | - | - | - |
| ASO 4 | 4 | 16 | 19 | 1 | 7 | 19 | - | - | 1 |
| PO 1 | - | 1 | 1 | - | 1 | 1 | - | - | - |
| ASO 3 | 3 | 21 | 23 | 1 | 4 | 22 | - | 1 | 1 |
| ASO 2 | 2 | 16 | 17 | 1 | 11 | 17 | 1 | - | - |
| ASO 1 | 1 | - | 1 | - | - | 1 | - | - | - |
| Trainee | - | 1 | 1 | - | 1 | 1 | - | - | - |
| Total | 59 | 121 | 173 | 7 | 34 | 171 | 3 | 3 | 3 |

Senior Executive Service information as at 30 June 1997

| SES level | Male | Female | Total |
|-------------------|----------|----------|----------|
| SES Band 2 | - | 1 | 1 |
| SES Band 1 | 4 | - | 4 |

Appendix 7: Consultants

All consultancies during 1996-97 arose from either the need for new or additional specialised knowledge and/or skills, or insufficient timeframes for existing resources to complete the work.

Community education

Ethnic Affairs Commission of New South Wales - contribution to the Community Harmony Project - \$20 000

K A Price and J Williams-Mozley - National Aboriginal and Torres Strait Islander Community Education Project - \$15 000

Lee Page Pty Ltd - community education - \$13 540

New South Wales Disability Discrimination Legal Centre (Inc) - Curriculum development for the National Indigenous Legal Curriculum Development Project - \$28 416

State of Queensland - National Indigenous Legal Curriculum Development Project - \$86 123

University of South Australia - National Aboriginal and Torres Strait Islander Community Education Project resource package - \$60 000

Information technology services

Powernet Services Pty Ltd - programming services - \$2 160

Legal

John Basten QC - legal advice - \$4 241

Clayton Utz Barristers and Solicitors - legal advice - \$484

Suzette Coates - legal advice - \$10 983

CP Recruitment and Management Services - staff selection and scribes - \$2 548

First Choice Insurance Brokers - indemnity insurance for Phillip Tahmindjis - \$575

Regina Graycar - legal advice - \$4 128

Stanley Jones QC - legal advice - \$1 012

Stephen Keim - legal advice - \$2 975

Phillip Tahmindjis - legal advice - \$5 950

Media

NewsMakers - media training services - \$3 675

Pacific Media - media analysis and report of treatment of race issues - \$2 000

National Inquiry into Children and the Legal Process

Australian Law Reform Commission - grant - \$30 000

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families - Aboriginal Legal Rights Movement - fieldwork services - \$2 000

Lorena Allam - research, editing and design of community guide - \$5 500

Australian Bureau of Statistics - statistics for the report \$240

Sadie Canning - National Inquiry - Co-Commissioner - \$1 184

Chris Cuneen - research - \$14 000

Catherine Iorns - research and preparation of briefing paper for report - \$500

Kimberley Land Council - National Inquiry Co-Commissioners - \$4 203

William Leslie - liaison and network strategies for launching the report - \$2 600

Teresa Libesman - research - \$13 000

Kathy Mills - National Inquiry Co-Commissioner - \$111

Northern Territory University - sitting fee for Professor Marcia Langton, Inquiry Co-Commissioner - \$1 480

Annette Peardon - National Inquiry Co-Commissioner - \$902

Sarah Pritchard - research for report format - \$24 000

The Rupert Factor Pty Ltd - development of media strategy for tabling of the report - \$5 663

Marjorie Thorpe - National Inquiry Co-Commissioner - \$2 249

Laurel Williams - National Inquiry - Co-Commissioner - \$111

Other

Balmain Rehabilitation and Physiotherapy Centre - ergonomic assessments - \$243

Bereavement Care Centre - counselling - \$1 040

Bev Sweeney and Associates - staff selection - \$405

Centre for Culture, Ethnicity and Health - cultural diversity training - \$1 000

Daryl Dixon - financial planning advice - \$200

Holland and Holland - provision of financial advice - \$150

Human Rights International Pty Ltd - planning and organisation of Australian visits by overseas human rights delegations - \$27 919

Jan Lee - training - \$3 847

Scott MacInnes - training - \$4 050

Migrant Resource Centre of South Australia - report writing and community consultations - \$2 310

New Summit Financial Services - financial planning services - \$300

Carol Pein - Disability Discrimination Act action plan reference group - \$219

Protrain Voice Services - training - \$70

Provenance Consulting Services - records sentencing and disposal services - \$2 304

Public Service Merit Protection Commission - referral for excess clients - \$4 200

Sounds Bent - assist in editing radio documentaries for Indigenous Mediation Project - \$500

Steven A Ripley - Disability Discrimination Act action plan reference group - \$219

Stephen Rothman - test case comparative work - \$1 000

Kim T Rowles - Disability Discrimination Act action plan reference group - \$219

Rybarz Zappulla - financial planning advice - \$140

Joe Sabolcec - harassment contact officer training - \$350

Mark Streeter - staff selection - \$2 280

Susan J Thompson - Disability Discrimination Act action plan reference group - \$219

Winchcombe Carson Financial Planning - financial planning advice - \$850

Privacy audits

Deloitte Touche Tohmatsu -privacy audit - \$20 885

Pannell Kerr Forster - privacy audit - \$32 629

Price and Newman - privacy audit - \$3 011

Public Information Campaign

Cultural Perspectives Pty Ltd - racial hatred public information and community education campaign - \$70 806

Quay Connections - racial hatred public information and community education campaign - \$100 000

University of Technology, Sydney - development of guide for the media - \$12 750

Publications

Prudence Borthwick - research, editing and printing of sex discrimination reports - \$3 400

CEH Pty Ltd - contribution towards *Cultural Diversity Training Manual* - \$1 000

Liz De Rome and Associates Pty Ltd - production of 'Dealing with racist violence' kit - \$12 536

Sandra Forbes - research and development of publications policy for the Commission - \$1 000

Terry Johnson - research, editing and proofreading of *Working Hours* report - \$1 120

Joanna Kalowski and Associates - article on cross cultural training - \$1 000

Frank McLeod - artwork for 'Indigenous Mediation Project' - \$800

Dr Elizabeth McMahon - editing *1995-96 Human Rights and Equal Opportunity Commission Annual Report* - \$1 600

Page and Picture Pty Ltd - research for Commission's *Publications Manual* - \$800

Annie Parkinson - research and proofreading of *Enterprise Bargaining* manual - \$250

Phoenix Projects - research, editing and preparation of *Cultural Diversity Training Manual* - \$2 500

Streetwize Comics - production of comic on racial hatred - \$60 400

Alan Walker - compilation of index to the *1995-96 Human Rights and Equal Opportunity Commission and Privacy Annual Reports* - \$800

Kerrie Wilson - race issues project 'Myths and Rebuttals' - \$3 200

Research

Wes Aird - review of the Racial Discrimination Act - \$550

Mareja Bin Juda - sex discrimination package for Aboriginal and Torres Strait Islander women - \$776

Centre for Plain Legal Language - draft privacy principles guidelines - \$5 000

Minelle Creed - research for sex discrimination package for Aboriginal & Torres Strait Islander women - \$3 332

Disability Discrimination Law Advocacy Service - Disability Discrimination Act information booklet - \$2 540

John Deshon Architect - research for Draft Disability Discrimination Act guidelines - \$2 528

Margaret Doyle - research for 1996 *State of the Nation* report - \$4 005

Lynden Esdaile - research for the Commission's Disability Discrimination Act action plan - \$4 000

Indecs Llwynog Pty Ltd - Coronial research report statistics - \$1 620

Peter Jull - draft speech preparation - \$600

Peter Lidbetter - review of financial aspects of cooperative arrangements between the Commonwealth and States - \$4 000

Martyn Consulting - preparation of a discussion paper on digital rights - \$10 000

Mervyn Smythe and Associates - research for Commission submission to the Mansfield review of the ABC - \$2 350

Public Sector Research Centre - impact of competitive tendering and contracting out on women - \$10 000

Stamatia Stamatellis - analyses of anti-racist reports and material - \$5 200

George Zdenkowski - preparation of report on *Euthanasia and international human rights law* - \$3 000

Total **\$815 580**