

Human Rights and Equal Opportunity Commission

Annual Report 1997-98

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Statement from the President

Professor Alice Tay

The promotion and protection of human rights is about finding practical, pragmatic, realistic and lasting solutions to issues of discrimination and abuse

I am delighted to present my first statement as President of the Human Rights and Equal Opportunity Commission for this annual report. Much of what has been reported in this volume occurred before I took up my appointment. The last twelve months have been a time of significant change for the organisation as it continues the important task of promoting the observance of human rights in Australia.

My first and pleasurable duty in this statement is to acknowledge the extraordinary contribution to this organisation by the former President, Sir Ronald Wilson. Sir Ronald was appointed President of the Commission in February 1990 after his retirement from the High Court. Throughout his term he was a tireless advocate for the human rights of all people and especially those suffering disadvantage including the mentally ill, people with a disability, refugees, women, Indigenous communities and gays and lesbians. During his term Sir Ron shouldered a heavy workload of public hearings, the decline and review functions of the Commission and the Interim Determinations. In such a way the jurisprudence of human rights and anti-discrimination law in Australia has been developed into an integrated body of law and was a continuation of his work on human rights issues in the High Court. His contribution to the Commission, the Australian legal system and the broader community throughout his long and distinguished career cannot be overstated.

I commenced my appointment as President of the Human Rights and Equal Opportunity Commission in April 1998. It is with a sense of deep privilege and commitment that I take up this position. The promotion and protection of human rights, in one way or another, has been a fundamental concern for me throughout a greater part of my life. It represents one of my chief areas of study and investigation throughout thirty years as an academic. For me, human rights is not a distant, an abstract, legalistic concept of no practical significance. It is, rather, a vital field of endeavour precisely because it is grounded in the daily lives and experiences of individual men, women and children.

The promotion and protection of human rights is about finding practical, pragmatic, realistic and lasting solutions to issues of discrimination and abuse. Since its establishment, this Commission has been actively engaged in helping people find such solutions, whether it be through resolving individual complaints of discrimination or conducting substantial national inquiries. I look forward to stepping outside the contemplative halls of scholarship to face the challenge of applying a lifetime of learning and reflecting, to the working-out of immediate human rights issues. And the challenges are many. Indigenous Australians still lag far behind non-Indigenous Australians in such basic areas as health, education and employment. People continue to suffer unlawful discrimination because of their gender, their ethnicity or because they have a disability. People continue to have their privacy breached.

Education remains a key priority for the Commission in highlighting to Australians from all walks of life their human rights and community responsibilities. It will gain new impetus as we seek to support the wide range of our functions with practical educational programs. Education is not about moralising, indoctrination or providing simplistic slogans. It is, rather, about providing individuals, groups, organisations and communities with relevant information and resources that will assist them make informed and sensitive decisions. Through effective education, discrimination and abuse of human rights can be countered and prevented from occurring in the first place; rights and responsibilities can be balanced to achieve a harmonious society and reasonable citizens.

Later this year, on 10 December 1998, the world will celebrate the 50th anniversary of the Universal Declaration of Human Rights. Drafted in the aftermath of the horrors of the Second World War, the

Declaration stresses the universality and indivisibility of human rights. It highlights our inalienable birthright of freedom and dignity. It emphasises those things that we all share in common, regardless of our gender, race or religion. It was, and remains, a document of healing and hope. Currently in Australia, however, public discussion seems to focus more on those things which divide us rather than those which we share. There remains an urgent need for all Australians to recognise the values of inclusion, equality and fairness. As we celebrate this 50th anniversary, it is imperative that we reach out to others in a spirit of friendship, tolerance and generosity and work cooperatively to resolve differences. For me, these qualities are the essence of being Australian.

In the international arena, the Commission continues to play a significant role as Secretariat of the Asia Pacific Forum of National Human Rights Institutions. The Forum is rapidly becoming the premier focus for discussions on human rights issues in our region. Its function is to facilitate consultation and mutual assistance for representatives from the national human rights institutions of Indonesia, India, Sri Lanka, the Philippines, New Zealand and Australia. A highlight of the year was the second annual workshop in New Delhi last September. The Commission is grateful to the federal Government for its continued financial support of this vital regional partnership.

The Commission has been greatly served by two Commissioners who completed their terms of office during the last year. The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Michael Dodson, completed his five-year term in January 1998. His advocacy for Indigenous Australians was intelligent, passionate and tireless. His body of work included the annual *Native Title Report* and the annual *Social Justice Report*, as well as the *Bringing Them Home* report into the separation of Indigenous children from their families. His distinctive voice repeatedly focused the attention of all Australians on the human rights of Indigenous Australians and the path to reconciliation.

The Disability Discrimination Commissioner, Ms Elizabeth Hastings, completed her term of office in December 1997. Her stewardship of the *Disability Discrimination Act 1992* since it came into effect from 1 March 1993 ensured that it received wide awareness and acceptance among both the disability community and, importantly, those that have responsibilities under the legislation. During her term, significant progress was made in the development of disability standards in relation to access to public transport, building design, employment and access to goods and services.

I would like to thank Commissioners Antonios and Sidoti for the extra workload they have taken on in addition to their own responsibilities as Acting Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Disability Discrimination Commissioner respectively.

In April 1998 Ms Susan Halliday commenced her appointment as federal Sex Discrimination Commissioner. Ms Halliday brings to the Commission a thorough understanding of the business community and expertise in the area of anti-discrimination and equal opportunity issues. We look forward to the important contribution she will make in the area of sex discrimination.

Despite significant funding cuts to the Commission, which necessitated the loss of 60 staff members over the last year, the organisation remains committed to and focussed on addressing critical human rights and discrimination issues facing Australians. With a hard-working and dedicated staff, the Commission will meet with enthusiasm and confidence the challenges at hand.

Significant achievements 1997-98

Development of a service charter for the Commission's complaint handling service. **See page 20.**

The Commission was awarded a tender to provide technical assistance to the South African Human Rights Commission, which included the development of a Complaint Handling Procedures Manual. **See page 21.**

Release of the Aboriginal and Torres Strait Islander Social Justice Commissioner's *Fifth Annual Report* and *Native Title Report 1997*. **See page 53.**

Launch of the National Aboriginal and Torres Strait Islander Community Education Project, Tracking Your Rights. **See page 56.**

Launch of the National Indigenous Legal Curriculum Development Project. **See page 57.**

Publication of advisory notes on access to public transport, access to premises and access to the World Wide Web, as well as guidelines on the application of the Disability Discrimination Act to insurance and superannuation. **See pages 64-65.**

Release of *Sterilisation of Girls and Young Women in Australia*. **See page 65.**

Release of *Seen and Heard: priority for children in the legal process*, the report of the National Inquiry into Children and the Legal Process. **See page 69.**

Release of *Those who've come across the seas: detention of unauthorised arrivals*. **See page 72.**

Launch of *Bush Talks*, a series of consultations to identify and examine human rights concerns in regional, rural and remote areas. **See page 73.**

Coordination and implementation of international training programs by the Secretariat of the Asia Pacific Forum of National Human Rights Institutions, located within HREOC. **See page 80.**

Release of *Community Development Employment Program and the Racial Discrimination Act 1975*. **See page 93.**

Incorporation of training modules from the *Dealing with Racist Violence* kit into the New Constable Education Program for all NSW police recruits. **See page 96.**

Launch of *The Equal Pay Handbook*. **See page 100.**

Launch of *Sex Discrimination Act 1984 - Which Way? An information video for Aboriginal and Torres Strait Islander Women*. **See page 101.**

Release of the *National Principles for the Fair Handling of Personal Information, Minding Our Own Business: Privacy protocol for handling the personal information of Indigenous Australians* and *Who's Calling? Your Privacy and Calling Number Display*. **See Annual Report of the Privacy Commissioner.**

Chapter 1 – The Commission

The 1997-98 Annual Report of the Human Rights and Equal Opportunity Commission provides an overview of the Commission and its work during the period 1 July 1997 to 30 June 1998.

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).

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.

President, Professor Alice Tay

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

She has lectured in many countries and was Distinguished Visiting Professor of Law, Humanities and Social Sciences, and Visiting Fellow, in the United States, Canada, the People's Republic of China, Italy, Japan and Germany. With the late Eugene Kamaneka, and alone, she is the author and editor of 19 books and more than 120 articles.

As Director of the Centre for Asian and Pacific Law in the University of Sydney, she has been very active in organising and conducting intensive legal and human rights training courses for Vietnam and the People's Republic of China. She was a part-time Commissioner with the Australian Law Reform Commission, a member of the Australian Science and Technology Council, President of the International Association for Philosophy of Law and Social Philosophy. She is a member of the Attorney-General's Department's International Legal Services Advisory Committee.

Professor Tay's awards and qualifications include: PhD (ANU, 1964), LLD (honoris causa, Edinburgh, 1987); Order of Australia, 1986; Barrister-at-law, Lincoln's Inn, UK, of the High Court of Singapore, the Supreme Court of the ACT and of NSW; Fellow of the Australian Academy of Social Sciences and Academician titular of the International Academy of Comparative Law, Paris; Visiting Professor, Ministry of Justice, Vietnam, and the Zhongnan University of Politics and Law, Wuhan, People's Republic of China.

Human Rights and Acting Disability Discrimination Commissioner, Chris Sidoti

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.

Race Discrimination and Acting Aboriginal and Torres Strait Islander Social Justice Commissioner, Zita Antonios

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.

Sex Discrimination Commissioner, Susan Halliday

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

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

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

Privacy Commissioner, Moira Scollay

Moira Scollay was appointed as Australia's second Privacy Commissioner for a five year term from February 1997.

Ms Scollay has extensive experience as a senior Commonwealth public servant, most recently as Second Commissioner of Taxation. Prior to working at the Tax Office, Ms Scollay held senior positions in the Public Service Board and the Australian Institute of Aboriginal Studies. Her earlier 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: a BA and LittB (ANU); a DipEd (CCAEd); and a Graduate Diploma in Executive Management (Qld).

Legislation

The Commission is responsible for implementing the following Acts:

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

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 HREOC includes the *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. The Sex Discrimination Commissioner has functions in relations to federal awards and equal pay under the *Workplace Relations Act 1996*.

Human Rights and Equal Opportunity Commission Act

The Human Rights and Equal Opportunity Commission (HREOC) was created by the *Human Rights and Equal Opportunity Commission Act 1986*, which came into effect on 10 December 1986. The Commission has responsibility in relation to the following seven international human rights instruments:

- International Covenant on Civil and Political Rights (ICCPR);
- International Labour Organisation (Convention No.111) on Discrimination (Employment and Occupation);
- Convention on the Rights of the Child;
- Declaration of the Rights of the Child;
- Declaration on the Rights of Disabled Persons;
- Declaration on the Rights of Mentally Retarded Persons; and
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Racial Discrimination Act

The *Racial Discrimination Act 1975* implements some of Australia's obligations under the *Convention on the Elimination of all Forms of Racial Discrimination*. In 1990, a number of significant amendments were made to the Act. Indirect discrimination on the basis of race was included as a ground for complaint and provision was made for liability of employers and school principals for acts of racial discrimination by their employees and agents. Racial vilification legislation, the *Racial Hatred*

Act 1995, has major implications for the Discrimination Commissioner in promoting the legislation, conducting public education campaigns and complaint handling.

Sex Discrimination Act

In 1984 the Sex Discrimination Act was passed, giving effect to some of Australia's obligations under the *Convention on the Elimination of All Forms of Discrimination Against Women* and certain aspects of *International Labour Organisation (Convention No.156) on Workers With Family Responsibilities*. The Act makes discrimination on the grounds of sex, marital status, pregnancy and family responsibilities unlawful in a range of areas of public life such as employment, accommodation and the provision of goods and services.

Disability Discrimination Act

In 1993 the Disability Discrimination Act came into effect with the objectives of eliminating discrimination against people with disabilities and promoting community acceptance of the principle that people with disabilities have the same fundamental rights as all members of the community.

Privacy Act

The *Privacy Act 1988* gives effect to the International Covenant on Civil and Political Rights (Article 17) and the Organisation for Economic Cooperation and Developments (OECD) *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*. The guidelines cover the way personal information about individuals is collected, stored, used and disclosed. The guidelines also establish the right of individuals to gain access to, and have amended, information about them held by others.

The standards in the Act have been built on the OECD principles. The Privacy Act sets out legally binding standards for the handling of personal information. The Act provides protection to individuals in three areas:

- the Information Privacy Principles set out strict safeguards for any personal information which is handled by federal government and ACT government agencies. These rules cover the collection, storage, use and disclosure of this information;
- the Act provides protection for individuals' Tax File Numbers giving individuals the right to withhold this information and, where it is provided, limiting its use to tax related, assistance agency and superannuation purposes. The Act requires that the Commissioner issue and administer legally binding guidelines; and
- part IIIA of the Act places strict safeguards for the handling of individuals' consumer credit information by the credit industry. These provisions recognise the sensitivity of credit worthiness information and the implications for individuals should it be mishandled. Strict penalties apply where these provisions are breached.

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

Under the Privacy Act, the Privacy Commissioner has specific functions in relation to complaint handling and investigation of breaches of the Act, and auditing and monitoring compliance with the Act.

There is provision in the Act for the Privacy Commissioner to make public interest determinations which fulfil a similar role to exemptions under the anti-discrimination legislation. The Commissioner also provides policy advice and promotion of privacy issues to encourage adoption of privacy standards more broadly in the community. The Commissioner also performs functions under the following legislation:

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

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:

- human rights;
- race discrimination;
- sex discrimination;
- disability discrimination;
- Aboriginal and Torres Strait Islander social justice; and
- privacy.

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.

Commission Restructure

Introduction

During the year in review the Commission has been affected by substantial budget cuts and as a result significant structural and staffing changes have been necessary. In October 1997 the Government also announced its intention to make further legislative changes. They include a change to the name of the Commission, a reduction in the number of statutory offices-holders, and changes to some of the functions of the Commission. This legislation, the *Human Rights Legislation Amendment Bill (No 2 1998 (Cth))*, is currently before the Senate.

Some changes are independent of the proposed structural changes; some give rise to the proposed structure. The Coalition's pre-election policy of a reduction of \$1.5 million in the Commission budget was deferred pending the proposed transfer of the Commission's public hearing function to the federal court as a result of the High Court's decision in *Brandy v Human Rights and Equal Opportunity Commission*. Legalisation to effect this and other changes outlined in last year's Annual Report, the *Human Rights Legislative Amendment Bill (1997 (Cth))*, is still before the Senate. The legislation will remove the Commission's role in hearing and in making determinations on unconciliated complaints. Unconciliated matters may be pursued directly in the Federal Court whose judgements on complaints will be binding.

Thus, there are at the time of writing, two Bills before the Senate which significantly affect the operation and structure of the Commission.

Budget cuts

The \$1.5 million cut to the Commission's budget proposed in the Coalition's pre-election policy is more than the cost of the transferred function, so the effect of this cut when it takes effect will be a reduction to the Commission's general budget in the order of \$870,000.

In the 1997/98 budget the Government announced further cuts to the Commission. The Commission's budget was reduced in total by around \$5.1 million. These reductions took effect over two financial years, with the full effects commencing on 1 July 1998.

The reductions have been as follows:

- In 1997/1998, \$0.8 million reducing the Commission's running costs appropriation to \$16.6 million.
- In 1998/1999 a further, \$4.3 million reducing the Commission's running costs appropriation to around \$12.3 million.

Taken together over a three year period these cuts represent a reduction of 40% to the budget of the Commission.

Consequential restructure and staffing reductions

As a consequence of budget cuts the Commission examined its activities and devised a new staffing structure to enable it to meet the new budget limits.

The identification of staff eligible for redundancy was undertaken in consultation with staff and staff representatives. As the Commission needed to recoup close to \$2m on redundancy payments in the financial year, the new structure was scheduled to take effect from 1 January 1998. Salaries saved assisted the Commission meet redundancy costs.

The most significant cuts affected the policy and corporate areas of the Commission. The Commission consulted widely with staff and their representatives during this process and is pleased to report that morale remained high. All redundancies were voluntary.

Although all areas of the Commission were cut, some preference was accorded to complaint handling, the Commission's core statutory function. The Commission remains committed to maintaining an efficient and effective complaint handling service.

The Public Affairs unit was maintained intact, in recognition of the critical role the media plays in the education and promotion of human rights.

There was also recognition that Privacy and the Aboriginal and Torres Strait Islander Social Justice Unit required some extra consideration, although both areas were significantly reduced.

The complaints function was centralised in the Commission's Sydney office apart from the Commission's Tasmanian office. The Darwin regional office of the Commission was closed to the great regret of the Commission.

In spite of budget cuts, temporary additional staff were employed to handle the backlog of complaints from Queensland, ACT and Darwin. The complaints section of this report provides full details of the progress in clearing backlogs, and the measures taken to ensure that the people in those states and territories were not disadvantaged in accessing the services of the Commission.

The policy staff of each Commissioner was reduced to three, with all Commissioners reprioritising their activities. The Commission's project budgets, the Secretariat, and corporate services areas were substantially reduced.

The Commission has worked harmoniously with staff to ensure that the work of the Commission has been minimally affected. The conduct of Public Hearings and conciliation of complaints have continued to improve, the Commission has developed an impressive international work schedule and major national projects have been progressed.

These achievements were possible because of the constructive and professional approach taken by the Commission staff during the year, and the Commission is confident that it has now met the challenges of the year in review, and is well placed to continue its important human rights work.

The Commission has been supported during this period of change by the professionalism and hard work and commitment of its staff.

Proposed legislative changes to the Commission

In September 1997, the Attorney-General announced the Government's intention to make the following changes to the Commission, in addition to those announced in 1996 and outlined in the Commission's previous Annual Report;

- a change of name to the Human Rights and Responsibilities Commission;
- a revised structure consisting of a President and three deputy presidents who would be responsible for the current five portfolio areas;
- a separate Office of the Privacy Commissioner to be established; and
- education and the dissemination of information on human rights and assistance to business and the general community to be the central function of the commission.

Pending the passage of this legislation the government has not appointed a new Disability Discrimination Commissioner or an Aboriginal and Torres Strait Islander Social Justice Commissioner at the expiry of their appointments. Instead the Government has appointed Chris Sidoti the Human Rights Commissioner, as the acting Disability Discrimination Commissioner and Zita Antonios, the Race Discrimination Commissioner as the acting Aboriginal and Torres Strait Islander Social Justice Commissioner.

Susan Halliday was appointed as Sex Discrimination Commissioner.

In response to the Government's announcement the Commission has taken steps to separate the budget and internal administration of the Office of the Privacy Commissioner. It is the intention of the Privacy Commissioner, who until the passage of this legislation will continue to be a member of the Commission, to remain co-located with HREOC and to purchase corporate support from the Commission.

Commission's Response to certain of the proposed changes

The major features of the amending legislation which will impact on the work and function of the Commission, and which are of concern to the Commission are:

- the removal of the Commission's power to intervene in proceedings before the Courts; and
- the lack of transitional provisions for current Commissioners to transfer to the envisaged positions of Deputy Presidents.

The Commission while welcoming the proposed strengthening of the educational function of the Commission, has grave concerns about some aspects of the legislation which in the Commission's view impact upon the independence, integrity and effectiveness of the Commission.

The Commission has presented a submission to the *Senate Legal and Constitutional Legislation Committee* which argues that the removal of the Commission's power to intervene in proceedings before the Courts and the failure to provide transitional provisions compromise the Commission's independence and integrity.

The Commission's submission recommends that the status quo prevail and the Commission's intervention power remain unfettered by the need for approval from the Attorney-General. The Commission has also recommended that the Bill be amended to include transitional provisions to enable the current Commissioners to transfer within the new structure.

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

Background

The Report of the National Inquiry was tabled on 16 May 1997 by the Minister for Aboriginal and Torres Strait Islander Affairs, Senator John Herron. A full report detailing the terms of reference of the Inquiry, the hearing processes, and a summary of the evidence and submissions to the Inquiry can be found in the 1997 Annual Report of the Commission. The National Inquiry Report, community guide, executive summary and other material is on HREOC's website at <http://www.hreoc.gov.au>

Events and activities following the release of the Report

In the period following the release of the Report, Commission President Sir Ronald Wilson and Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner, conducted a program of promotion of the Report and its findings at meetings and other functions in all capital cities and in many regional and rural areas.

Following the release of the Report, a community-based program of activities in response to Recommendation (7a) for a national "Sorry Day" was established. This activity culminated in public meetings, the signing of "Sorry Books" and other events on 26 May 1998.

Distribution of Inquiry Report

The Australian Government Publishing Service (AGPS) continued to sell the Report, entitled *Bringing Them Home*. A total of 7,500 copies of the Report were sold up to June 1998.

Community Guide and Video

In the past twelve months there has been a continuing demand for both the community guide and the video. Sponsorship was obtained from a number of organisations for the re-printing of the community guide and distribution of these items:

- fifty thousand copies of the guide were distributed to schools and other educational institutions as well as to community organisations, business groups and to individuals; and
- three thousand copies of the video were distributed free of charge to peak indigenous community bodies and individuals associated with the Inquiry. Copies were also sold through the ABC Bookshops.

Response from governments

In December 1997 the Minister for Aboriginal and Torres Strait Islander Affairs announced the federal government's response to the recommendations of the Inquiry - a package providing \$63 million to be delivered over four years. The response targeted health, counselling services and family reunions. And included \$11.25 million for Indigenous organisations such as Link-Up to provide practical support for bringing together families; \$39 million to enhance counselling and mental health services for people affected by the separation; \$1.6 million to the National Library Oral History Project; \$2 million to the Australian Archives to index, copy and preserve files held by the Commonwealth and a freeze on the destruction of records held by the Commonwealth.

Some of the Inquiry's recommendations were not addressed in the federal government's response. The response made it clear that the government did not consider compensation appropriate. The recommendations related to funding for school curricula were also not accepted by the government. The government announced there would not be an expression of regret that would be evidenced by a national

apology. They argued that a national apology was untenable given the large proportion of Australians who had arrived in Australia only in the last 20 years.

The Commission welcomed the positive initiatives in the government's package but expressed regret for the lack of understanding of the core recommendation of a national apology.

Report-back to communities and analysis of the response from state governments and other bodies

An externally-funded program of reporting back to Indigenous communities including an analysis of the response of the federal, state and territory governments to the Report is being finalised. An edited version of this analysis will be published in the 1998 Aboriginal and Torres Strait Islander Social Justice Report due to be tabled in Parliament in October/November 1998 .

Media Coverage

An externally funded analysis of the qualitative and quantitative media response to the Inquiry was finalised in May.

1997 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 1997 Medal and Awards were supported by Ansett Airlines, Sheraton on the Park and N.R.M.A.

The presentation ceremony for the Awards was held on Wednesday, 10 December 1997 at a luncheon in Sydney. The luncheon was attended by over 500 people. The ceremony also acknowledged the work of the past President of the Commission, Sir Ronald Wilson, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson and the Disability Discrimination Commissioner, Elizabeth Hastings.

The Awards were presented by a representative of each judging panel. The Human Rights and Equal Opportunity Commission extends its appreciation to the judges of the Medal and Awards: Mark Bagshaw, Tim Bowden, Anglea Catterns, Heather Chapman, Senator Helen Coonan, Bryce Courtenay, Sandy Edwards, Sharon Finnane, Avril Henry, Jose Ramos Horta, Ray Hughes, Damien Keogh, Curtis Levy, Michael Lynch, Robert Manne, Bernadette McMenamin, Bani McSpedden, Joseph O'Reilly, Bruce Petty, Violet Roumeliotis, Ulrike Schuermann, Tony Squires, Virginia Trioli, Maureen Wheeler, and Sue Williams.

Winner of the Human Rights Medal

This year, 34 nominations were received for the Medal. The judging panel consisted of Jose Ramos Horta, Nobel Peace Prize Winner, Bryce Courtenay, author, and Senator Helen Coonan.

The Medal was awarded to Dr. Faith Bandler for her inspirational work dedicated to improving conditions and opportunities for Indigenous people and working towards reconciliation between Indigenous and non-Indigenous Australians. The medal was presented by the Governor General, Sir William Deane.

Winner of the Human Rights Awards

There were eight categories in the 1997 Human Rights Awards, including the new Youth category. The focus of the Awards continued to be on the role of the media and the community in informing the public about human rights.

Print media

Joint Winners: Wilson da Silva
Australian Financial Review Magazine
The Politics of The Prize

Gary Hughes and Gerard Ryle
Suffer the Children
The Age

Commendations: Dr Julianne Schultz
The Courier-Mail

Radio

Winner: David Busch
The Churches and the Stolen Generations
Encounter, ABC Radio

Commendations: Chris Bullock
The Stolen Generation
Hindsight, ABC Radio

Narelda Jacobs and Adrian Shaw
Native Title News
Radio 6AR

Community

Joint Winners: Link Up (NSW)
Tasmanian Gay and Lesbian Rights Group

Commendations: Sister Kathleen O'Connor
Sisters of St Joseph of the Sacred Heart
Julalikari Council

Youth

Winner: Tammy Williams

Commendations: Allison Summergreene

Television

Winner: Working Dog Pty Ltd, Apunipima Cape York Health Council and
Kowroa Aboriginal Community Association
Epitaph
Frontline

Commendations: Peter Kirkwood
Stolen Children
Compass, ABC TV

Paul Roberts, Des Kootji Raymond & Bill Dempsey
Buffalo Legends
 Film and Television Institute

Michael Maher
Budiman: Portrait of an activist
 Foreign Correspondent, ABC TV

Corporate

Winner: Coles Myer Ltd

Commendations: Brisbane City Council
 NSW Adult Migrant English Service

Arts

Winner: John Harding
Up the Road

Commendations: Robyn Williams
Normal service won't be resumed

Photographic

Winner: Ricky Maynard
No More Than What You See

Commendations: Warren Clarke
Landmines: A Global Tragedy

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 1992* 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 attempting 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 to the Commission for hearing and determination. A determination by the Commission does not bind the parties and further proceedings must be taken in the Federal Court for an enforceable judgement.

Legislative amendment arising from the High Court's decision in *Brandy v Human Rights and Equal Opportunity Commission* is currently before Parliament. This legislation will remove the Commission's hearing and determination role. Unconciliated complaints will go directly to the Federal Court, whose judgements on complaints will be binding. Further information on the amending legislation is provided in the Legal Services section following.

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 and regional offices and through state anti-discrimination and equal opportunity agencies, with whom the Commission has cooperative arrangements. Prior to September 1997 the Commission had regional offices in both Tasmania and the Northern Territory. Funding cuts necessitated closure of the Darwin regional office. As Tasmania has no comprehensive state anti-discrimination legislation, the Commission decided to keep its regional office in Hobart open. Northern Territory complaints under the federal legislation are now handled by central office.

Development of complaint handling services

Previous annual reports have detailed the reform and development of complaint handling practice that has occurred as a result of external reviews and the Commission's 1996 benchmarking exercise. During 1997-98 the Commission has undertaken a number of activities which demonstrate its commitment to continual improvement of the complaint handling service.

Outreach program

Changes to cooperative arrangements over recent years and the closure of the Northern Territory regional office this year have required the Commission to explore alternative means by which its functions can be provided throughout Australia. An outreach program to remote areas was piloted by the Commission in May 1998 with a visit to Alice Springs by the Race Discrimination Commissioner and staff from the Commission's complaint handling, policy and public affairs sections. The aim was to promote awareness of the Commission's functions and explore other means for addressing discrimination in areas where cooperative arrangements with state and territory anti-discrimination and equal opportunity agencies no longer exist. The complaint handling section coordinated the visit which included a Tracking Your Rights information session co-hosted by the Arrente Council, a forum for local business groups co-hosted by the Northern Territory Chamber of Commerce and Industry and the Central Australian Tourism Industry Association, and an information session for service providers co-sponsored by the Migrant Resource Centre of Central Australia. Officers were also available during the visit to answer enquiries regarding possible breaches of federal legislation. The Commission plans further visits to remote centres as a result of this pilot.

Although the Commission was reluctant to close its regional offices, it considers that in practice the closures have had few ramifications for service delivery. The major part of the complaint handling function is conducted through correspondence and by telephone. While the centralisation of the complaint handling function has reduced face to face contact between Commission clients and staff, central office has explored alternative approaches to tasks which once required face to face contact. Complaints from across the country are now commonly settled by telephone negotiation or by an exchange of letters. Witness statements can be dictated by the witness over the telephone and forwarded to the witness for signing. There has been no recorded drop in the average number of federal complaints received by the Commission from Queensland, the Northern Territory and the Australian Capital Territory since the cessation of the cooperative arrangements and the closure of regional offices.

Case Handling and Record Management System (CHARMS)

Last year's report referred to the implementation of a computerised complaints management system at central office. During 1997-98 the CHARMS system was licensed for use by the Equal Opportunity Commission of Victoria, the Office of the Equal Opportunity Commissioner in South Australia and the Anti Discrimination Commission of Queensland. This development will enable increased consistency in the practice and reporting of complaint handling across Australia.

National Register of Conciliation Outcomes

During the year the Commission approved the commencement of work to enhance the database (CHARMS) to provide for a register of conciliation outcomes. The information technology specifications are now complete and programming work will commence shortly. This register will be available on the Commission's website which already provides information about the Commission's hearing determinations. It is hoped that improved public accessibility to this information will better inform parties and their advocates and assist them to resolve complaints satisfactorily.

Training

During 1997-98 the Commission finalised the development of two specialised training programs. These programs provide knowledge and skills in statutory investigation and conciliation and were developed in consultation with experts in the relevant fields. Both programs are now being prepared for national accreditation. During the past year, two training programs were held in Sydney for Commission staff and staff from state anti-discrimination and equal opportunity agencies. In March 1998 the Investigation Training Program was conducted at the Equal Opportunity Commission of Victoria, and in June 1998 the program was presented at the Office for the Commissioner for Equal Opportunity in South Australia. These agencies are partners with the Commission under the cooperative arrangements. The provision of training has been a positive mechanism to convey necessary knowledge, skills and standards for quality complaint handling services.

Service charter

1997-98 saw the development of a service charter for the Commission's complaint handling service as required by Government policy. The charter provides a clear and accountable commitment to service by which users can understand the nature and extent of the service and by which the Commission can develop and improve.

The 1994 reviews of the complaint handling service by external consultants entailed extensive work on surveying users of the service. These reviews found the major consumer concerns to be:

- confusion and lack of information about the nature of the process and role of the Commission;
- delay;
- perceived bias; and
- perceived lack of accountability.

A draft of the charter was developed after considering these concerns and consultation with a wide cross section of service users and stakeholders. In October 1997, 375 copies of the draft service charter were sent to persons/organisations. Twenty-one responses were received. Generally the responses to the draft were positive and congratulatory on the Commission's commitment to service. Examples include "seems to be comprehensive and clear"; "looks very good"; "an excellent draft" and "clear and to the point". The draft was amended, where appropriate, to address the responses.

In 1997-98 the Commission received one complaint about its services through this mechanism.

Service evaluation

In December 1997, the Commission implemented a service evaluation strategy using a customer satisfaction survey as a part of its approach to develop its complaint handling service. The survey was used to obtain feedback from complainants and respondents (or their advocates) involved in the process. This inaugural survey provides a useful benchmark against which future performance can be measured. The information obtained will also be used to identify areas for further improvement.

The survey questions were aimed in particular at the areas of service user concern identified in earlier external reviews. Participants were randomly selected and surveyed by telephone. Survey results for the period December 1997 - June 1998 indicated that:

- 62 percent of complainants and 66 percent of respondents were satisfied with the timeliness of the complaint handling process;
- 72 percent of complainants and 92 percent of respondents found Commission staff courteous and helpful;
- 86 percent of complainants and 88 percent of respondents understood information about the complaint handling process provided by staff;
- 89 percent of complainants and 88 percent of respondents felt the Commission's forms and correspondence were easy to understand; and
- 76 percent of complainants and 86 percent of respondents described complaint handling staff as unbiased.

The results of the survey demonstrate the significant work that has been done to address user concerns identified in the 1994 external review of the Commission's complaint handling services.

International work

In early 1998 the Commission was awarded a tender to provide technical assistance to the South African Human Rights Commission. A component of the technical assistance project involved assisting the South African Commission in the development of a Complaint Handling Procedures Manual. Two senior staff members from the central office complaint handling section visited the South African Commission in March 1998 to undertake this work. During the past twelve months the central office complaint handling section has also been involved in providing information about the Commission's complaint handling work to visiting delegations from human rights institutions in Bangladesh, Indonesia and South Africa.

Complaint handling performance

The number of complaints received and finalised over the past three years is similar to the number received in 1995-96 and lower than the number of complaints received in 1996-97. The high number of complaints received in 1996-97 is explained by the one-off receipt of 210 complaints after the closure of the Queensland and ACT offices and an influx of Racial Discrimination Act complaints after the introduction of the racial hatred provisions.

There is no developing trend in the overall number of complaints received in central office and it appears that complaint numbers rise and fall from year to year with no obvious explanation. State anti-discrimination agencies have anecdotally reported a drop in complaint numbers for this financial year as have other complaint handling bodies. While there is no obvious reason for this decrease, a contributing factor may be the introduction of comprehensive internal complaint handling mechanisms and service charters by Commonwealth agencies which shift the incidence of complaint handling from external agencies to internal processes.

The number of complaints finalised rose 16 percent from 1995-96 to 1996-97 and the number is similar in 1997-98 meaning the effectiveness gains have been maintained.

During 1997-98 there has also been a further reduction in complaint processing times with approximately 50 percent of complaints being finalised within 6 months of receipt.

The proportion of complaints resolved by conciliation in 1997-98 is slightly lower than in 1996-97 but more than a third above 1995-96 figures.

Complaint statistics

Total complaints

Prior to 1996-97 state and federal agencies utilised different methods to count complaints. For the past two years, a comparable method of counting has been used by the Commission and its state cooperative arrangement partners. 1997-98 data on state complaints and total complaints can therefore be compared with the data from the 1996-97 report but valid comparisons with data from earlier reports cannot be made.

The statistics provided for the Northern Territory Regional Office are only for the period July 1997 - September 1997. The Equal Opportunity Commission of Victoria reports that there is some unreliability attached to the statistics provided for 1997-98. The CHARMS database has recently been implemented at this office and the database is not yet stabilised and the reporting function is incomplete.

Under the current cooperative arrangements, Commission offices handle complaints under the federal Acts; the Commissioner for Equal Opportunity in South Australia and the Western Australian Equal Opportunity Commission handle complaints under the Sex Discrimination Act and Racial Discrimination Act (excepting racial hatred complaints) and the Equal Opportunity Commission Victoria handles complaints under the Disability Discrimination Act, Sex Discrimination Act and Racial Discrimination Act (excepting racial hatred complaints).

Table 1: Complaints received in 1997-98 by location of office

Act	Central office	NT	Tas	Vic	SA	WA	Total
Disability Discrimination Act	296	2	23	267	-	-	588
Human Rights and Equal Opportunity Commission Act	144	-	3	-	-	-	147
Racial Discrimination Act	197	3	7	77	69	15	368
Sex Discrimination Act	218	1	17	72	105	6	419
Total	855	6	50	416	174	21	1522

In 1997-98 all offices, except the Equal Opportunity Commission of Victoria, experienced a decrease in the number of complaints received. The number of complaints received by the Equal Opportunity Commission of Victoria under the Disability Discrimination Act is higher by 81 complaints than the number received in 1996-97. The 1997-98 statistics however include 120 complaints lodged by two individuals where the complainants' standing to proceed is unclear. When this factor is taken into account the number of disability discrimination complaints received by that agency in 1997-98 is lower than the last reporting year. This example illustrates continuing discrepancies in the assessment and counting of complaints by cooperative arrangements partners.

Table 2: Complaints finalised in 1997-98 by location of office

Act	Central office	NT	Tas	Vic	SA	WA	Total
Disability Discrimination Act	402	13	28	197	-	-	640
Human Rights and Equal Opportunity Commission Act	266	9	3	-	-	-	278
Racial Discrimination Act	416	15	8	69	68	24	600
Sex Discrimination Act	326	8	21	116	146	15	632
Total	1410	45	60	382	214	39	2150

In 1997-98, as in the last reporting year, more complaints were finalised than received. The areas of disability and sex discrimination remain dominant.

Racial Discrimination Act

In comparison with 1996-97 figures, complaints received under the Racial Discrimination Act have decreased by 37 percent. The decrease is in large part attributable to a decrease in racial hatred complaints, not unexpected after the large influx of racial hatred complaints in the year following the introduction of the racial hatred amendments. The number of complaints finalised is consistent with 1996-97 figures. Figures for the Commission's central office indicate that over the past two years there has been a 135 percent increase in the number of complaints finalised.

The racial hatred amendments to the Racial Discrimination Act have now been in force since October 1995. All racial hatred complaints are handled by the Commission's central office.

Table 3: Racial Discrimination Act complaints received and finalised in 1997-98 by location of office

RDA*	Central office	NT	Tas	Vic	SA	WA	Total
Received	197	3	7	77	69	15	368
Finalised	413	15	8	69	68	24	600

*Includes complaints lodged under the racial hatred provisions.

There are three primary outcomes of a complaint: a complaint may be declined; conciliated; or referred to the Commission for hearing and determination. Inquiry into a complaint may be declined by the Race Discrimination Commissioner on the grounds provided in the Racial Discrimination Act. These grounds are set out in Table four with the category "withdrawn" subdivided to illustrate the reason for the complainant withdrawing. A complaint is considered to be withdrawn when the Commission has lost contact with the complainant, where the matter has been resolved outside of the Commission or where the complainant advises that they do not wish to proceed with the complaint. This latter category includes situations where complainants do not proceed because they are satisfied with the initial reply obtained from the respondent.

Table 4: Outcomes of Racial Discrimination Act complaints finalised in 1997-98

RDA*	Central office	NT	Tas	Vic	SA	WA	Total
Declined	318	10	2	58	51	15	454
Not unlawful	9	2	-	1	3	-	15
Withdrawn, does not wish to pursue, advised Commission	101	4	-	9	17	5	136
Withdrawn, does not wish to pursue, settled outside Commission	3	-	-	5	1	-	9
Withdrawn, lost or unable to contact	58	-	-	10	6	5	79
More than 12 months old	15	1	-	10	-	1	27
Vexatious, misconceived, lacking in substance or frivolous	131*	3	2	23	24	4	187
Conciliated	44	3	5	5	10	4	71
Referred for hearing	25	2	1	6	7	1	42
Terminated**	15	-	-	-	-	1	16
Transferred***	15	-	-	-	-	3	18
Total	416	15	8	69	68	24	600

* Of the 131 central office complaints, 125 were declined as lacking in substance and six were declined as misconceived. No complaints were declined as frivolous or vexatious. Data from other offices and state agencies is not available.

** 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.

The proportion of conciliated outcomes remains lower than that for complaints of sex and disability discrimination. There is no clear explanation for this difference. Complaint handling experience indicates that respondents to racial discrimination complaints often do not view their behaviour as racial discrimination and do not understand how complainants could conceive of the behaviour in this way. Additionally complainants under the Racial Discrimination Act appear to have more difficulty obtaining evidence to support their allegations and this may be indicative of the more covert nature of racial discrimination.

The percentage of complaints declined as either vexatious, misconceived, lacking in substance or frivolous is similar to 1996-97. As outlined in **Table 4** the majority of complaints in this category were declined as lacking in substance. A decision to decline a complaint as lacking in substance indicates that the complainant has been unable to provide sufficient evidence to substantiate the allegation and does not necessarily equate to a determination that discrimination has not occurred. During 1997-98 there was a slight increase in the percentage of complaints withdrawn at the request of the complainant (8 percent). The other main reason for decline is loss of contact with the complainant.

Table 5: Racial Discrimination Act complaints received in 1997-98 by area

RDA	Central office	NT	Tas	Vic	SA	WA	Total
Rights to equality before the law	12	-	-	-	-	-	12
Access to places and facilities	5	-	-	-	2	-	7
Land, housing, other accommodation	4	-	1	5	5	2	17
Provision of goods and services	39	2	2	46	39	5	133
Right to join trade unions	1	-	-	-	-	-	1
Employment	49	1	3	95	26	6	180
Education	6	-	1	6	3	-	16
Incitement to unlawful acts	2	-	-	-	-	-	2
Other	9	-	-	1	-	2	12
Racial Hatred**	94	-	-	8	-	-	102
Total*	214	3	7	161	75	15	482

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

**One complaint may have multiple areas.

Racial hatred complaints make up 44 percent of all complaints dealt with by central office under the Racial Discrimination Act and form a significant proportion of racial discrimination complaints generally. Racial hatred complaints are discussed in more detail over the page. During 1997-98 there has been an 8 percent increase in complaints regarding discrimination in the provision of goods and services. Employment remains the single highest area of complaint. During 1997-98 the policy work of the Race Discrimination Commissioner has included work on the development of guidelines for employers on eliminating racial discrimination and harassment in the workplace.

Table 6: Complainant gender or group - Racial Discrimination Act complaints received in 1997-98

RDA	Central office	NT*	Tas	Vic	SA	WA	Total
Male	128	-	6	41	49	10	234
Female	54	-	1	36	20	5	116
Organisation	5	-	-	-	-	-	5
Community, other organisation	1	-	-	-	-	-	1
Joint, multiple	9	-	-	-	-	-	9
On others behalf	-	-	-	-	-	-	-
Total	197	-	7	77	69	15	365

*Data from the Northern Territory regional office is not available.

Racial hatred

The racial hatred amendments to the legislation came into effect in October 1995. Racial hatred complaints are predominantly handled by the Commission's central office and the statistics produced in this section refer to central office only.

Table 7: Racial hatred complaints received and finalised in 1997-98

Received	94
Finalised	187

There has been a decrease in the number of racial hatred complaints received in the past year. As forecast in last year's Annual Report, determining a trend from these numbers is not possible given the short time the legislation has been in place. It is difficult to draw any conclusion about any rise and fall in racism in the country from the federal complaint numbers alone. This is because complaint numbers may be determined by any number of factors including awareness of the law, the newness of the racial hatred provisions, the effect of community education strategies and the lodgement of complaints under state legislation.

Table 8: Outcomes of racial hatred complaints finalised in 1997-98

Declined	136
Not unlawful	7
Withdrawn, does not wish to pursue, advised Commission	68
Withdrawn, does not wish to pursue, settled outside Commission	1
Withdrawn, lost or unable to contact	27
More than 12 months old	4
Vexatious, misconceived, lacking in substance or frivolous	29*
Conciliated	32
Referred for hearing	15
Terminated	4
Transferred	-
Total	187

*All complaints in this category were declined as lacking in substance.

The proportion of racial hatred complaints conciliated is higher than the proportion conciliated under the Racial Discrimination Act generally.

Table 9: Racial hatred complaints received in 1997-98 by area

Media	17
Neighbourhood	49
Personal relations	2
Employment	4
Racist propaganda	1
Entertainment	3
Sport	1
Public debate	8
Other	9
Total	94

Table 9 shows that just over half of the complaints received in 1997-98 concerned neighbourhood disputes. There has been a 22 percent increase in this area of complaint in the past year. While complaints concerning the media have remained fairly constant at 18 percent, there has been a 10 percent decrease in complaints concerning racist propaganda and a similar decrease in complaints concerning public debate (though the numbers concerned are small).

Case studies

Roadside altercation

The complainant stated that she approached the respondent at a set of traffic lights and requested that he make a donation to a charitable organisation for which she was collecting. The complainant alleged that the respondent swore at her, said “you Asians go back to your own country” and assaulted her. The complainant’s father-in-law was a witness to the incident. The matter was resolved by conciliation with the respondent agreeing to pay the complainant \$1,500 financial compensation and provide a verbal apology.

Work conditions

The complainant alleged that he was referred to as “black” by a co-worker on at least two occasions. He further alleged that, when he advised his supervisor of the comments, little or no action was taken to redress the situation. The complainant also alleged that because he complained he was given fewer work shifts than his co-workers. The respondent’s company stated that a full investigation of the complainant’s concerns had been undertaken. The company claimed that it was the complainant’s lack of availability, not the fact that he complained, which led to him receiving less work.

The complaint was resolved by conciliation. The respondent agreed to make the company’s grievance handling procedures more accessible to staff, to provide the complainant with an apology and pay the complainant financial compensation of \$3,425. A written apology was also provided by the co-worker who allegedly made the comments.

Purchase of equipment

An Aboriginal organisation alleged that it had been discriminated against by a government department on the grounds of race as the department had rejected the organisation’s application to purchase equipment at the non-commercial rate. The department denied that race was a factor in its decision and stated that the complainant organisation’s application did not meet the required criteria.

In conciliation, the department agreed to provide the complainant organisation with the equipment at non-commercial rates, subject to certain conditions.

Neighbourhood dispute

The complainant alleged her neighbour made insulting racially based comments about her in public. The complainant alleged that her neighbour said “You don’t belong here. Get back to where you come from”. The neighbour denied saying the alleged words but advised the Commission that she was willing,

in the hope of a more harmonious neighbourhood, to apologise for any perceived hurt that the complainant felt as a result of the incident. The complainant accepted the neighbour's apology as settlement of the complaint.

Harassment at work

The complainant alleged that he was subjected to racial abuse by co-workers who called him "coconut head" and "gorilla". The complainant claimed that after years of such abuse he complained to management. The complainant stated that, following a management investigation, he was subjected to further acts of discrimination and due to the resulting stress was forced to take sick leave. The complainant provided medical evidence of his stress related condition. The respondent stated that there was evidence that the alleged events occurred. However as no individual employee could be identified as being responsible, no action could be taken by the company.

At conciliation the respondent agreed to make arrangements for the complainant to work on a different shift, reinstate the complainant's sick leave and annual leave, provide the complainant with an employment reference, implement discrimination policies, provide Equal Employment Opportunity (EEO) training for managers and allow the complainant to take part in EEO training with a view to becoming a harassment officer within the company. The complainant was also paid \$10,000 financial compensation for hurt and humiliation.

Termination of employment

The complainant, a white Australian woman, lodged a complaint against her previous employer, an Aboriginal organisation. The complainant alleged that an Aboriginal co-worker made derogatory comments about her racial background. The complainant stated that she made a complaint to management and the co-worker received a written warning. The complainant's employment was later terminated and the complainant alleged that this was because of her race. The respondent organisation denied the allegations and stated that the complainant's contract was not renewed because of her performance and complaints about her by co-workers and clients.

The complaint was resolved by conciliation. The respondent agreed to provide the complainant with a written apology, to pay financial compensation for lost wages (\$1,038) and institute workplace grievance procedures.

Offensive comments by customer

The complainant is employed in a customer service position with a financial institution. The complainant alleged that while serving a customer he had difficulty with the transaction and in response the customer said "I don't want it from you you're not an Australian, you don't know your work, go back to where you came from". The customer denied making the alleged comment but agreed that there had been a dispute between himself and the complainant. The complainant provided evidence from his co-workers who witnessed the incident.

The complaint was resolved by the respondent providing the complainant with a written apology and financial compensation of \$300 for hurt and humiliation.

Sex Discrimination Act

In contrast with figures for 1996-97, there has been a 37 percent decrease in complaints received under the Sex Discrimination Act and a 29 percent decrease in the number of complaints finalised. The number of complaints finalised at central office is similar to 1996-97 figures and represents a 23 percent increase on the number of complaints finalised in 1995-96.

Table 10: Sex Discrimination Act complaints received and finalised in 1997-98 by location of office

SDA	Central office	NT*	Tas	Vic	SA	WA	Total
Received	218	1	17	72	105	6	419
Finalised	326	8	21	116	146	15	632

Table 11: Outcomes of Sex Discrimination Act complaints finalised in 1997- 98

SDA	Central office	NT	Tas	Vic	SA	WA	Total
Declined	150	1	9	73	67	6	306
Not unlawful	19	-	-	-	1	-	20
More than 12 months old	22	-	-	8	-	1	31
Vexatious, misconceived, lacking in substance or frivolous	49*	-	3	19	33	1	105
Withdrawn, does not wish to pursue, advised Commission	47	-	2	31	18	1	99
Withdrawn, does not wish to pursue, settled outside Commission	-	1	1	11	6	-	19
Withdrawn, lost or unable to contact	13	-	3	4	9	3	32
Conciliated	104	5	6	27	55	6	203
Referred for hearing	25	2	4	16	24	1	72
Terminated**	20	-	-	-	-	-	20
Transferred***	27	-	2	-	-	2	31
Total	326	8	21	116	146	15	632

* Of the 49 central office complaints, 41 were declined as lacking in substance, seven were declined as misconceived and one was declined as frivolous. No complaints were declined as vexatious. Data from other offices and state agencies is not available.

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

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

Table 11 shows the proportion of complaints declined, conciliated and referred for public hearing. The rate of conciliation of complaints under the Sex Discrimination Act is comparatively high. In the Commission's central office the rate of conciliation of complaints under the Sex Discrimination Act is 35 percent. For the past three years the percentage of complaints resolved by conciliation has continued to increase. 1996-97 central office statistics indicated a 12 percent increase in conciliation outcomes and the 1997-98 figures show a further increase of two percent.

Table 12: Sex Discrimination Act complaints received in 1997-98 by ground

SDA	Central office	NT	Tas	Vic	SA	WA	Total
Sex Discrimination	74	-	6	78	39	2	199
Marital status	12	1	2	13	6	1	35
Pregnancy	29	-	5	12	13	2	61
Sexual harassment	115	-	4	67	85	2	273
Parental status, Family responsibility	9	-	-	5	1	-	15
Victimisation	1	-	-	15	4	1	21
Total*	240	1	17	190	148	8	604

*One complaint may have multiple grounds.

Table 12 shows the spread of complaints between the various types of sex discrimination defined in the Sex Discrimination Act. Sexual harassment remains the single greatest cause of complaint, with sex discrimination the next most numerous area. Central Office statistics for the past three years indicate a continual increase in the percentage of sexual harassment complaints.

Table 13: Sex Discrimination Act complaints received in 1997-98 by area

SDA	Central office	NT	Tas	Vic	SA	WA	Total
Employment	180	1	14	164	112	6	477
Goods, services and facilities	22	-	2	22	32	-	78
Land	-	-	-	-	-	-	-
Accommodation	2	-	-	1	2	-	5
Superannuation, insurance	1	-	-	-	-	-	1
Education	2	-	-	-	-	-	2
Clubs	8	-	-	3	2	-	13
Administration of federal laws and programs	13	-	1	-	-	-	14
Application forms etc	-	-	-	-	-	-	-
Trade unions, accrediting bodies	-	-	-	-	-	-	-
Total*	228	1	17	190	148	6	590

*One complaint may have multiple areas.

Table 13 shows the spread of complaints across the areas of unlawful discrimination under the Sex Discrimination Act. As in 1996-97, allegations of discrimination in employment dominate, followed by complaints concerning the provision of goods and services. Figures for central office indicate that there has been a continual increase over the past 3 years in the number of complaints concerning alleged discrimination in employment. During 1997-98 the policy work of the Sex Discrimination Commissioner has continued to focus on the area of employment.

Table 14: Complainant gender or group - Sex Discrimination Act complaints received in 1997-98

SDA	Central office	NT	Tas	Vic	SA	WA	Total
Male	22	-	4	11	15	-	52
Female	190	1	13	61	90	6	361
Organisation	4	-	-	-	-	-	4
Community, other group	-	-	-	-	-	-	-
Joint, multiple	2	-	-	-	-	-	2
On other behalf	-	-	-	-	-	-	-
Total	218	1	17	72	105	6	419

Table 14 shows that the majority of complainants under the Sex Discrimination Act are lodged by women (86 percent). It should be noted that the Sex Discrimination Act implements the *Convention on the Elimination of all forms of Discrimination Against Women*. Due to constitutional restrictions on federal power, men can only lodge a complaint under the Sex Discrimination Act where the respondent is either a Commonwealth agency, a trading corporation, a financial institution or engaged in interstate trade and commerce. State and territory anti-discrimination laws are not limited in this way.

Case studies

Sexual harassment

The complainant alleged sexual harassment against her former employer, a health professional who operated his own surgery. The complainant alleged that the respondent insisted on offering her a lift home from work on her first day of employment. The complainant alleged that the respondent grabbed her and forcibly kissed her but then apologised, saying that it would not happen again. The complainant claimed that the next day her employer touched her again and so she resigned. The complainant had been undertaking technical training in the area and lost her traineeship.

The matter was settled by conciliation with the respondent agreeing to pay the complainant \$15,000 compensation for hurt and humiliation and provide the complainant with a verbal apology and a work reference.

Family responsibilities

The complainant lodged a complaint against her previous employer, a manufacturing company. The complainant stated that during her employment with the respondent she had been required to take a lot of leave because of her child's illness. She alleged that her former employer had been unwilling to provide her with flexible work shifts and that she had no choice but to resign. The complainant also alleged that she had been sexually harassed by a supervisor within the company. The respondent company stated that it had tried to accommodate the complainant, but as she was a skilled supervisor it was unable to continually find substitute supervisors at short notice.

The matter was settled by conciliation with the respondent agreeing to provide the complainant with \$5,000 in compensation and provide her with a work reference. The respondent was prepared to re-employ the complainant but she was unwilling to return.

Pregnancy dismissal

The complainant alleged that her former employer had discriminated against her on the grounds of her pregnancy. Prior to her dismissal, the complainant had worked on a casual basis as a waitress in the respondent's restaurant for some thirteen months. The complainant alleged that when she was four months pregnant she was told to "stand down" from her position without pay so that she could "look after herself and the baby". The respondent claimed that this action was taken because of the complainant's poor health, caused by morning sickness and because her work performance had deteriorated.

The complaint was settled by telephone negotiations between the parties with the respondent agreeing to reinstate the complainant to her former number of shifts.

Sexual harassment and victimisation

The complainant, who worked in a specialised unit within a large corporation, alleged that she had been sexually harassed by a supervisor in the workplace and by her manager while at a staff function. The complainant alleged that both of her supervisors made comments of a sexual nature which she found offensive, humiliating and intimidating. The complainant also alleged that certain male colleagues (including one of the supervisors) watched pornographic videos at work, discussed the contents of the videos within the workplace and made comparisons between the videos and female co-workers. The complainant said that she complained to the company about this behaviour. The complainant alleged that because of her complaints to the company and the Commission she was denied opportunities for promotion and work colleagues made unfavourable comments to her. The respondent company advised that it had conducted an internal investigation in response to the complainant's concerns which indicated that there was substance to some of the complainant's allegations. The respondent company advised however that the two named individual respondents no longer worked for the company. The company stated that the complainant was denied opportunities for promotion because she had made a complaint.

The complaint was settled at conciliation with the respondent agreeing to implement EEO training to section staff, appoint an harassment contact officer and introduce EEO as a standard agenda item at all team meetings. The respondent also agreed to pay the complainant \$5,500 compensation for hurt and humiliation.

Discrimination on the grounds of pregnancy

The complainant alleged discrimination on the grounds of pregnancy by her previous employer. The complainant, who occupied a middle management position in a large financial institution, stated that she was advised in the early stages of her pregnancy that her position would be reassessed and possibly upgraded due to increased business levels. The complainant claimed that while on twelve months maternity leave her position was officially upgraded but she was not advised about the regrading or given the opportunity to apply for the position. The complainant stated that the position was filled by another staff member and she was given the option of returning to a casual or full-time lower grade position at another location. The complainant resigned at the end of her maternity leave. Due to the

length of time since the alleged incidents and changes to company structure, management and staff, the company was unable to provide a definitive response to the allegation.

The complaint was settled by means of telephone negotiations between the parties. Without admission of liability, the respondent agreed to pay the complainant compensation of \$34,000 which took the form of a retrenchment package with superannuation payment adjustments.

Disability Discrimination Act

In 1997-98 there was a 14 percent decrease in the number of complaints received under the Disability Discrimination Act and a similar decrease in finalised complaints. Figures for central office indicate that the number of complaints received in 1997-98 is similar to the number received in 1995-96 and the finalisation rate has remained relatively constant over the past three years.

Table 15: Disability Discrimination Act complaints received and finalised in 1997- 98 by location of office*

DDA	Central office	NT	Tas	Vic	Total
Received	296	2	23	267	588
Finalised	402	13	28	197	640

*As noted previously, complaints under the Disability Discrimination Act are not currently handled by either the South or West Australian Equal Opportunity Commissions.

Table 16: Outcomes of Disability Discrimination complaints finalised in 1997-98

DDA	Central office	NT	Tas	Vic	Total
Declined	219	11	8	125	363
Not unlawful	44	1	1	1	47
More than 12 months old	18	-	1	8	27
Trivial, lacking in substance, misconceived or vexatious	72*	7	4	42	125
More appropriate remedy available	13	-	-	-	13
Adequately dealt with already	16	-	1	10	27
Withdrawn, does not wish to pursue, advised Commission	51	3	-	38	92
Withdrawn, does not wish to pursue, settled outside Commission	3	-	-	7	10
Withdrawn, lost or unable to contact	2	-	1	19	22
Conciliated	113	1	14	46	174
Referred for hearing	34	-	6	26	66
Terminated**	19	-	-	-	19
Transferred***	17	1	-	-	18
Total	402	13	28	197	640

* Of the 72 central office complaints, 70 were declined as lacking in substance and two were declined as misconceived. No complaints were declined as trivial or vexatious. Data from other offices and state agencies is not available.

**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 16 details the outcomes of finalised complaints under the Disability Discrimination Act. The proportion of conciliated complaints is 29 percent, which is lower than complaints under the Sex Discrimination Act but higher than complaints under the Racial Discrimination Act.

Table 17: Complainant's type of disability* - Disability Discrimination Act complaints received in 1997-98

DDA	Central office	NT	Tas	Vic	Total
Physical disability	67	1	5	10	83
A mobility aid is used (walking frame or wheelchair)	31	-	2	115	148
Physical disfigurement	13	-	-	-	13
Presence in the body of organisms causing disease (HIV/AIDS)	2	-	-	-	2
Presence in the body of organisms causing disease (other)	7	-	-	5	12
Psychiatric disability	26	1	6	8	41
Neurological disability (epilepsy)	13	-	1	-	14
Intellectual disability	8	-	-	2	10
Learning disability	6	-	-	-	6
Sensory disability (hearing impaired)	10	-	1	5	16
Sensory disability (deaf)	9	-	2	-	11
Sensory disability (vision impaired)	23	-	4	7	34
Sensory disability (blind)	1	-	-	-	1
Work related injury	20	-	-	13	33
Medical condition (diabetes)	9	-	-	6	15
Other	16	-	2	96	114
Total	261	2	23	267	553

* A complainant may have multiple disabilities

Table 17 provides information on complainant disability type. Since the introduction of the Commission's computerised database, it has been the practice of the Commission's central office to send a detailed questionnaire to the complainant when their complaint is made. Central office data on the type of disability is gathered by means of this questionnaire. In 1997-98, 57 percent of complainants under the Disability Discrimination Act returned the questionnaire.

Table 18: Disability Discrimination Act complaints received in 1997-98 by area

DDA	Central office	NT	Tas	Vic	Total
Employment	120	1	14	150	285
Goods, services and facilities	90	1	4	169	264
Access to premises	39	-	3	13	55
Land	-	-	-	-	-
Accommodation	3	-	-	3	6
Incitement to unlawful acts or offences	-	-	-	-	-
Advertisements	1	-	-	-	1
Superannuation, insurance	10	-	-	-	10
Education	31	-	-	14	45
Clubs, incorporated associations	10	-	2	4	16
Administration of federal programs	15	-	-	-	15
Sport	15	-	-	-	15
Application forms, requests for information	-	-	-	-	-
Trade unions, registered organisations	-	-	-	-	-
Unlawful to contravene disability standards	1	-	-	-	1
Total*	335	2	23	353	713

*One complaint may have multiple areas.

Table 18 shows the areas of public life in which complaints were made. Employment remains the single greatest area of complaint followed by complaints concerning the provision of goods, services and facilities. There has been a five percent increase in complaints alleging discrimination in the provision of goods, services and facilities and a small increase (2 percent) in complaints in the area of employment. The figures indicate that there has been a five percent decrease in complaints concerning education and a similar decrease in complaints regarding access to premises.

The policy work of the Disability Discrimination Commissioner continues to be informed by the nature of the complaints received by the Commission. During 1997-98 the Disability Discrimination Unit released a further draft of Employment Disability Standards and a revised version of Advisory Notes on Access to Premises. The experience derived from the handling of disability discrimination complaints has also been utilised in the development of a “frequently asked questions” section on the Commission Internet site.

Table 19: Complainant gender or group - Disability Discrimination Act complaints received in 1997-98

DDA	Central office	NT*	Tas	Vic	Total
Male	164	-	9	160	333
Female	113	-	13	107	233
Organisation	4	-	-	-	4
Community, other group	1	-	1	-	2
Joint, multiple	10	-	-	-	10
On other behalf	4	-	-	-	4
Total	296	-	23	267	586

*Data from the Northern Territory regional office is not available

Case studies

Airline services

The complainant, who has a mobility disability, was unable to use toilet facilities independently during a long flight because the aircraft in which he was travelling did not have onboard wheelchairs. This resulted in the complainant being carried down the aisle by two flight attendants causing him significant distress and embarrassment. The complainant alleged that he had been advised by airline booking staff that onboard wheelchairs were available. The complainant claimed that his inability to fully access the plane and the services provided by the airline constituted discrimination on the grounds of disability. In reply the airline claimed that it was impractical to carry onboard wheelchairs on some of its flights because of space and seating considerations.

The complaint was resolved by conciliation with the airline agreeing to fit the majority of its aircraft with onboard wheelchairs over a two year period, to review its operations relating to passengers with disabilities and invite speakers from peak disability groups to address its customer service committee. The airline also offered the complainant a free flight of equivalent length.

Casual employment

The complainant was referred by the Commonwealth Employment Service for casual work as a taxi driver. The owner of the taxi company requested that the complainant first accompany another driver to understand what was involved. The appointed driver refused to take the complainant out with him because she had a deformity of both lower arms and he considered that she was incapable of doing the job. The complainant told the owner that she could fulfil all the requirements of the job if given the opportunity. Another arrangement was made for her to accompany a driver on a trial run but that driver, after speaking with the first driver, failed to turn up. The complainant alleged discrimination in employment and claimed that the company was liable for the action of its drivers.

When contacted by the Commission the owner stated that he was prepared to offer the complainant casual work. However, by this time, the complainant had moved from the area. The respondent said that they regretted the incident and, while he did not admit liability, he agreed to provide the complainant with financial compensation of \$4,000.

Duties of employment

The complainant has a vision impairment and for that reason cannot drive a motor vehicle. The complainant applied for a job as a social worker which listed a driver's licence as an essential requirement. On being asked to bring her licence to the interview, the complainant said that she did not have one. The offer of interview was then withdrawn. The complainant lodged a complaint in which she claimed that a driver's licence was not an essential requirement for the advertised position as most of the work was centre based and the area was well served by public transport.

The respondent did not accept liability but acknowledged the complainant's disappointment and offered her financial compensation of \$1,000. The respondent also agreed to monitor its mix of centre based work and field work to ascertain if it could employ non-drivers in the future.

Restaurant refitted

The complainant alleged that one of the better restaurants in his town did not provide adequate toilet facilities for people with mobility disabilities. The restaurant was part of a low rise shopping complex. An accessible toilet some distance from the restaurant was kept locked and a key was available from the restaurant. The complainant said that because of his disability he had very little warning that he needed to use the toilet. It was not possible for him to wait for a key and then wheel himself seventy metres to the accessible toilet. Furthermore, the complainant said that the accessible toilet was mainly used by staff and was not kept as clean as the restaurant facilities.

A site inspection revealed that one of the toilets in the restaurant could be rendered wheelchair accessible. The owner of the shopping complex agreed to implement the required changes immediately and to provide a parking space for drivers with disabilities adjacent to the restaurant entrance.

Travel insurance

The complainant stated that although he had a mental illness he had been well for several months and planned to travel with his family to America to visit relatives. He claimed that an insurance company refused to provide him with travel insurance for a pre-existing mental illness. While the complainant was away he became unwell and was hospitalised for a short period. The trip was cut short because of the related medical expenses. The complainant alleged that the insurance company was not covered by the exemption in the Disability Discrimination Act because it had acted without reference to statistical or actuarial information that was reasonably available. The complainant also alleged that the decision did not take into account the particular circumstances surrounding the travel and that therefore it was not a reasonable decision. The insurance company denied that statistical or actuarial data was reasonably available and it claimed that, on the face of the application, it was not reasonable to provide the applicant with the insurance.

The complaint was settled by conciliation. The insurance company agreed to pay the complainant \$4,500 in financial compensation and provided an undertaking that the company would commission an actuarial inquiry into the risks of insuring a person with this particular disability.

Access on campus

The complainant uses a wheelchair. He enrolled at a tertiary institution in a degree program but alleged that he was unable to continue his studies because the university's premises were not fully accessible to people with disabilities who use wheelchairs. The university claimed that in meetings with the complainant prior to and after enrolment an integration plan had been developed which included identification of the complainant's needs arising from his disability. The institution claimed that the complainant was concerned about one issue that had not yet been resolved. The university claimed that it had endeavoured to deal with all the issues.

The complaint was resolved by conciliation. Without admission of liability the respondent agreed to provide a statement of commitment to the complainant, ensure that the complainant could re-apply for course admission without penalty, refund the complainant's course fees and pay the complainant compensation of \$715.

Income protection insurance

The complainant, who is blind, claimed that she contacted the respondent company seeking income protection insurance and was told by the company's underwriter that the company could not assist her but "might have been able to do something had she had some vision". The complainant maintained that her health was very good and that she does not have other health problems. The complainant claimed that, even if the insurance company was able to produce evidence to demonstrate she was a high risk, she should not be totally excluded from cover. The complainant sought a reversal of the policy which excluded blind people from income protection cover. She requested that the company define the correct risk of insuring her and assign a rating to that risk, as is the usual procedure.

The complaint was settled by conciliation. Without admission of liability the respondent apologised for the distress and inconvenience experienced by the complainant as a result of its handling of the matter and offered to reconsider the complainant's case on lodgement of an application. The respondent also agreed to complete a review of its underwriting procedures and undertook that in future, subject to normal medical evidence and an appropriate exclusion clause (if required), income protection insurance would be provided to people who are blind or vision impaired. In the complainant's case, the exclusion clause would exclude benefits for any disease or disorder of either eye including blindness.

Education

The complainant has a visual disability and reads in Braille. She contacted an organisation that conducted tests for entry to tertiary institutions as she wished to enrol in a massage therapy course. The complainant claimed that she was told that tests in written English were conducted on a monthly basis but the Braille test was conducted only once every year and the test would include raised diagrams and maps which the complainant states she would be unable to interpret. The complainant claimed that she wished to complete the test earlier in the year to establish her eligibility for enrolment before completing courses that were prerequisite to the massage therapy course.

At conciliation, the respondent advised that it had reviewed and amended its policy on dealing with applicants who have a disability, including amendments to the application form and processes. The respondent did not admit that it had discriminated against the complainant. However the respondent apologised for the frustration caused by poor customer service. The respondent agreed to circulate its policy on special test arrangements to the peak disability organisations in the state and to pay the respondent an amount of \$1,000 in financial compensation.

Access to facilities in swimming centre

The complainant, who uses a wheelchair and swims at a local swimming centre, complained that she could not shower after swimming because there were no accessible shower facilities. The complaint was resolved by conciliation. The swimming centre agreed to provide new floor fittings, re-grade the floor and provide lower grab-rails.

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 which alleges 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
- the Declaration of the Rights of the Child
- the Declaration on the Rights of Mentally Retarded Persons
- the Declaration on the Rights of Disabled Persons
- the Convention on the Rights of the Child and
- the 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 as 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 finding. Where a complaint is neither conciliated nor declined, 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 20: Human Rights and Equal Opportunity Commission Act complaints received and finalised in 1997-98 by location

There has been a 54 percent decrease in the number of complaints received under the Human Rights and Equal Opportunity Commission Act during 1997-98. The number of complaints finalised has also decreased in comparison with figures for 1996-97. The absence of any power to make and enforce determinations under this Act means that the number of complaints received has traditionally been much lower than the number of complaints received under federal anti-discrimination legislation.

HREOCA	Central office	NT	Tas	Total
Received	144	-	3	147
Finalised	266	9	3	278

Table 21: Outcomes of Human Rights and Equal Opportunity Commission Act complaints finalised in 1997-98

HREOCA	Central office	NT	Tas	Total
Declined	224	8	1	233
Does not constitute discrimination	35	4	1	40
Human rights breach, not inconsistent or contrary to any human right	70	1	-	71
Withdrawn, does not wish to pursue, advised Commission	25	2	-	27
Withdrawn, does not wish to pursue, settled outside Commission	6	-	-	6
Withdrawn, lost or unable to contact	12	-	-	12
More than 12 months old	6	-	-	6
Vexatious, frivolous, lacking in substance or misconceived	42*	1	-	43
More appropriate remedy available	21	-	-	21
Adequately dealt with	7	-	-	7
Conciliated	31	-	2	33
Referred for reporting**	5	1	-	6
Terminated	4	-	-	4
Transferred	2	-	-	2
Total*	266	9	3	278

*Of the 42 central office complaints, 40 were declined as lacking in substance and two were declined as misconceived. No complaints were declined as vexatious or frivolous. Breakdowns of data from other offices is not available.

**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 21 shows that the decline rate under the Human Rights and Equal Opportunity Commission Act is much higher than under the other three Acts. This has traditionally been the case. Complaints alleging a breach of human rights cover an extraordinary range of issues, which are not human rights as defined by the Human Rights and Equal Opportunity Commission Act. Except in relation to allegations of discrimination in employment, the Human Rights and Equal Opportunity Commission Act is also limited to complaints against the Commonwealth. Many complaints alleging breaches of human rights by people other than the Commonwealth must be declined for this reason. Lack of enforceability may contribute to the low conciliation rate. It is noted however that the proportion of complaints resolved by conciliation has almost doubled over the past three years; increasing from seven percent in 1995-96 to

12 percent in 1997-98. The conciliation rate for complaints within jurisdiction has almost doubled in the last year, from 14 percent in 1996-97 to 26 percent in 1997-98.

Table 22: Human Rights and Equal Opportunity Commission Act complaints received in 1997-98 by ground

HREOCA	Central office	NT	Tas	Total
Race (ILO 111)	-	-	-	-
Colour (ILO 111)	-	-	-	-
Sex (ILO 111)	2	-	-	2
Religion (ILO 111)	6	-	-	6
Political opinion (ILO 111)	2	-	-	2
National extraction (ILO 111)	-	-	-	-
Social origin (ILO 111)	-	-	-	-
Age (ILO 111)	17	-	-	17
Medical record (ILO 111)	1	-	-	1
Criminal record (ILO 111)	11	-	-	11
Impairment (including HIV/AIDS status) (ILO 111)	-	-	-	-
Marital status (ILO 111)	1	-	-	1
Disability (ILO 111)	2	-	-	2
Nationality (ILO 111)	-	-	-	-
Sexual preference (ILO 111)	13	-	-	13
Trade union activity (ILO 111)	9	-	2	11
International Covenant on Civil and Political Rights	42	-	-	42
Declaration on the Rights of the Child	3	-	-	3

Table 23: Human Rights and Equal Opportunity Commission Act complaints received in 1997-98 by ground (continued)

HREOCA	Central office	NT	Tas	Total
Declaration on the Rights of Mentally Retarded Persons	-	-	-	-
Declaration on the Rights of Disabled Persons	2	-	-	2
Convention on the Rights of the Child	12	-	1	13
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	2	-	-	2
Not a ground within jurisdiction	5	-	-	5
Not a human right as defined by the Act	24	-	-	24
Total*	154	-	3	157

*One complaint may have multiple grounds.

Table 23 shows that alleged breaches of the International Covenant on Civil and Political Rights are the highest single category of complaint. The Covenant has 53 Articles which enumerate many different human rights. During 1997-98, there has been a five percent increase in complaints concerning the Convention on the Rights of the Child. In relation to employment, complaints of discrimination on the basis of age, sexual preference, trade union activity, criminal record and sexual preference are most common. It is also noted that the percentage of complaints alleging discrimination in employment on the grounds of sexual preference has doubled in the past year.

Table 24: Human Rights and Equal Opportunity Commission Act complaints received in 1997-98 by area

HREOCA	Central office	NT	Tas	Total
Employment, occupation	57	-	2	59
Acts or practices of the Commonwealth	37	-	1	38
Not act or practice of the Commonwealth (not employment cases)	50	-	-	50
Total	144	-	3	147

Table 24 shows the distribution of complaints under the Human Rights and Equal Opportunity Commission Act. In 34 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 25: Human Rights and Equal Opportunity Commission Act - non-employment complaints received in 1997-98

HREOCA	Central office
Prisons, prisoner	13
Religious institutions	-
Family court matters	5
Other law court matters	2
Immigration	19
Law enforcement agency	2
State agency	6
Other service provider (private sector)	3
Local government	6
Education systems	3
Welfare systems	4
Health systems	-
Other	24
Total	87

Table 25 shows the nature of complaints lodged at central office 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 concerning prisons 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 if they are complaints from persons imprisoned under federal laws. Complaint handling experience indicates that the majority of complaints concerning prisons are from persons imprisoned under state and territory law. Despite the significant number of complaints received, the human rights of state and territory prisoners remain unprotected by federal law.

The increasing number of complaints from or on behalf of people from immigration detention centres since 1995-96 was the impetus for the Commission undertaking a formal inquiry into the detention of unauthorised arrivals. During 1997-98 complaint handling staff from central office were involved in site visits to detention centres around Australia in the preparation of the report of the inquiry which was tabled in Parliament on 12 May 1998.

Table 26: Complainant gender or group - Human Rights and Equal Opportunity Commission Act complaints received in 1997-98

HREOCA	Central office	NT*	Tas	Total
Male	101	-	-	101
Female	34	-	2	36
Organisation	1	-	-	1
Community, other group	-	-	-	-
Joint, multiple	5	-	-	5
On other behalf	3	-	1	4
Total	144	-	3	147

*Data from the Northern Territory regional office is not available

Case studies

Sexual preference

The complainant alleged that he had been harassed by his co-workers on the basis of his sexual preference and that his employer had not done enough to eliminate this behaviour. The employer denied discrimination against the complainant on the basis of his sexual preference.

In conciliation the respondent agreed to provide the complainant with an apology and \$1,750 in financial compensation. The respondent also agreed to continue to review its EEO/harassment procedures and training.

Trade union activity

The complainant was unsuccessful in her application for a job as a machine operator with a large manufacturing company. In her complaint to the Commission the complainant stated that during her previous employment with the respondent company she had been a shop steward and had participated in a major industrial campaign. The complainant alleged that she was not offered the job because of her past trade union activity.

In reply, the respondent company denied the allegation and stated that the complainant's application was not successful because the company had received a large number of applications from people who were better qualified and had better work references than the complainant. The respondent also stated that it is supportive of unions within the workplace.

The complaint was resolved at a conciliation conference. The respondent provided the complainant with a verbal apology and financial compensation of \$6,350.

Imputed sexual preference

The complainant claimed that she was discriminated against in employment on the basis of imputed sexual preference. The complainant states that her supervisor victimised and discriminated against her because she thought that she was a lesbian. The complainant claimed that the less favourable treatment included being compulsorily transferred, being denied a graded return to work, being denied time off to attend counselling and training and being discriminated against in relation to flex time entitlements. The complainant's allegations were supported by a statement from her rehabilitation case manager.

The complaint was resolved by the respondent organisation agreeing to pay the complainant \$42,000 and providing her with a graded return to work.

Trade union membership

The complainant, who worked on a casual basis in the hospitality industry, alleged that after he joined a trade union and made a complaint about not being paid correctly he was removed from a supervisory position and offered fewer shifts.

The respondent company stated that the complainant neither applied for nor was offered the supervisor position. The complainant was provided with some supervisor shifts but only on a casual basis. The respondent further argued that at no point in time were the complainant's hours of work reduced because he had joined a union. Any changes in the shifts worked by the complainant were said to be due to changes in the hotel's occupancy rate and the complainant's refusal to perform some manual tasks.

The complaint was resolved at a conciliation conference with the respondent company agreeing to pay the complainant financial compensation of \$2,500 and provide him with a full-time clerical position.

Enquiries

All Commission offices and state agencies receive enquiries from people seeking advice and assistance in relation to possible breaches of federal legislation. These enquiries may be made by telephone, in person or in writing. As state anti-discrimination and equal opportunity agencies deal with enquiries in terms of both state and federal legislation, the statistics outlined in this section only refer to enquiries received at Commission offices.

In 1997-98 the Commission's offices received 7,463 telephone enquiries. Approximately 65 percent of these telephone enquiries concerned issues about which the Commission may have power to act under its complaint legislation. Where it appears that a complaint can be made, callers are sent information about the legislation and the complaint handling process. Where it appears that the Commission cannot assist, every effort is made to refer the caller to another appropriate avenue of redress. In 1997-98 the Commission also responded to 163 in-person enquiries and 547 written enquiries. Further information about written enquiries is provided below.

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 may not specify the grievance in terms which attract the coverage of an Act. People also request general information about the complaints process. The Commission provides enquirers with advice about the coverage of the legislation and where it appears that the issue raised is not covered by the federal legislation, information is provided about other possible methods to address the complaint.

Table 27: Written enquiries received in 1997-98 by location of office

	Central office	NT	Tas	Total
Written enquiries	482	3	62	547

Table 28: Conclusion of written enquiries received in 1997-98

Conclusion	Central office	NT	Tas	Total
Referred to State or Territory Equal Opportunity Commission, Anti-discrimination Board or the Commission	6	1	1	8
Referred elsewhere, alternative remedy	42	-	2	44
General information provided	24	-	35	59
Advised to lodge a complaint, complaints form and information package sent	2	-	4	6
Appointment made for interview with complaints officer	-	-	-	-
Community education to be provided	-	-	1	1
Complaint made, additional information form and package sent	14	-	-	14
No grounds for complaint	370	-	16	386
Lost contact, inquiry withdrawn	18	2	-	20
Other	6	-	3	9
Total	482	3	62	547

Table 29: Issues raised by written enquiries received in 1997-98

Issue	Central office	NT	Tas	Total
Race	40	-	6	46
Race (racial hatred)	25	1	1	27
Race (social origin)	2	-	1	3
Sex	14	-	7	21
Sexual harassment	10	-	4	14
Sexual preference, transgender, homosexuality, lawful sexual activity	8	-	-	8
Sex (marital status, family responsibilities or status, parental status)	5	-	1	6
Sex (pregnancy)	-	-	1	1
Disability (impairment)	29	2	11	42
Disability (medical condition, record, HIV/AIDS)	9	-	-	9
Disability (mental health)	10	-	2	12
Disability (other medical issues for example, maltreatment)	5	-	1	6
Age	15	-	1	16
Privacy, data protection	3	-	1	4
Neighbourhood issues	4	-	-	4
Personality conflicts, favouritism	3	-	-	3
Victimisation	5	-	1	6
Union, industrial activity	4	-	1	5
Unfair dismissal, other industrial issues	38	-	-	38
Advertising	2	-	-	2
Religion, religious organisations	7	-	-	7
Criminal record, conviction	2	-	1	3
Prisons, prisoners	17	-	-	17
Police	16	-	-	16
Court (family matters)	21	-	-	21
Court (other law matters)	15	-	-	15
Immigration	28	-	-	28
Political opinion	1	-	-	1
Local government (administration)	5	-	1	6
State government (administration)	6	-	1	7
Federal government (administration)	32	-	3	35
International Covenant on Civil and Political Rights	3	-	-	3
Declaration on the Rights of the Child	-	-	-	-
Declaration on the Rights of Disabled Persons	-	-	-	-
Convention on the Rights of the Child	3	-	1	4
Other human, civil rights	16	-	2	18
Human rights, other equal opportunity issues	7	-	9	16
Career status	-	-	4	4
Other	99	-	1	100
Total*	509	3	62	574

*Enquiries may have multiple issues.

Table 30: Written enquiries received in 1997-98 by area

Area	Central office	NT	Tas	Total
Employment or business	104	1	23	128
Education	13	1	3	17
Goods, services and facilities	51	-	5	56
Access to premises, place, facilities or vehicles	5	-	2	7
Land, housing or accommodation	12	-	-	12
Superannuation and insurance	4	-	-	4
Finance and credit	3	-	-	3
Equality before the law	3	-	1	4
Incitement to unlawful Acts	1	-	-	1
Acts or practices of the Commonwealth	24	-	3	27
Federal laws and programs	38	1	5	44
State laws and programs	52	-	6	58
Local government	5	-	-	5
Law enforcement agency	16	-	-	16
Clubs, incorporated associations	6	-	1	7
Sport	-	-	1	1
Trade unions, accrediting bodies, industrial organisations	1	-	-	1
Advertisements	4	-	1	5
Application forms, discriminatory requests for information or questions	-	-	1	1
Racial hatred (neighbourhood)	6	-	2	8
Racial hatred (personal conflict)	2	-	-	2
Racial hatred (public debate)	5	-	-	5
Racial hatred (media)	7	-	1	8
Immigration	29	-	-	29
Religious institutions	1	-	-	1
Family court matters	17	-	-	17
Court matters (other)	18	-	-	18
Welfare	16	-	5	21
Other	75	-	2	77
Total*	518	3	62	583

*Enquiries may have multiple issues.

Cooperative arrangements

As noted in last year's report, despite the expiration of formal cooperative arrangements with Western Australia, South Australia and Victoria, negotiations between the responsible Attorneys-General have resulted in a continuation of arrangements where the state equal opportunity agencies receive and handle discrimination complaints under federal legislation.

As part of the negotiations for new cooperative arrangements, the Commission has undertaken 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.

Legislative amendments currently before Parliament will result in a standard complaints procedure for federal anti-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 continues to contribute actively to both of these processes.

The Commission and the state equal opportunity agencies conduct an annual meeting to assist in the coordination of activity. In December 1997 the meeting resolved to establish a working party on National Complaint Handling Standards. This working party is carrying forward the work identified as necessary by the Commission's National Complaint Handling Review in 1994. The working party is comprised of a representative from each state. Draft National Standards have been drawn up. Agencies which have entered into a cooperative arrangements with the Commonwealth have identified the need for strategies to improve consistency in decision-making under federal legislation and to examine the election of jurisdiction processes developed by each agency.

A similar working party has been established in the area of racial discrimination and information and strategies are being shared through the conduct of telephone conferences between all of the agencies.

After the cessation of a cooperative arrangement in Queensland the Commission has sought to promote a close working relationship with the Anti Discrimination Commission of Queensland. The Commission has contributed \$10,000 to assist this state agency promote the Commission's literature and provide for office space when Commission officers are working in Queensland.

Northern Territory regional office

Funding cuts to the Commission in 1997-98 necessitated the closure of the Commission's Northern Territory regional office in September 1997. The complaint handling and public education work of this office has been highlighted in previous annual reports. Complaint handling statistics for the office for the period July 1997-September 1997 are set out elsewhere in this section of the report. The Commission wishes to acknowledge the commitment and dedication of staff who have worked at the Northern Territory office. The decision to close this office was taken reluctantly and through necessity.

Tasmanian regional office

The Commission's sole remaining regional office is located in Hobart. At the state level Tasmania has legislation in the area of sex discrimination but has no comprehensive anti-discrimination legislation. The State parliament is currently considering the introduction of comprehensive legislation. The Tasmanian regional office undertakes complaint handling, statistics for which are set out elsewhere, and community education. The regional office provides seminars and workshops for public and private sector organisations, trade unions, schools, colleges and the University of Tasmania. The office is in contact with many community organisations and is involved in a wide range of community activities which culminate in a variety of events during Human Rights Week each year.

Legal Services

The primary responsibilities of the Legal Section are:

- to schedule and facilitate the Commission's Inquiry into unconciliable complaints of unlawful discrimination under the *Racial Discrimination Act 1975* (Cth) ("RDA"), *Sex Discrimination Act 1984* (Cth) ("SDA") and the *Disability Discrimination Act 1992* (Cth) ("DDA") and for its legal officers to provide associate and/or counsel assistance to Hearing Commissioners;
- to assist the President (or his or her delegate) in the handling of his or her statutory duties in reviewing decisions by the Race, Sex or Disability Commissioners to decline complaints and in his or her consideration of applications for interim determinations under the RDA, SDA and DDA;
- to assist the Human Rights Commissioner in the preparation of notices and reports under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) ("HREOCA");

- to act as Counsel or instructing solicitor for the Commission in Commission interventions in legal proceedings and in external litigation, such as applications for review of Commission decisions under the *Administrative Decisions (Judicial Review) Act 1977* (Cth);
- to provide legal advice to the Commission;
- liaise with the Attorney-General's Department and Federal Court of Australia in relation to the drafting and implementation of the *Human Rights Legislation Amendment Bill 1997* (Cth) and the *Human Rights Legislation Amendment Bill No.2 1998* (Cth); and
- to respond to applications under the *Freedom of Information Act 1982* (Cth) on behalf of the Commission.

Amending legislation

As discussed in the last Annual Report of the Commission, the *Human Rights Legislation Amendment Bill 1997* (Cth) is still before the Parliament. The main features of the amending legislation that impact upon the work of the Legal Section are:

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

The *Human Rights Legislation Amendment Bill No.2 1998* (Cth) was introduced in the Parliament on 8 April 1998. The provision that impacts most directly and substantially upon the work of the Legal Section is that which makes the use of the Commission's intervention power subject to the approval of the Attorney-General.

Hearings and determinations by the Commission

Complaints which are unable to be settled by conciliation are referred for public hearing by the Commission by the responsible Commissioner, in accordance with the requirements of the RDA, SDA and DDA.

In conducting hearings and making determinations, the Commission acts in a way that is analogous to 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.

There is no provision in the HREOCA for referral to public hearing of unconciliated complaints, though the Commissioner may report to the Attorney-General where conciliation cannot resolve the matter and an inquiry has satisfied the Commission that there has been a breach of human rights or discrimination in employment. In such complaints Legal Services assists the Human Rights Commissioner to inquire fully into the complaints. The number of inquiries is reported in the statistics below in the same way as public hearings under the Racial, Sex, and Disability Discrimination Acts as they are relatively small in number and similar in process.

Role of the President

The term of the former President of the Commission, Sir Ronald Wilson, ended on 31 July 1997. Professor Alice Tay was appointed President of the Commission on 1 April 1998, and took up the appointment the same day. Between those dates, the work of the President in relation to conducting Presidential reviews and considering applications for interim determination was performed by part-time Hearing Commissioners to whom the President's powers had been delegated.

Hearing Commissioners

In the 1997-98 reporting period public hearings were conducted by part-time Hearing Commissioners, as well as by the statutory members of the Commission. The legislation requires that a Hearing Commissioner sitting alone must be legally qualified, although the Commission may also sit as more than one Commissioner, provided that at least one is legally qualified. Part-time Hearing Commissioners for the period of 1997-98 were:

New South Wales

The Hon. Elizabeth Evatt AC, AO
Mr Anthony Cavanough QC
Mr Graeme Innes, AM

Victoria

Mr Anthony Cavanough QC
Ms Susan Crennan QC
Ms Susan Kenny QC
Mr Richard Tracey QC

South Australia

Ms Kathleen McEvoy

Queensland

The Hon. William Carter QC

Tasmania

The Hon. Robert Nettlefold

Western Australia

Sir Ronald Wilson
Mr Peter W. Johnston

Referrals to public hearings

The decrease in the number of complaints received and handled by the Commission has translated into a decrease in the number of complaints being referred for public hearing. During 1997-98, 169 complaints were referred for hearing (including HREOCA matters) - 256 had been referred in 1996-97. During 1997-98, 198 complaints that had been referred to hearing were finalised (including HREOCA matters) - 244 had been finalised in 1996-97. Of the hearing matters (including HREOCA matters) finalised during 1997-98:

- 97 were conciliated prior to or during hearing (127 in 1996-97);
- 31 were substantiated after a hearing and formal decision (44 in 1996-97);
- 39 were dismissed after a hearing and formal decision (40 in 1996-97); and

- 31 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 (33 in 1996-97).

Examples of cases referred to public hearings

Neil Francey & Sue Meeuwissen v Hilton Hotels of Australia Pty Ltd.

Disability Discrimination Act 1992

Commissioner Graeme Innes AM

Date of decision: 25 September 1997

This inquiry was a joint inquiry into complaints brought by Ms Meeuwissen and Mr Francey ("the complainants") under the *Disability Discrimination Act 1992* against Hilton Hotels of Australia P/L ("the respondent").

Ms Meeuwissen's complaint alleged discrimination on the ground of her disability (asthma) which resulted in less favourable treatment in access to premises and the provision of services. Ms Meeuwissen complained that her visit to the nightclub, Juliana's, in the respondent's Sydney Hilton, on the evening of 18 March 1995, was brought to a premature end as a result of her suffering physical distress in reaction to environmental tobacco smoke. Mr Francey's complaint alleged discrimination against him, as Ms Meeuwissen's associate, on the evening in question.

The Commission found that Hilton Hotels of Australia P/L had unlawfully discriminated against Ms Meeuwissen on the ground of her disability in respect of: (i) access to premises; and (ii) the provision of goods services and facilities. The Commission found that Hilton Hotels of Australia P/L had unlawfully discriminated against Mr Francey on the ground of his status as an associate of a person with a disability.

The Commissioner awarded financial compensation, \$2,000 for Ms Meeuwissen and \$500 for Mr Francey. Once submissions have been received from the parties the Commissioner will make a declaration as to what remedial action should be taken to prevent the continuation of the discriminatory conduct.

Marea Hickie v. Hunt and Hunt

Sex Discrimination Act 1984

Decision of Commissioner Elizabeth Evatt

Date of decision: 9 March 1998

The complainant commenced work with the respondent in 1988 and by 1995 she had become a contract partner. At that time the complainant was also pregnant. On returning to work following the birth of her child the complainant found that her duties and responsibilities had been dramatically reduced. In May 1996 the respondent decided not to renew the complainant's contract as an equity partner beyond its expiration in June 1996.

The complainant claims to have been the victim of discrimination and victimisation in regard to the decision of non-renewal and also in regard to the way in which she was treated by the firm, particularly in the period from mid 1995 onwards.

Commissioner Evatt did not find any discrimination in regard to the arrangements established for Ms Hickie's maternity leave nor any direct discrimination in the decision to curtail the complainant's practice in December 1995. Commissioner Evatt did find the decision to curtail the complainant's practice constituted indirect discrimination. A further requirement that the complainant work full-time was also found to constitute indirect discrimination and this requirement further adversely affected the decision to not renew the complainant's contract. Commissioner Evatt found no act of victimisation by the respondent.

Commissioner Evatt found that the respondent had failed to have in place clearly defined maternity leave and part-time work policies that would have ensured minimum standards of fair and equal treatment.

Commissioner Evatt ordered that the respondent should pay the complainant damages by way of compensation for loss and damage in the sum of \$95,000, comprising compensation for Ms Hickie's lost earnings for the first 12 month period after the termination of her contract at \$40,000, future loss of earnings at \$30,000 and damages for non-economic loss at \$25,000.

Table 31: Trends in numbers of matters referred for public hearing

Year	1993-94	1994-95	1995-96	1996-97	1997-98
Total	52	120	231	256	169

Table 32: Complaints referred for public hearing during 1997-98 (with comparison to 1996-97) by location and Act

Office	Total No. of referrals		HREOCA		RDA		SDA		DDA	
	96-97	97-98	96-97	97-98	96-97	97-98	96-97	97-98	96-97	97-98
NSW	83	85	12	4	10	23	39	26	21	32
VIC	101	37	2	-	16	5	42	12	41	20
SA	33	33	-	-	7	9	26	22	1	2
QLD	16	0	-	-	11	-	1	-	4	-
WA	5	3	1	-	1	2	1	1	2	-
NT	4	2	-	-	1	1	1	1	2	-
ACT	3	0	-	-	-	-	-	-	3	-
TAS	11	9	-	-	1	-	7	5	3	4
Total	231	169	15	4	47	40	117	67	77	58

The above table reflects that during the 1997-98 year, the Commission's regional offices in the ACT and the Northern Territory were closed down and complaints from those offices were dealt with and referred for hearing by the Sydney office.

Decline decisions reviewed by the President

Under the RDA, SDA and DDA decisions not to inquire into a complaint by the relevant Commissioner may be reviewed by the President or his or her delegate if the complainant requires it. While there has been a decrease in the number of complaints being handled by the Commissioners, only 10 less requests for Presidential review have been received in 1997-1998. Consistent with the fact that fewer complaints are being made to the Commission, fewer complainants are choosing to seek a Presidential review. In 1996-97, 50% of eligible complainants sought a Presidential review whereas in 1997-98, 44% of eligible complainants did so. The President (or the President's delegate) has not confirmed the Commissioner's decision (or part of the decision) and has returned the matter to the Commissioner for further investigation in 36 (13.8%) matters out of the 260 review matters which were finalised in 1997-98. The extent of this work can be seen in Table 33

Table 33: Trends in numbers of Commissioner decline decisions which were referred for review by the President

Year	1993-94	1994-95	1995-96	1996-97	1997-98
Total	11	125	205	245	225

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 has declined slightly during 1997-98. Virtually all of these applications are dealt with by the President or his or her delegate, with a very small number being handled over the past few years by the Commission. The following table reflects the number of applications over the past few years.

Table 34: Trends in numbers of interim determination applications made to the Commissioner or the President

Year	1993-94	1994-95	1995-96	1996-97	1997-98
Total	3	61	87	47	37

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.

In the current year the Commission received a decision of the High Court in *Qantas Airlines Limited v John Christie*, in which it had intervened in 1996-97. The Commission also intervened in the High Court proceedings in *Kartinyeri & Gollan v The Commonwealth of Australia* (“the Hindmarsh Island Bridge Case”).

Qantas Airlines Limited v John Christie - meaning of “inherent requirements”

Qantas appealed to the High Court against a decision of the Full Bench of the Industrial Relations Court that the termination of Mr Christie’s employment at age 60 was unlawful pursuant to the *Industrial Relations Act 1988* (now the *Workplace Relations Act 1996*).

Mr Christie had been employed by Qantas as a captain of B747-400 aircraft on international flights. His initial contract did not provide that his employment would be terminated at any particular age; however there were provisions for retirement arising from industrial agreements between Qantas and the industrial organisation representing pilots to the effect that the normal date for retirement was 1 July following a pilot’s 55th birthday and that a pilot might extend his or her employment to a limit of their 60th birthday. When Mr Christie sought to extend his employment past his 60th birthday Qantas refused to continue employing him.

The policy of Qantas that pilots not continue employment once they are beyond the age of 60 was based on the *Rule of 60* found in the *Convention on International Civil Aviation*. The effect of the *Rule of 60* is that a State signatory to the Convention is able to exclude from their airspace pilots who have reached the age of 60.

The proceedings were argued before the High Court on 3-4 June 1997, and the decision was handed down on 19 March 1998.

The major issue for the Commission related to the meaning of the term “inherent requirements of the particular position”, and whether being under 60 years of age was an inherent requirement of the position of a pilot and captain of B747-400 aircraft.

In the determining of what constitutes the “inherent requirements” of a particular position, each member of the Court provided slightly differing versions of the test:

- Brennan CJ held that in determining what is an inherent requirement “a stipulation in a contract of employment is not necessarily conclusive” and that the question must also be answered by reference to the function which the employee functions as part of the employer’s undertaking. The Chief Justice, however, also noted that his comments were by no means an indication of some kind of final and definitive test of “inherent requirements”;

- Gaudron J, in stating the test in practical terms put it this way: “ask whether the position would be essentially the same if that requirement were dispensed with”;
- McHugh J stated that what is an inherent requirement is that which is essential to the performance of a particular position;
- Gummow J held that for the exemption to apply the reason could be “incidental to the inherent requirements or is derived from them”;
- Kirby J held that what constitutes an inherent requirement of the particular position is that which is “permanent and integral”.

The majority of the Court decided that Mr Christie was not able to comply with the “inherent requirements” of the position, which was the ability to be able to fly internationally, including to countries which enforced the *Rule of 60*.

***Katinyeri & Gollan v The Commonwealth of Australia* (“the Hindmarsh Island Bridge Case”) - the limits of the race power in s. 51 (xxvi) of the Constitution**

The Commission also intervened in *Katinyeri & Gollan v The Commonwealth of Australia*, also known as the “Hindmarsh Island Bridge Case”, which was heard by the High Court in Canberra on 5 and 6 February 1998.

The plaintiffs, who are Ngarrindjeri Aboriginal people, alleged that the *Hindmarsh Island Bridge Act 1997* (Cth) (“the Bridge Act”) was not a valid enactment by the Commonwealth under s. 51(xxvi) of the Constitution, which provides that the Parliament shall have the power to make laws with respect to “the people of any race for whom it is deemed necessary to make special laws”.

It was submitted that the so-called ‘race power’ under the Constitution is limited to laws that are for the benefit and/or advancement of Aboriginal people. It was claimed that the Bridge Act, by amending the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (“AHPA”) so as effectively to prevent an application by Aboriginal persons for a protection of the Hindmarsh Island land because of its cultural significance, was unconstitutional as it operated to the detriment of Aboriginal persons.

The Commission’s submissions upon intervening were as follows:

- section 51(xxvi) should be construed as a power which enables Parliament only to make laws which would benefit and/or advance people of any race, including Aboriginal people, for whom it is deemed necessary to make special laws;
- the above interpretation arises as a result of construing the section in accordance with ordinary principles of statutory interpretation and by construing the section in accordance with Australia’s international obligations; and
- the Bridge Act is not a law which is for the benefit and/or advancement of any race entitled to make claims under the AHPA.

The general thrust of the Commission’s submissions were that the Constitution should be construed with regard to the ordinary rules of statutory interpretation which includes principles of international law, including treaties and customary international law. The Commission submitted that by becoming a party to the *Convention on the Elimination of all forms of Racial Discrimination* (“CERD”) in 1966, prior to the 1967 Referendum (which extended s. 51 xxvi to include Aboriginal people), Australia undertook to prohibit and eliminate racial discrimination in all its forms. Accordingly at the time of the 1967 Referendum, Australia was obliged to refrain from acts which would defeat the objects and purposes of CERD. It was submitted that s.51(xxvi) should be construed by having regard to the 1967 referendum and the change in historical circumstances since 1900, including the substantial developments in the prohibition of discrimination based upon race.

In its decision handed down on 1 April 1998, a majority of the High Court found that the Bridge Act was supported by s. 51(xxvi) of the Constitution. The substance of the court's decision lay in the finding by Brennan CJ and McHugh J, Gummow and Hayne JJ, and Gaudron J that Parliament, having validly enacted the HPA, could validly amend or repeal that Act. Gummow and Hayne JJ considered also that Parliament has a wide discretion as what is "deemed necessary" for Aboriginal persons, and this discretion was not abused in the case of the Bridge Act. Gummow and Hayne JJ also rejected the argument that the Constitution must be construed in accordance with international law, finding that there is no such limit on the legislative power of the Commonwealth. Kirby J, in dissent, found that the Bridge Act was detrimental to, and discriminatory against, people of the Aboriginal race by reference to their race and, as such, it fell outside the power under s. 51 (xxvi) of the Constitution and was an invalid exercise of power.

Other external litigation

Table 35: Trends in numbers of ADJR Act applications where the Commission is named as respondent

Year	1994-95	1995-96	1996-97	1997-98
Total	9	9	11	35

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) ("the ADJR Act").

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, in these matters, attempted to assist the Court rather than act in a way that would appear contentious or adversarial. The numbers of applications under the ADJR Act in relation to a Commission determination or the President or his or her delegate's review in 1997-98 are shown below along with the statistics for previous years.

Chapter 3 – Aboriginal and Torres Strait Islander Social Justice

Statement from the Acting Aboriginal and Torres Strait Islander Commissioner, Zita Antonios

The recognition of Aboriginal and Torres Strait Islander rights is inseparable from the material improvements I believe all Australians want to see.

There is a domain of experience in this country which is unique to Aboriginal and Torres Strait Islander peoples. The impact of dispossession, the destruction and denigration of culture, the division of families and the removal of children still shudders through Indigenous communities. The aftermath contributes to, and compounds, contemporary problems, such as a 15-20 year lesser life expectancy and the operation of apparently neutral state and territory criminal justice systems which continue to imprison Aboriginal and Torres Strait Islander people at a vastly higher rate than the rest of the population.

The distinctive position of Indigenous Australians underwrote and underwrites the need for a specific Aboriginal and Torres Strait Islander Social Justice Commissioner, charged with the responsibility to monitor and promote the exercise and enjoyment of human rights by Aboriginal and Torres Strait

Islander peoples. Mick Dodson's appointment as the first Commissioner fulfilled the potential of this office to give a direct, national voice to Indigenous Australians. Mick gave definition to the role of an advocate determined, not only to promote a better understanding of the rights of Aboriginal and Torres Strait Islander peoples, but to see those rights translated into practice.

This concern for the practical enjoyment of rights and a strong sense of the blunt realities of Indigenous life drawn from direct experience constantly informed Mick's work. It was clear from the start. In his First Report 1993 he said:

Social justice must always be considered from a perspective which is grounded in the daily lives of Indigenous Australians. Social justice is what faces you when you get up in the morning. It is waking up in a house with an adequate water supply, cooking facilities and sanitation. It is the ability to nourish your children and send them to a school where their education not only equips them for employment but reinforces their knowledge and appreciation of their cultural inheritance. It is the prospect of genuine employment and good health: a life of choices and opportunity, free from discrimination.

In acknowledging Mick's achievements the difficulty of my own acting appointment is revealed. One consistent characteristic of the position of Indigenous peoples has been the absence of their own voices, the absence of the power to control their own lives: the absence of self-determination. And now, at a critical time in the life of our country, when we are grappling not only with a realignment of legal rights but a new understanding of our history and identity, Indigenous Australians do not have a direct voice role.

I believe unequivocally that the office of Aboriginal and Torres Strait Islander Social Justice Commissioner should be held by an Indigenous person. It is only in the absence of such an appointment and with the support of Mick and other Indigenous people, that I have taken up the position in order to keep the office alive and active at this time of particular need.

The distinctive position of Australia's Indigenous peoples bears some careful consideration. We stand at a point in our history as a nation where the potential to achieve a reconciliation between the interests and aspirations of all Australians stands at its highest. It is also a time where the recognition of the unique position and rights of Aboriginal and Torres Strait Islanders has aroused disquiet and frank antagonism: jeopardizing the potential for a lasting reconciliation within our national community.

The disadvantages experienced by Indigenous men, women and children, in health, education, housing and employment are severe and chronic. In 1989 the Royal Commission into Aboriginal Deaths in Custody commenced an examination of the immediate circumstances surrounding 99 deaths in police or prison custody. It quickly became apparent that the disproportionate numbers of Aboriginal deaths reflected the massive over-representation of Aboriginal people held in custody in every Australian jurisdiction. The terms of the Royal Commission's inquiry were expanded to examine the broader causes of this over-representation. Those causes were found to be embedded in underlying social issues, in particular, the severe disadvantages experienced in health, education, housing and employment. The statistical indicators of inequality in these areas are unique to Aboriginal and Torres Strait Islander people. This same distinct profile is recognisable in statistics drawn from Australian criminal justice systems.

The National Report of the Royal Commission into Aboriginal deaths in custody provided a thorough examination of the way in which chronic social disadvantage compounds and generates other problems leading to unequal treatment in virtually every area of life capable of measurement. The report describes a complex and dynamic inter-relationship between the lack of enjoyment of economic, social and cultural rights and the lack of enjoyment of civil and political rights. One response to the unique matrix of problems experienced by Indigenous Australians was the establishment of the office of Aboriginal and Torres Strait Islander Social Justice Commissioner, charged with the particular responsibility to report annually on the exercise and enjoyment of human rights by Indigenous Australians.

I recall this recent history to place in context the anxiety which now attends the recognition of Indigenous rights. The High Court's judgements in *Mabo* and *Wik* have recast the landscape of our country. They have not only reshaped interests in land but have given a new understanding to the reality of Indigenous dispossession. In a more intimate way, *Bringing Them Home*, the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, has introduced many Australians to an interior landscape of deep suffering and another form of Indigenous dispossession. Each form of dispossession has had a profound and continuing impact on the lives of Aboriginal and Torres Strait Islander Australians and are reflected in the indicators of health, education, housing and employment. They are woven in a single cloth and the recognition of distinct rights is integral to the removal of distinct disadvantages.

In many ways, the work of our office this year has centred on an endeavour to explain how the recognition of rights distinctive to Indigenous Australians, is not only required as a matter of justice and genuine equality, but is also required as part of the practical solution to the experience of chronic disadvantage. The recognition of Aboriginal and Torres Strait Islander rights is inseparable from the material improvements which I believe all Australians wish to see. And the benefits which can flow from a just reconciliation between Indigenous and non Indigenous Australians can uplift our entire community.

It is precisely as Mick put it:

Social justice which is based on the day by day enjoyment of human rights by Aboriginal and Torres Strait Islander peoples offers an enrichment of all our lives. Human rights derive from the inherent dignity of all human beings. The achievement of social justice for Indigenous Australians is an affirmation of the dignity of all Australians. In this perspective, our cause, as the Indigenous peoples of this country, is everyone's cause.

Such a perspective has certainly sustained the staff of my office during a particularly difficult time. Our numbers have been halved by the cutting of the Commission's budget but the dedication remains. I wish to thank them for their tireless effort and support.

Aboriginal and Torres Strait Islander Social Justice Commissioner

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.

Monitoring and Reporting

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

The Commissioner's monitoring and reporting functions are fulfilled by releasing an annual social justice report. In 1997 Commissioner Dodson produced his fifth and final Annual Report which covers the period 1 July 1996 to 30 June 1997.

The report came at a time when the Commonwealth Parliament was about to debate the Government's Native Title Bill. This was, and continues to be, clearly a critical time for all Australians to consider issues surrounding the rights of Indigenous peoples and their place in modern Australia. The report advocates embracing the notion of a just co-existence as the basis for the relationship between Indigenous and non-Indigenous peoples. The report suggests that to do this we can start with the core values of justice and equality that lie at the heart of Australian society.

1967 Referendum (30 Years On)

The report examines the meaning of the 1967 referendum and traces and analyses developments over the last thirty years. A time line of major events and milestones is provided together with comment on what the Commissioner considered the major impediments to change.

Indigenous People and the Juvenile Justice System

The rights of young Indigenous people and the juvenile justice system is a thematic issue considered in two previous reports. It is re-examined in the light of the release of *Bringing Them Home*, the report of the National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from their Families.

Education

Reports on the progress in the implementation of two projects for which the Human Rights and Equal Opportunity Commission has responsibility, the National Aboriginal and Torres Strait Islander Community Education Project (NCEP) **and the** National Indigenous Legal Curriculum Development Project (NILCDP).

Appendices

The appendices to the report include a report on the Ministerial Summit on Indigenous Deaths in Custody (Canberra, 4 July 1997), with answers to some frequently asked questions about the National Inquiry into the Separation of Aboriginal Children from their Families and a discussion of international indigenous issues and major developments from a global perspective.

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

Commissioner Antonios will present her first annual report as Acting Aboriginal and Torres Strait Islander Social Justice Commissioner to the federal Government later this year. It will cover the period 1 July 1997 to 30 June 1998.

The sixth report will provide an overview and analysis of the political, media and public responses to *Bringing Them Home*, the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. It will specifically outline the responses of governments to the recommendations of the Inquiry and also examine the impact of the report and subsequent debate in Indigenous communities.

Reporting on the Native Title Act

The objectives of the Commissioner in monitoring and reporting on the operation and human rights implications of the *Native Title Act 1993* (NTA) are:

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

During the past year, the Commissioner's native title work has focused on analysing and responding to proposals to amend the NTA outlined in the 'Ten Point Plan' and the *Native Title Amendment Bill 1997*. These proposals raised vital human rights issues.

Commissioner Dodson's *Native Title Report 1997*, explored the potential for co-existence between native title and other forms of property rights, and argued that 'certainty' is best achieved through negotiation and agreement rather than by using legislation to facilitate the extinguishment of native title. The report began by describing the essential contribution of Indigenous Australians to the development of the pastoral industry and the long history of black and white Australians living and working side by side on pastoral properties. It went on to provide a comprehensive analysis of the *Wik* case. The report then explored human rights issues raised by the draft Native Title Amendment Bill which was released by the federal Government in June 1997. It also considered the constitutionality of the Bill and its relationship to non-discrimination standards under international law.

Commissioner Dodson made submissions about the proposed NTA amendments to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund and to the Senate Legal and Constitutional Legislation Committee. He also made a submission to the West Australian Parliament's Select Committee on Native Title Rights. Submissions were made by the Commissioner's Office to the inquiry into the *Aboriginal and Torres Strait Islander Heritage Protection Bill 1998* by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund.

Until the end of his appointment Commissioner Dodson maintained liaison with the National Indigenous Working Group on Native Title. The Working Group has endeavoured to inform the Government of Indigenous views regarding the proposed amendments to the NTA. Staff also attended a national workshop of native title representative bodies in February 1998.

Throughout their involvement Commissioner Dodson and Acting Commissioner Antonios have stressed:

- the need for the Government to pursue a non-discriminatory policy in dealing with property rights;
- that the Racial Discrimination Act must be complied with when amending the NTA; and
- that the statutory extinguishment of native title would be racially discriminatory.

The Acting Aboriginal and Torres Strait Islander Social Justice Commissioner is presently preparing the fifth *Native Title Report*.

Other Monitoring and Reporting Activities

In addition to the material presented in the Commissioner's 1996/97 Native Title and Social Justice Annual Reports, the Commissioner has monitored and reported on a range of other issues relevant to the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples. These include health, education, criminal justice, employment, cultural and intellectual rights, housing and infrastructure.

The Commissioner has, until recently, maintained a broad monitoring role regarding the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. A major report for the Aboriginal and Torres Strait Islander Commission was completed and published in late 1996.

The Commissioner and a small group of Aboriginal leaders participated by invitation of the Commonwealth Government in a National Summit on Indigenous Deaths in Custody in July 1997. The participants in the Summit comprised in large part Commonwealth, State and Territory Governments' Ministers with portfolio responsibilities relating to justice, juvenile issues, police, prisons and Indigenous affairs. The Commissioner was disappointed that, despite the plethora of information and

experience available, the forum was unable to reach agreement on setting clear strategies and targets within reasonable time frames for reducing incarceration and deaths.

The Commissioner also provided comments on the Australian government's report to the United Nations Human Rights Committee on the implementation of International Covenant of Economic, Social and Cultural Rights [ICESCR] and to the Committee Against Torture on the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment [CAT].

International Activities

Commissioner Dodson attended the third session of the Working Group of the Commission on Human Rights on the Draft Declaration on the Rights of Indigenous Peoples in Geneva. Whilst in Geneva the Commissioner also participated in an intercessional meeting of the Advisory Group for the Voluntary Fund for the International Decade of the World's Indigenous People in his capacity as Chair of the Fund. This fund assists representatives of Indigenous communities and organisations to participate in the deliberations of the Working Group on Indigenous Peoples.

In August 1997 Commissioner Dodson participated in consultations organised by the Rigoberta Menchu Tum Foundation to discuss the worldwide exhibition to be held in Hannover Germany, commencing in October 2000. The key note theme of the EXPO2000 Hannover exhibition is 'Humankind-Nature-Technology' and one of its main objectives is to find common answers to global issues such as the environment, population and health. The Rigoberta Menchu Tum Foundation has signed an agreement committing the Foundation to presenting an Indigenous People Dignified Presence during the five months of the EXPO2000.

The objective of the meeting was to discuss with international Indigenous representatives the advances achieved by the Foundation in relation to EXPO2000, to analyse the potential collaboration of participants and the contribution of Indigenous Initiative for Peace. The meeting also provided Commissioner Dodson with an opportunity to participate in the establishment of criteria to ensure a diverse and plural exposition of the projects and programs from Indigenous peoples from countries worldwide.

National Aboriginal and Torres Strait Islander Community Education Project - *Tracking Your Rights* Resouce Package

The National Aboriginal and Torres Strait Islander Community Education Project (NCEP) forms the core implementation of Recommendation 211 of the Royal Commission into Aboriginal Deaths in Custody.

After extensive consultations the *Tracking Your Rights* resource packages was completed for three regions; one for Western Australia, one for the Northern Territory and South Australia and one for New South Wales, Tasmania, Victoria and the Australian Capital Territory.

The *Tracking Your Rights* package was launched nationally on 20 January 1998 at Ngaimpe Aboriginal Corporation on the Central Coast of New South Wales. The Commissioner launched *Tracking Your Rights* with Jack Beetson, Tranby Aboriginal College, and Melva Robinson, an Aboriginal woman whose son died in custody. Judy Monk from the Victorian Equal Opportunity Commission spoke on behalf of the State and Territory Equal Opportunity and Anti-Discrimination Commissions, and the consultants from each region also spoke of their involvement in the development of *Tracking Your Rights*.

Each *Tracking Your Rights* package includes:

- a regional resource which aims to assist Aboriginal and Torres Strait Islander peoples to use anti-discrimination laws and other mechanisms;
- a Train the Trainer manual which accompanies the regional resource materials;
- a National video;
- a Video Training Manual; and
- a mediation audio tape which discusses different models of mediation and alternate dispute resolution titled *Working it Out Locally*.

Negotiations with representatives of the Anti-Discrimination Commission Queensland's Brisbane and Cairns offices, are ongoing regarding the format and production of a package for Queensland which would incorporate the Queensland *Tracking Your Rights* book, produced under the HREOC Community Relations Strategy in 1992, and training material.

Strategies

A strategic plan has been developed for the implementation nationally of *Tracking Your Rights*. Some funds are available however these are insufficient for full national implementation to occur. Funding sources are being sought to enable national implementation to commence.

The strategies which were pursued in 1997-98 include:

- conducting training sessions in a number of locations including Sale, Melbourne and Cairns;
- distribution of the final newsletter from the National Coordinator of the National Community Education Project to members of the community education network;
- contributions to various publications including the Cairns Aboriginal and Torres Strait Islander Corporation for Women's Community Newsletter; and
- information sessions conducted in Alice Springs as part of HREOC's pilot Outreach Program with a number of Aboriginal and Torres Strait Islander community organisations.

National Indigenous Legal Curriculum Development Project

Outcomes

The National Indigenous Legal Studies Curriculum was launched by Commissioner Dodson in Sydney on 16 October 1997. It is the first nationally accredited legal training course for Aboriginal and Torres Strait Islander peoples.

Community service, government and non government organisations gave their time and contributed their ideas to the NILCD Project. Throughout the development process, opportunities for Indigenous educators, legal officers and community members to contribute were maximised. A particular focus was to include the people directly affected by the result, the people who are likely to take the course and the people accessing the services of Aboriginal Legal Field Officers. The product is culturally appropriate and tailored to meet the needs of Aboriginal and Torres Strait Islander people working in their communities.

The courses focus on the legal and human rights of Aboriginal and Torres Strait Islander peoples, including court procedures, mental health, juvenile justice, family law, customary law and international law.

The curriculum will be available at the community, vocational and university level. Courses for the vocational sector, developed by the Aboriginal and Torres Strait Islander Curriculum Consortium,

based at the Queensland Institute of Training and Further Education, will be offered through Institutes of TAFE and community controlled education and training centres such as Tranby Aboriginal College in Sydney. A higher level course is being offered through the University of Technology, Sydney.

The curriculum also includes two elective modules focusing on discrimination against Indigenous people with a disability. Ms Elizabeth Hastings, the then Disability Discrimination Commissioner, launched the two disability modules of the curriculum. These modules, entitled *Making Connections Disability Rights*, can be accredited to other courses or can be run as a distinct training program within Indigenous legal, health, welfare, child care or advocacy organisations.

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 Indigenous people.

Commissioner Dodson provided submissions to the:

- Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund Inquiry into the *Native Title Amendment Bill 1997*;
- Select Committee on Native Title Rights in Western Australia;
- Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund on the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*; and
- Senate Committee on Legal and Constitutional Affairs Inquiry into the Constitutional Aspects of the *Native Title Amendment Bill 1997*;

Commissioner Antonios, Acting Aboriginal and Torres Strait Islander Social Justice Commissioner, provided submissions to:

- *Aboriginal Land Rights [Northern Territory] Act [1976] Review*; and the
- Review of the *Land Acquisitions and Compensation Act 1986* [Victoria].

Chapter 4 – Disability Discrimination

Statement from the Acting Disability Discrimination Commissioner

People with disabilities continue to endure rights violations, exclusion and poverty more than any other group of Australians other than Indigenous people.

At the conclusion of Elizabeth Hastings' term as Disability Discrimination Commissioner in December 1997, I agreed to a request from the Attorney-General that I act in that office for twelve months in addition to being Human Rights Commissioner. The Government had previously announced its intention to seek to amend the Commission's legislation to combine these two areas of responsibility into a single position. Legislation to achieve that result was introduced into Parliament in March 1998 but it has not been enacted.

The loss of a specialist position devoted solely to disability discrimination issues comes only five years after the enactment of the *Disability Discrimination Act 1992* and the establishment of the position. Much has been accomplished during those five years but equality for Australians with a disability remains at best an unfinished agenda. The case for maintaining the specialist position remains compelling. The loss of the position coincided with the loss of more than half the specialist staff in the disability discrimination policy unit as a result of severe budget cuts imposed on the Commission by the Government. There are now only three people working on these issues.

I must say that, although I have worked on human rights issues throughout my adult life, I have never experienced as much frustration as I have as Acting Disability Discrimination Commissioner. Progress in this area of human rights seems to occur at glacial pace although the needs are great and well acknowledged. After five years of the Disability Discrimination Act 1992, for example, there has not been a single standard adopted. Were it not for the Commission's work in issuing advisory notes and other information on the application of the Act, there would have been little progress at all in setting benchmarks for non-discriminatory practices. Complaint handling regularly seems to drag on, at the insistence of one or other or both of the parties, when an appropriate settlement is clearly within grasp. Indeed the complaint load itself seems to reflect more the failure of workers compensation systems across Australia more than a systematic attack on entrenched discrimination. The quality of complaints leaves a great deal to be desired.

In spite of these disappointments, the Commission continues to work to promote the effective implementation of rights and responsibilities under the Disability Discrimination Act 1992. In some areas, notably building access and public transport, there has been some progress during the last year. In other areas there has been little, if any, improvement in the protection of human rights. For example, the Commission's background research in 1997 on abuse of people with a disability in institutions confirms the depressing picture presented by numerous inquiries at State level. I will work with relevant Commonwealth and State authorities during 1998-99 to promote effective action in this area.

Because of these disappointments and frustrations, as Acting Disability Discrimination Commissioner I have decided to set new directions and approaches in this area of responsibility. If I am continued by the Government in this position these new directions and approaches will be pursued vigorously.

First, I am seeking to ensure that the Commission's work on disability issues is not confined to a narrow anti-discrimination approach. This is a negative approach that does not correspond to the positive obligations that human rights law more broadly imposes. Our work needs a broader, more positive focus on the human rights of people with a disability, including in areas of our jurisdiction beyond the Disability Discrimination Act itself. One positive result of combining the responsibilities of Human Rights Commissioner and Disability Discrimination Commissioner is that I am able to draw on my authority under both Acts I now administer. This enables a more rights based focus in disability issues. As an example, work has continued to identify effective means to ensure that girls and young women with a disability are not subjected to unlawful sterilising operations and in particular to ensure that the Commonwealth does not fund these operations. This is a human rights issue, a child rights issue, more than a discrimination issue and it requires attention.

Much of the Commission's work on disability issues consists of advice and encouragement to mainstream regulatory bodies, as with our work on building access and telecommunications. These processes are often low profile and unspectacular but achieve important, far reaching reforms to enable people with a disability to be fully equal participants in Australian society.

I am convinced, however, that disability rights issues require a higher profile approach than has been adopted in the past. In our work on disability rights we are now using some of the approaches used in the more general human rights area. They include an increased emphasis on publicity for and public participation in the Commission's work. In particular, the public inquiry model seems very suitable for broad policy issues affecting access and equality for people with a disability, such as those covered by our recently announced inquiry into closed captioning of television for deaf and hearing impaired people.

I intend to apply this model to other disability discrimination issues in future where appropriate, including as a possible part of the investigation of significant complaints of broad relevance to people with disabilities. In the Commission's present budgetary circumstances, this is only possible where an inquiry can be conducted with minimal resources and within existing staffing. I propose to discuss with government in the coming year some disability rights issues where an effective inquiry could be conducted with specific additional funding.

The rights of people with disabilities require more and more urgent attention than they have received to date. People with disabilities continue to endure rights violations, exclusion and poverty more than any other group of Australians other than Indigenous people. That is why I am determined to adopt new directions and new approaches in this work. A higher and more effective level of performance is required of the Commission - difficult to build and sustain with our budget cut so drastically but nonetheless essential if there is to be any significant improvement in ensuring basic human rights.

Disability Standards

The Disability Discrimination Act provides for 'Disability Standards' to be made by the Attorney-General in specified areas, presently accommodation, administration of Commonwealth laws and programs, education, employment and public transport. Contravention of a Disability Standard is unlawful under the Act. Action in compliance with a Disability Standard is not unlawful under the Act. Disability Standards offer an increase of certainty and clarity of rights and responsibilities for relevant parties.

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

Commonwealth government information and communications

The Attorney-General's Department has been coordinating the development of a standard in government information and communications. For a long time it encountered considerable difficulty obtaining any very useful input from other agencies. Reasonably rapid progress towards a consultation draft being released within the next few months now appears possible based on guideline material contributed by AusInfo (formerly AGPS), and other available material including the Commission's World Wide Web advisory notes. The Commission will continue to participate in this process with a view to enabling the Attorney to make a standard early in 1999.

Education

The Commission is not directly involved in the development of draft Disability Standards on education by a taskforce of the Ministerial Council on Employment, Education, Training and Youth Affairs, but it is providing advice to participants on request. The Commission understands that the taskforce hopes to have draft Standards available for consultation late in 1998.

Employment

The Commission has provided 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 which comprises employer, trade union, government and disability community representatives.

The subcommittee released a second draft Standard for comment in December 1997, following consideration of comments the first draft in August 1996. The second draft Standard, was broadly consistent with, while providing useful clarification of, existing rights and obligations under the Disability Discrimination Act. Improvements in drafting might be made on the basis of comments in submissions. The approach throughout this process however has been to proceed on the basis of consensus rather than on the basis of the view of the Commission or any other participant acting alone.

Many interested organisations had difficulty meeting the March 1998 timetable for submissions, such that a number of major submissions were not received until May 1998. Disability community opinion

was divided. Some submissions support the general approach taken in the draft, while seeking further revision and consultation. Many other submissions expressed continuing concern that standards will take away rights and that non-prescriptive standards will not be effective. These submissions generally called for the Commission to adopt guidelines rather than Standards, at this stage. Most though not all submissions received from government agencies expressed general support for proceeding with Standards along the lines of the draft. Employer representatives, while not expressing major concerns about the content of the draft, indicated a strong preference for a non-regulatory approach, such as guidelines, rather than Standards.

As at June 1998 the Commission was seeking the views of subcommittee members on whether and how to proceed.

Public transport

Australian Transport Council approval is anticipated in July 1998 for release of the Regulation Impact Statement on the draft Accessible Public Transport Standards adopted by the Council in June 1996. Depending on the results of the 12 week consultation process, approval of a standard may be possible in November 1998. The Commission is not directly involved in the current phase of consideration of standards in this area but it is providing advice to participants when requested.

Access to premises

The Commission has advised the Attorney-General that it supports amendment of section 31 of the Disability Discrimination Act as soon as possible to allow for the development of a Disability Standard on access to premises. This would permit adoption under the Act of content developed by the mainstream building regulatory regime and would provide industry, local government, people with disabilities and other parties with a clearer and more coherent set of rights and responsibilities. By July 1999 the Australian Building Codes Board process should provide a product suitable for adoption as at least a partial Disability Standard on access to premises with reasonably general industry and disability community acceptance.

Action Plans under the Disability Discrimination Act

The Commission's objectives in this area are to encourage and assist development of action plans by service provision organisations with responsibilities under the Act and to encourage greater participation of the disability community sector and interested individuals in the development of disability action plans.

An updated list of Action Plans registered with the Commission is available. Action plans lodged totalled 91 (compared to 40 up to June 1997) in the following categories: business, non-government organisations and government business enterprises (24 plans); education (16 plans); local government (21 plans); state government (7 plans); Commonwealth government (23 plans). One highlight among plans received in 1997-98 was the National Australia Bank's plan, launched in October 1997 by the then Disability Discrimination Commissioner Elizabeth Hastings.

A new publication to supplement the Action Plan Guides produced in 1995 has now been completed. The document, *Developing An Effective Action Plan*, is available from the Commission and will soon be on the Commission's homepage.

Promotion of understanding, acceptance and compliance

Access to premises

The Commission's objective in this area is to promote non-discriminatory access to premises consistent with the requirements of the Disability Discrimination Act. Principal activities have been assistance to the Australian Building Codes Board (ABCB) in continuing revision of the Building Code of Australia, continued development and review of Advisory Notes on Access to Premises and development of "Frequently Asked Questions" (FAQ) information based on responses to requests for compliance information.

In 1998-99 the Commission plans to continue to assist the ABCB in revision of the Building Code to the point where it can be adopted as the basis for a Disability Standard on accessibility of new premises. The Commission will also provide advice to or, if necessary, participate in an ABCB working party on access requirements for existing premises. It will also consider any exemption applications received in this area.

Accessible public transport

The Commission held discussions with a number of State government authorities and private transport operators regarding preparation of action plans under the Disability Discrimination Act and possible exemption applications associated with submission of an action plan. Some of these discussions are expected to result in public commitments in the second half of 1998 to processes for accessible public transport.

Closed captioning TV broadcasts and videos

The Commission's objective in this area is to achieve commitment of industry to closed captioning consistent with the requirement of the Disability Discrimination Act that goods and services be accessible to people with disabilities, that is, to the maximum extent possible without causing unjustifiable hardship.

Comparisons with the UK and the USA suggest that Australia is making slow progress towards providing captioning for people who are deaf or hard of hearing. The Commission has been considering options in this area and intends to commence a process of public examination of the issues in July 1998.

Telecommunications and access to information

The Commission has acted as an observer and given advice when requested in the Australian Communications Industry Forum's industry code development process. Executive Director, Diana Temby has had useful discussions with the Department of Communications and the Arts on the relationship between the Telecommunications Act, the draft Disability Equipment Regulations and the Disability Discrimination Act.

The Commission has established productive liaison with the National Office for the Information Economy, the Commonwealth's major vehicle for promoting the Internet as a deliverer of e-commerce and government services. The National Office is administering a \$3m grants program called 'accessability: online access for people with disabilities'. The program was launched by the Minister, Senator Alston, on 15 June and aims to enhance access to the Internet by people with disabilities.

Issues concerning electronic documents, company prospectuses and access to Commonwealth information have come together in several recent complaints to the Commission. The Commission has done some work towards a public process to be commenced in July 1998 to canvass these issues and gather information that would guide the performance of its functions under the Act.

Accommodation rights and abuse

The Commission's objectives in this area are to promote identification and adoption of effective measures of protection and remedy against abuse of people with a disability in institutional and other settings and to encourage measures to ensure that people with a disability have accommodation options consistent with Australia's human rights commitments.

The Commission undertook substantial background research in this area in 1997. In May 1998 the Acting Disability Discrimination Commissioner met with the National Disability Advisory Council (NDAC) Chair, Mr Ian Spicer, to discuss the NDAC project on deinstitutionalisation and possibilities for an effective contribution from the Commission. The Commission is awaiting the NDAC discussion paper before deciding on further action in this area.

Review on National Mental Health Strategy

The Commission's objective in this area is to promote legal, policy and program measures which increase respect for and ensuring of human rights of people with a mental illness.

The principal activity under way is a review of progress of relevant aspects of the National Mental Health Strategy by reference to Australia's human rights commitments and the recommendations made by the Commission's National Inquiry into the Human Rights of People with a Mental Illness. The current review is not an "inquiry" intended to lead to a formal report and should not be seen as competing with the evaluation of the Strategy being conducted by Health Ministers. It is intended at this stage principally to inform the Commission itself of current perspectives of key stakeholders, including government, consumers, carers, service providers and research bodies and to identify possible needs and avenues for effective involvement by the Commission.

Initial research based on published materials has been completed and a strategy for consultation with stakeholders has been developed. Approximately twenty consultations have already been undertaken. These consultations have enabled the identification of important issues and assisted in developing a useful resource network for further work in the area. At present the material obtained by consulting key stakeholders is being used to develop briefing papers and information sheets. These will be used to inform the Commission and assist it in determining avenues for further effective involvement in the mental health area.

Frequently Asked Questions series

The Commission has commenced publication on its Internet site of Frequently Asked Questions materials on a number of areas covered by the Disability Discrimination Act, including education and employment. These materials draw on responses given to individual enquiries as well as the Commission's complaint handling experience, participation in policy processes, and relevant court and tribunal decisions. The intention is to update these materials frequently.

Examination of enactments

Medicare Benefits for Psychiatric Services

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 had the effect that, subject to certain exceptions, the scheduled fee and thus the Medicare rebate for psychiatric consultations was reduced by 50 percent after a patient's 50th visit in any one year.

The Commission decided to conduct an examination to determine whether the regulations were inconsistent with or contrary to the objects of the Disability Discrimination Act.

The Commission reported the results of its examination to the Attorney-General in November 1997. The report summarised the findings of the examination.

In the Human Rights and Equal Opportunity Commission's view, the restrictions which were introduced in the 1996 Budget on Medicare benefits in relation to certain psychiatric services, included restrictions which had a discriminatory impact on people with a psychiatric disability and which accordingly were not consistent with the objects of the Disability Discrimination Act.

Modifications which were made to the relevant regulations (effective from 1 January 1997) with the introduction of Medicare Item 319, addressed some but not all concerns in this respect.

It is regrettable that the government considered that it was not able to undertake the consultations, which led to these modifications, prior to the original Budget decision.

As a result of further modifications to the regulations, introduced effective from 1 November 1997, following further consultations, HREOC is unable to conclude that the regulations as most recently revised remain discriminatory or inconsistent with the objects of the DDA.

In HREOC's view, the restrictions which remain are now more closely comparable to those which apply to Medicare benefits in relation to a range of other areas of medical treatment, rather than being properly characterised as discriminatorily singling out or stigmatising psychiatric treatment and psychiatric patients.

HREOC hopes that the conduct of this examination, and the contributions of the people with a psychiatric disability, mental health professionals, and others who made submissions to HREOC, has assisted in achieving these improvements.

HREOC urges continued review of the operation of the relevant provisions, in consultation with consumers and the professional bodies concerned, to ensure that they operate in a manner which is non-discriminatory and which is consistent with and promotes the rights of people with a psychiatric disability to equality with all members of the Australian community.

Guidelines

Advisory Note on public transport

In 1997 the Disability Discrimination Commissioner became concerned that, while the Regulatory Impact Statement process on the draft Standards issued by Transport Ministers in June 1996 was continuing, there was a growing incorrect impression that rights and obligations in this area do not yet exist or have been suspended and that major action to achieve equal access may and should be deferred pending authorisation of the Standards.

In October 1997 the Commission decided to issue a short Advisory Note on public transport to clarify the current application of the Disability Discrimination Act in this area. The Note endorses the draft Disability Standards for accessible public transport as generally reflecting existing obligations under the Act, and indicates that HREOC will take these draft Standards into account in complaint handling and in considering exemption applications.

Insurance and Superannuation

Guidelines on the application of the Disability Discrimination Act to insurance and superannuation were developed during 1997 in cooperation with relevant industry associations and in consultation with disability community representatives. These guidelines were adopted by the Commission in March 1998 and are available on the Commission's homepage.

Advisory Notes on Access to Premises

The Commission issued a revised version of its Advisory Notes on Access to Premises in March 1998 to take account of issues raised by industry, consumer, professional and regulatory representatives, and of the results of the process being conducted by the Australian Building Codes Board (ABCB) to revise the Building Code of Australia. A further revision is intended in July 1998 in view of progress anticipated for the ABCB process towards defining a level of access that meets the requirements of the Disability Discrimination Act.

World Wide Web Access

Government, business, educational and other organisations in Australia are increasingly using the World Wide Web (WWW) as a means of providing large numbers of people with access to information and other services in a timely and cost-effective way.

Availability of information and services in electronic form through the WWW has the potential to provide equal access for people with a disability and to provide it broader, more cheaply and more quickly than is possible using other formats.

In July 1997 the Commission issued an initial version of WWW Advisory Notes to assist people and organisations involved in developing or modifying internet documents, by making clearer what the requirements of the DDA are in this area and how they can be complied with.

In April 1998 the Commission issued a draft second version of these Notes for comment. The Commission expects to adopt a revised version by July 1998.

The Commission is discussing adoption of the Advisory Notes or equivalent standards with the Commonwealth Government.

Research and educational programs

In October 1997 the then Disability Discrimination Commissioner commissioned a report, *Sterilisation of Girls and Young Women in Australia*, which was released in December 1997.

The High Court decided in 1992 that court or tribunal authority is required before any child can be sterilised lawfully unless the sterilisation occurs as a by-product of surgery appropriately carried out to treat some malfunction or disease. Authorisation may be given only if sterilisation is in the child's best interests after alternative and less invasive procedures have all failed or it is certain that no other procedure or treatment will work.

The report presented evidence that despite this at least 1,045 girls had been sterilised since the High Court's decision, compared to a total of 17 cases where courts and tribunals had authorised sterilisation. The report argued that the "sterilisations of the vast majority were unlawful because without any doubt, alternative and less invasive options had not been exhausted". It called for urgent legislative reform to provide a more accessible and effective and less costly process for accountability of decision-making in this area. It noted that the High Court in 1992 had similarly pointed out a need for legislative reform. The report also drew attention to a need for more effective support for families to ensure that alternative options to serilisation are more effectively available.

The Commission is currently discussing statistical issues regarding the report with the Department of Health and Family Services. The Commission will be participating in a meeting in July 1998 called by the Attorney-General's Department to discuss recommendations for legal and procedural changes to prevent unlawful sterilisation of children. This meeting will include representatives from legal and advocacy bodies with a particular interest in this problem. It is expected that, following the meeting, the

Attorney-General's Department will finalise a paper with recommendations for consideration by the Standing Committee of Attorneys-General.

Exemptions

The Commission has power under section 55 of the Disability Discrimination Act to grant temporary exemption from provisions of the Act which make discrimination unlawful. No applications for exemption were made or considered during 1997-98. The Commission's policy on exemption applications is obtainable on the Commission's Internet homepage or from the Commission.

Chapter 5 – Human Rights

Statement from the Human Rights Commissioner, Chris Sidoti

Human Rights transcend all borders, cultures and nations of difference. We all share responsibility for their protection and promotion.

Human rights are for all people - each woman, man and child - in all places and at all times. They are not the preserve of minority groups. They are not privileges only for majorities. They are for everyone. Human rights transcend all borders, cultures and notions of difference.

We all share responsibility for the protection and promotion of human rights. In 1948 the international community adopted the Universal Declaration of Human Rights which proclaimed fundamental rights to which everyone is entitled without discrimination. Australia actively supported and was centrally involved in the development of the Universal Declaration. Its fiftieth anniversary year should be marked by three things: celebration of achievement, recognition and acknowledgement of failure and commitment for the future.

We in Australia can point to many achievements since 1948. Laws protecting human rights and prohibiting discrimination have been drafted and adopted at Commonwealth, State and Territory levels. There is greater respect for self-determination of Indigenous Australians and recognition of their status as citizens. There has been an end to the death penalty, military conscription and physical punishment of children in almost all schools. The White Australia Policy has been abolished, leading to a society that is richer economically, socially and culturally. Women no longer have to resign from permanent employment when they marry.

Celebration of achievement is essential but it is not enough. We must also recognise and acknowledge failure. This is part of knowing our history as a whole, knowing the full truth and not some false or selective version of it. Knowing the past is necessary for understanding the present and planning for the future. Some of our most significant failures have a racial basis. Indigenous people are still the most disadvantaged Australians by any measure. Their mistreatment is the wrong-doing on which today's Australia is built. Racism and intolerance are stains that have discredited much of our history and continue to infect our present.

Another stain on our human rights record is the poverty which remains a fact of daily life for hundreds of thousands of Australians. It is a human rights issue which will not be properly addressed as long as economic fundamentalism is the predominant factor guiding public policy. Economic growth is increasingly taking on the character of entrenched unemployment, providing no answer to poverty and thereby contributing to greater inequity and exclusion. Without moral direction, human rights direction, economic growth cannot and will not solve social problems. It will only produce a wider gap between rich and poor.

These issues affect all Australians and they challenge us to re-affirm our commitment to:

- true national Reconciliation between Indigenous and other Australians and among all Australians;
- full acceptance and belonging for all who share this country, on the basis of equality;
- opportunities for all people to contribute to the development of the community;
- access to education, health care, housing and other services for all; and
- membership of the international community of peoples, sharing responsibility for the common good of all humanity.

The end of the 1997-98 year and the coming 50th anniversary are timely occasions to reflect on these principles and commitments and to take stock of our achievements in human rights. It is timely for me as I look back on the first half of my term as Human Rights Commissioner. In all our work over the year the staff in the human rights complaints and policy areas and I have sought to give concrete expression to the universality of human rights. We have sought to ensure that our work advances the human rights of all, especially those who experience the most serious violations.

The most significant initiative in the human rights area over the last year is the *Bush Talks* program on human rights in regional, rural and remote Australia. This program commenced early in 1998, largely as a response to the deteriorating quality of life and increasing hardship experienced by people living in the bush. In all of its major reports and inquiries over the years, the Commission has given attention to the distinct problems faced by rural Australians. However, the severity of those problems has convinced me that a more comprehensive and systematic approach is needed. The response to *Bush Talks* has been overwhelmingly positive with strong support from organisations such as the National Farmers' Federation, the Country Women's Association of Australia, the Returned Services League, the Aboriginal and Torres Strait Islander Commission and Australian Rural Youth. This program will shape many of the priorities for the second half of my term. I will be pursuing a range of specific projects over the next two years aimed at improving human rights for people in country Australia.

A number of significant human rights projects within my area of responsibility have come to fruition during 1997-98. They include two landmark reports tabled in federal parliament

- *Seen and heard: priority for children and the legal process*, the report of the National Inquiry into Children and the Legal Process.
- *Those who've come across the seas: detention of unauthorised arrivals*.

Other reports submitted to the Attorney and tabled in Parliament during the year deal with discrimination in employment on the basis of sexual preference, trade union activity and age. A report on the right to freedom of religion and belief in Australia is near completion and will shortly be submitted for tabling. Work is also advanced on the report of an inquiry into the Norfolk Island immigration legislation.

Through submissions to government, speaking engagements and other activities I have advocated reforms in areas such as poverty, homelessness and the criminal justice system. I have been particularly concerned by the effect of mandatory sentencing laws in Western Australia and the Northern Territory. These laws prevent any attempt by the courts to address the individual circumstances of offences and the individual situations of offenders and victims. They do nothing to promote community safety in the long term. They are particularly severe in their application to children.

I have made representations to the Tasmanian Government for the enactment of effective anti-discrimination laws in that State, including provisions prohibiting discrimination on the basis of sexual orientation. I was greatly encouraged when the proposed legislation passed through the Tasmanian lower house in May 1998. The Commission's support for the proposed legislation builds on our earlier successful advocacy for the repeal of provisions in the Tasmanian Criminal Code which penalised consenting sexual relations between adult males.

Work on these issues was undertaken in the most difficult circumstances. The number of staff in the human rights policy unit was more than halved late in 1997 as a result of the 40% budget cut imposed on the Commission. We were saddened to have to farewell our colleagues. I was also concerned that the demands on those who remained would be intolerable. This concern has proved well founded. We have been able to make some changes to the way we work but basically there has been no alternative but to reduce the number of projects. All the work of the human rights policy unit is now being done by only three full-time policy staff. Their efforts and products have been outstanding and I thank them for them. Fortunately we have been able to obtain assistance to supplement their efforts from student interns from Australian, Danish and US universities, an Indigenous cadet officer and other volunteers.

While our domestic work has been difficult our international role has gone from strength to strength over the year. The Minister for Foreign Affairs, the Hon Alexander Downer MP, has been unstinting in his support for the Commission in promoting the establishment of new human rights institutions in the Asia Pacific region and in strengthening the effectiveness of existing institutions. The secretariat of the Asia Pacific Forum of National Human Rights Institutions remains with the Commission, working with commissions in India, Indonesia, New Zealand, the Philippines and Sri Lanka and in South Africa and with governments and other agencies in Bangladesh, China, Fiji, Korea, Mongolia, Nepal, Papua New Guinea, Thailand and Vietnam.

The handling of complaints under the *Human Rights and Equal Opportunity Commission Act 1986*, for which I am responsible, has also developed well during the year. Complaints staff have eliminated all backlogs and are now able to commence the investigation of complaints within two or three weeks of receipt. Human rights complaints under the Act are restricted to acts and practices of the Commonwealth and so large numbers of complaints against State and Territory and private sector agencies are outside our jurisdiction. We promptly advise these complainants of this. We are achieving a very good rate of successful conciliation of complaints within jurisdiction even though there are no enforceable remedies available. Our experience, however, establishes the urgent need for comprehensive coverage of discrimination issues in federal legislation. Grounds such as age, sexual orientation, trade union activity, criminal record and religious and political opinion require the same kind of effective legislation as sex, race and disability grounds.

With the observance of the 50th anniversary of the Universal Declaration of Human Rights, the coming year, 1998-99, can be one for new advances in the protection and promotion of human rights in Australia. Certainly we will be doing all we can towards that goal, in spite of the staff cuts forced on us. *Bush Talks* will continue. Our efforts in complaint handling will continue, together with advocacy for better legislation. We will complete our reports on religious freedom and on the Norfolk Island immigration regime. To mark the International Year of Older Persons in 1999 we will release a discussion paper on age discrimination. We will commence projects on rural human rights issues. We will play our part towards meeting 'the universal standard of achievement for all humanity' that the Universal Declaration proclaims.

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 allow a comprehensive investigation into and response to more general experiences of human rights violations.

Inquiry into Children and the Legal Process

Australia's children are the nation's future. Australia's legal processes have consistently failed to recognise this fact by ignoring, marginalising and mistreating the children who turn to them for assistance. Much must be done to provide for children's access to and appropriate participation in the legal processes that affect them. Changes are needed across all levels of government and across all jurisdictions.

[*Seen and heard: priority for children in the legal process*, Human Rights and Equal Opportunity Commission and Australian Law Reform Commission, page 5]

On 19 November 1997 *Seen and heard: priority for children in the legal process* was tabled in federal Parliament. This report, a joint project of this Commission and the Australian Law Reform Commission, was the result of a two year National Inquiry into Children and the Legal Process. It represents the most comprehensive examination of young people and the legal system which has ever been undertaken in Australia.

The report documented extensive evidence of the problems and failures of legal processes for children.

This included evidence of:

- discrimination against children;
- a consistent failure by the institutions of the legal process to consult with and listen to children in matters affecting them;
- a lack of coordination in the delivery of, and serious deficiencies in, much needed services to children, particularly to those who are already vulnerable;
- the increasingly punitive approach to children in a number of juvenile justice systems including mandatory detention legislation in Western Australia and the Northern Territory which can result in teenagers being automatically incarcerated even for minor offences;
- the over-representation of some groups, particularly Indigenous children, in the juvenile justice and care and protection systems;
- the concentration of specialist services and programs in metropolitan areas, disadvantaging rural and remote children in their access to services, the legal process and advocacy;
- court processes which are bewildering and intimidating for children; and
- school exclusion processes which deny young people basic rights of procedural fairness and natural justice and seriously diminish their life chances.

A consistent message received by the Commission during the inquiry was that children and young people are frequently denied access to and appropriate participation in the legal processes that affect them. Submissions highlighted the urgent need for Commonwealth leadership to achieve better coordination between different jurisdictions and levels of government.

In responding to these messages, the Commissions did not recommend a proliferation of new government bodies. That would be not only inefficient but also counterproductive and confusing to consumers of services. Rather, the Commissions recommend mechanisms to provide a more integrated national approach to children's issues.

In arguing for a more active role by the Commonwealth, the Commissions did not seek to detract from the role of state and territory Governments and non-government organisations. However, the Commonwealth must take the leadership and coordination role. The Commissions recommended the establishment of a federal Office for Children located within the Department of Prime Minister and Cabinet to coordinate the development of policies and programs affecting children. Priority tasks would

include the development of national standards in the areas of school discipline, care and protection, investigative interviewing of children and juvenile justice.

The Commission's report also addressed the need for independent complaint and advocacy mechanisms for children and young people. Recommendations included establishment of a specialist children's rights unit to undertake broad, national systemic advocacy for children. In addition, the report recommends a network of individual advocates at the grass roots level to provide support and guidance for young people, for example when dealing with government agencies.

Other recommendations deal with specific areas and include:

- the use of multidisciplinary teams of interviewers to investigate abuse allegations and interview children, thus avoiding the trauma associated with multiple interviews
- the provision of age appropriate literature for child witnesses to explain legal proceedings and the roles of the other participants in the process
- providing child witnesses with qualified support to assist them through the court process
- guidelines to assist judges in preventing harassment of child witnesses
- the development of clear standards for the representation of children in all family law and care and protection proceedings, including requirements for appropriate participation by children
- measures to enhance the role of family court counsellors
- measures to encourage children to participate in primary dispute resolution processes such as counselling or mediation
- better training for legal representatives acting on behalf of children
- funding to ensure better resourcing for legal representation of children in family law, care and protection and juvenile justice proceedings
- access and equity measures to make legal processes more accessible and friendly for particularly vulnerable groups of children, including Indigenous children, children from non-English speaking backgrounds, children in rural and remote areas and young people with disabilities and
- specialised training in children's issues for judges, magistrates and other professionals working with children in legal processes.

This report, if taken seriously by governments, has the potential to bring about a new era of positive engagement and participation in the legal processes for young people in Australia ... I look forward to the day when we can truly say that children are "seen and heard" in the legal processes in this country. [Commissioner Chris Sidoti at the launch of *Seen and heard: priority for children in the legal process*, 4 December 1997]

The Federal Government has not yet formally responded to the report. The Commissioner's office has developed a detailed strategy for promoting the recommendations of *Seen and heard* and children's rights generally during 1998-99.

Norfolk Island immigration legislation

During the year the Commission commenced an inquiry into the Norfolk Island immigration legislation. Norfolk Island is a territory of Australia administered by the Commonwealth but granted a significant measure of self-government in 1979. It operates its own immigration regime under the *Immigration Act 1980* (NI). The development of immigration controls separate from those of mainland Australia reflect both the history and special circumstances of Norfolk Island.

In 1996 and 1997 the Commission received several complaints regarding the operation of the Norfolk Island immigration legislation. Issues raised in complaints included the system of entry permits and its effect on the rights to freedom of movement and freedom from discrimination. The Commissioner decided that the systemic nature of these issues warranted a general inquiry into the operation of the legislation. In July 1997 the Commission announced that an inquiry would be undertaken to examine whether the *Immigration Act 1980* (NI) and associated regulations, guidelines and policies were consistent with, or contrary to Australia's human rights obligations, in particular the right to freedom of movement and the right to equality before the law. The complaints received by the Commission were deferred pending the completion of the inquiry.

The inquiry was advertised in the national press and the Norfolk Island press and submissions from the public were invited. In December 1997 the Commissioner conducted consultations and hearings on Norfolk Island. He met with government ministers and other officials. He also held public meetings to give residents of Norfolk Island an opportunity to discuss issues relevant to the inquiry.

The inquiry has now concluded and the Commission's report will be submitted to the Attorney-General before the end of 1998.

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 1986* (Cth).

Under sections 11, 14, 20 and 29 of the Act, the Human Rights Commissioner on behalf of the Commission 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.

Children's rights

All people, irrespective of their age, have human rights - civil, cultural, economic, political and social. Young people have the same entitlement to these rights as older people. However, if we look at the facts I think it is clear that this principle has yet to be translated into reality ... We must strive for a future in which all human rights of young people are given the respect they deserve.

[Commissioner Chris Sidoti, address to the Youth Affairs Council of Western Australia - Conference, 6 September 1997]

Submission on rights of the child in Australia

In July 1997 the Commissioner provided a detailed submission to the Joint Standing Committee on Treaties Inquiry into the Status of the United Nations Convention on the Rights of the Child in Australia. The Commissioner also appeared before the Committee in Sydney in August. The submission provided an overview of Australia's record in applying the Convention, acknowledging both our achievements and our shortcomings. While Australia has done well in some areas, our performance in relation to particular issues and particular groups of children raises serious questions about compliance with the standards required by the Convention.

- Australia has been estimated as having the second highest level of child poverty in the industrialised world.
- Youth homelessness is a serious problem in Australia with the number of homeless young people having increased significantly over the past decade.

- The suicide rate for young Australian males aged 15 to 24 has been estimated as the fourth highest in the industrialised world.
- Indigenous children face serious disadvantages on almost every indicator including infant mortality, poverty, housing, health and education.

The submission concluded that full compliance with the Convention is both realistic and attainable but that more concerted action is needed to ensure its full implementation in Australia.

Submission on child care funding

In March 1998 the Commissioner provided a submission to the Senate Community Affairs References Committee Inquiry into Child Care Funding. The submission expressed concern about changes to policy and funding which may reduce the accessibility and quality of child care and other services for young children and their families in Australia. The submission emphasised the detrimental effects of the withdrawal of these services on the rights of a great many children, women and families in Australia.

International initiatives

The Commissioner continues to support international initiatives for the protection of children's rights. This has included providing advice on proposed International Labour Organisation Standards on Child Labour and proposed Optional Protocols to the Convention on the Rights of the Child dealing with the sale of children, child prostitution and child pornography and the involvement of children in armed conflict. In 1997 the Commissioner joined the Board of the International Bureau for Children's Rights. The Bureau is a non-government organisation with a mission to protect and promote the rights of children in all parts of the world. The main focus of the Bureau's work during 1997-98 has been on sexual exploitation of children. In May 1998 the Commissioner attended his first meeting of the Board in Montreal, Canada.

Detention of unauthorised arrivals

In the last year of my detention at Port Hedland I was in a bad state emotionally. Most nights I would lie in bed feeling nervous wondering about what would happen to us. We had not heard anything for a long time about our court case and felt that we could be deported any day. Our sleep was also disturbed by the guards checking on us every night.

[*Those who've come across the seas: detention of unauthorised arrivals*, May 1998, page 230]

I would prefer to stay in Australia but it has taken so long to get a response from the department I have lost heart. That is why I requested to go back to China. I don't want to go back to China because of what happened to me there and because my son would have to be cared for by someone else as I will be imprisoned ... I have been in detention for one year and still do not know what is happening.

[*Those who've come across the seas: detention of unauthorised arrivals*, May 1998, page 234]

On 12 May 1998 the Commission's report *Those who've come across the seas: detention of unauthorised arrivals* was tabled in Parliament. The report deals with the policy of mandatory detention of most unauthorised arrivals and the conditions of detention for those detained.

The Commission found that the policy of mandatory detention violates guidelines incorporated into international law which permit detention only where necessary to verify the detainee's identity, to determine the elements on which the claim to refugee status or asylum is based, to deal with people who have destroyed their documents to mislead the authorities, and to protect national security and public order. The Commission recommended that those whose detention could not be justified for one of these reasons should be released and proposed a range of community release options.

The Commission found that the conditions, treatment and services for detainees varied considerably among the three detention centres which were the focus of the inquiry: Port Hedland, Perth and Villawood.

The most serious findings of human rights violations related to

- the use of Villawood Stage One and Perth for long-term detention due to the lack of privacy, inadequate recreation facilities, inadequate educational opportunities and restrictions on movement
- the segregation of new arrivals at Port Hedland
- the inappropriate management of detainees' behaviour including the misuse of observation rooms, physical and chemical restraints and transfers to police cells and prisons
- the failure to inform new arrivals of their entitlement under Australian law to request the assistance of a lawyer.

Detailed recommendations are made to address each of the breaches identified. In addition the Commission recommends significantly enhanced external oversight and monitoring of the conditions and treatment of detainees.

On 1 June 1998 the Commission held a seminar to brief community representatives on the detention report. The seminar was very well attended by people from a range of community organisations and agencies. The Commissioner outlined the inquiry process and methodology, the findings and recommendations and the Commission's plans to follow up the report. He indicated that he would be seeking a meeting with the Department of Immigration and Multicultural Affairs to discuss the recommendations, undertaking a further inspection of each of the detention centres within the next year and proceeding with investigation of individual complaints. After his presentation a panel of speakers gave their perspectives on the report. The panel included representatives of the Refugee Council of Australia, the International Commission of Jurists (Australian Section), the St Vincent de Paul Society, the Jesuit Refugee Service, the Detention Working Group of the Asylum Seekers Interagency and Amnesty International. The panel session was followed by general comments and discussion from the audience.

Bush Talks

Over the past ten years, life for many in the bush has been difficult. On farms, outback properties and in country towns, many are isolated by age, circumstances and distance while community services, family and neighbours are limited. For country Australians, there is a deep seated feeling of disadvantage against the opportunity available in the cities. I welcome the initiative of the Commission to identify human rights abuses affecting people in rural Australia.

[Rt. Hon. Ian Sinclair, Speaker of the House of Representatives and Member for New England]

Since its establishment in 1986, the Human Rights and Equal Opportunity Commission has investigated many particular situations of human rights breakdown: homeless children, people with mental illness, access to clean, safe water, access to appropriate health services, violence based on race or ethnicity, children and the legal process. In every case the Commission found that rural and remote Australians have distinct human rights problems.

Bush Talks is a series of consultations which commenced in March 1998 and will continue for at least a year to identify human rights concerns in regional, rural and remote areas. The Human Rights Commissioner and other Commissioners and staff will be consulting with peak representative organisations in the States and Territories as well as nationally and with country people in a range of regional, rural and remote centres. The consultations are supported by the Country Women's Association, National Farmers' Federation, Returned Services League, Australian Rural Youth, the Aboriginal and Torres Strait Islander Commission and the Australian Local Government Association at the national level.

I met with the Human Rights Commissioner and assured him that rural and remote communities would welcome the opportunity to put before him issues in relation to human rights which encompass problems

being experienced throughout Australia.

[Mrs Margaret Smith, National President, Country Women's Association of Australia]

NFF is concerned that the gradual reduction in services to rural Australia, especially the areas of banking, health and education, is impacting on some of the rights outlined in the Commission's mandate. These include the right to 'family life, education, welfare assistance, and health care' and the right [for children] 'to have their best interests taken into account in decision making affecting them'.

[Dr Wendy Craik, Executive Director, National Farmers' Federation]

Consultations during the reporting year were conducted in Tamworth (18 March 1998), Wagga Wagga (23-25 April), Coffs Harbour, Wauchope and Port Macquarie (7-9 May) in NSW, Burnie and Hobart in Tasmania (28-29 May) and Port Augusta in South Australia (15 June). Scheduled future consultations include Orange and Bathurst, NSW (20-22 July), Albany, Bunbury, Narrogin, Geraldton and Kalgoorlie, WA (10-14 August), Mackay and Rockhampton, Qld (21-24 August), Broken Hill, NSW and Peterborough, SA (23-24 September), Alice Springs and Yuendumu, NT (12-16 October), Cairns and Mareeba in Qld (25-27 November), Ballarat and Bendigo, Vic (2-4 December) and the Top End of the Northern Territory and northern Western Australia (February 1998). Other areas will be included as time and resources permit.

Bush Talks seeks to identify and detail the human rights concerns of country people and to develop strategies which are both principled and practical for improving human rights in the bush. The Commission was told in Tamworth in March, 'They know they're hurting but they don't know the solutions'. By working together, we are confident of finding strategies to improve the situation.

Following the consultations this year, the Commission will announce a number of specific projects for 1999 and 2000 in which the Commission, in partnership with local communities and representative organisations, will work to improve the enjoyment of human rights in regional, rural and remote Australia.

Religion

[I]t is imperative that Australian law, at every level of government, fully enshrines the right to freedom of belief and religion. While Australian society generally has exercised a good degree of tolerance and understanding on this matter, it is very worrying to know that most of the states could, if they saw fit, establish a state religion, or discriminate on that basis.

[Submission R/175, Pastor Phillip Brown, Seventh Day Adventist Church]

The Human Rights Commissioner is finalising a report on freedom of religion and belief. The report will make recommendations to enhance the enjoyment of religious freedom and tolerance in Australia. Some states and territories have legislation prohibiting discrimination based on religion. However, this protection is patchwork and there is none at the federal level. Consideration must be given to providing comprehensive protection to the right to freedom of religion and belief to all Australians.

Consultations

This Discussion Paper is especially timely at this point in Australia's history, in view of current cultural and social debates. Those who are responsible for initiating the Paper are to be congratulated for their admirable motives in working to improve equity and inclusiveness in a nation of great diversity and potential disharmony.

[Submission R/46, Ms Zelda Bailey]

The report is the final step in the process which commenced with a discussion paper launched by the Commissioner in February 1997. The discussion paper provided an introduction to the right to freedom of religion and belief in Australia and sought responses from the community in several areas relating to freedom of religion and belief.

The discussion paper attracted 255 submissions from individuals, church groups, atheist, secularist, humanitarian, and new religious groups. The issues raised were broad ranging and provided the basis and direction of the report.

A workshop on religion and belief was held in April 1998 to discuss a number of central issues and to receive further comments from religious organisations and concerned individuals in the community.

The report

The report will be a broad examination of the right to freedom of religion and belief. The major areas to be covered will be

- *the right to manifest a religion or belief.* The right to freedom of religion and belief extends to the right to manifest that belief in practice provided that the practice is not limited by law to protect the human rights of others. The report will make recommendations on the expression of religion and belief in areas including Indigenous heritage protection, burials, autopsies, medical interventions, paganism and new religious movements.
- *discrimination and vilification on the basis of religion and belief.* Discrimination in areas including employment, education and provision of goods and services, limits the enjoyment of that freedom. Abuse, incitement to hatred, violence or harassment, and vilification on the basis of religion and belief also inhibit the enjoyment of human rights. The report will describe experiences of discrimination and vilification on the basis of religion and belief, and make recommendations to improve the protection offered in Australian society.

The report will be submitted to the Attorney-General in August for tabling in Parliament.

Promoting non-discrimination

I consider that the time has come for the enactment of comprehensive federal anti-discrimination law to ensure effective protection from discrimination on any prescribed ground in or under ILO 111 through enforceable remedies.

[*Discrimination on the Ground of Trade Union Activity* Report of Inquiry into a Complaint of Discrimination in Employment and Occupation, October 1997 (HRC Report No. 3), page 8]

The Human Rights Commissioner and the Commission have a duty to promote non-discrimination according to Australia's obligations under the International Covenant on Civil and Political Rights and the International Labour Organisation *Discrimination (Employment and Occupation) Convention 1958* (ILO III).

Age Discrimination

The needs of older workers to equality of opportunity cannot be adequately addressed without national standards of protection.

[*Redundancy Arrangements and Age Discrimination*, Report of Inquiry into Complaints of Discrimination in Employment and Occupation, October 1997 (HRC Report No. 2), page 10]

Reports on complaints

In October and November 1997, under section 31(b) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), the Commissioner submitted to the Attorney-General for tabling in Parliament two reports of inquiries into complaints of discrimination on the grounds of age.

HRC Report No. 2 (October 1997) concerned discrimination on the grounds of age in employment and occupation. It dealt with complaints against two State government employers about the use of age distinctions in the formulation of redundancy entitlements. The complainants submitted that the monetary value of the voluntary departure packages they received as employees over the age of 50, and

in one case over 60, were substantially less than the value of packages offered to younger employees and constituted discrimination on the grounds of age as defined in the Act. Attempts to conciliate the complaints were unsuccessful.

The Commissioner found that the acts complained of constituted discrimination on the grounds of age. He recommended that the practice of discriminating against older employees in determining the value of voluntary departure packages be abolished and that the respondents be paid compensation for loss suffered as a result of this practice.

These complaints demonstrated an approach to redundancy arrangements that is dismissive of the future employment aspirations and needs of older workers. The approach is based on a perception that older workers do not or should not expect to remain in the workforce and accordingly that they have less to lose than younger workers on separation from employment. Their redundancy entitlements are reduced because of this premise. These perceptions are at odds with the changing nature of Australian society. Australians are living longer and healthier and are remaining in the workforce longer. To ensure financial security during this longer period they need to be assured of equality of opportunity in all aspects of their work, including redundancy arrangements.

The Commissioner recommended the removal of age discrimination against older workers from redundancy entitlement provisions in employment laws, policies and practices.

HRC Report No. 4 (November 1997) concerned an age restriction in trade union membership rules. The complainant was a member of a union, the rules of which required members to retire from full membership at the age of 65 unless exempted by the Federal Executive of the union. The complainant was denied an exemption from the Federal Executive and was transferred to honorary membership which restricted his opportunities to work as an engineer. The complainant alleged discrimination by the union on the grounds of age. Attempts to conciliate the complaint were unsuccessful.

The Commissioner found that the union's actions, which had the effect of denying the complainant access to employment because of his age, constituted discrimination in employment based on age. He found it was not an inherent requirement of union membership or the particular job that a person be under 65 years of age. He recommended that the relevant union rule be repealed and that the complainant be granted an apology and compensation for financial loss suffered as a result of the discrimination.

The *Workplace Relations Act 1996* (Cth) prohibits discrimination on the grounds of membership or non-membership of a trade union in a decision to employ. However, this protection does not cover circumstances such as those of this complaint, which involved discriminatory practices within the administration of the trade union itself. Clearly, wider provisions are needed to guarantee non-discrimination in the exercise of the right to join trade unions and participate in trade union activity.

The Commissioner recommended that the *Workplace Relations Act 1996* be amended to provide that any discriminatory rule of a registered organisation of employees is invalid to the extent to which it is discriminatory on any of the grounds specified in section 3(j) of that Act. Those grounds are race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin. Transitional provisions could provide unions with time to review the rules themselves and submit applications for amendment where required. Laws and rules governing employer organisations should be similarly amended.

These two reports highlight a more general need to ensure stronger protection for older Australians against discrimination on the basis of their age. Some States and Territories have laws prohibiting discrimination on the grounds of age but there is considerable variation in approach and exceptions are numerous and inconsistent. Federal laws provide only limited protection in particular areas. These reports clearly demonstrate the need for national standards of protection. Accordingly, the

Commissioner recommended again that the Commonwealth Parliament legislate to provide a comprehensive national prohibition of age discrimination.

Discussion paper

Discrimination on the basis of age has long been of interest to the Commission. It is an issue that will affect most people at some time in their lives and is becoming increasingly important in our aging society. In 1996 approximately 12% of the population were over 65. By 2015 this will have risen to 25%. Adequate protections are required to ensure that the human rights of all people are respected regardless of age.

In the Commission's last Annual Report the Commissioner referred to the previous work on age discrimination. In particular, he described the reports to the Attorney-General on his findings and recommendations on compulsory retirement in relation to Qantas Airways and the Department of Defence. He recommended the enactment of federal legislation proscribing discrimination on the basis of age.

Issues surrounding age discrimination remain a priority in the Commissioner's work. This priority is given added impetus by the fact that 1999 is the 'International Year of Older Persons'. Accordingly, work has begun on a discussion paper on age discrimination. The paper will introduce a range of issues and will invite submissions from the community on age discrimination.

Discrimination in employment will be one of the major themes in the discussion paper, which will examine issues affecting both older and younger workers. For older workers, key areas of concern include compulsory retirement, workers' compensation, superannuation and redundancy. For younger workers, key areas of concern include junior pay rates and protections for those in casual employment. Stereotyping, harassment and the provision of training are important issues for both older and younger workers. The discussion paper will also examine age discrimination in the provision of goods and services, including accommodation, health care, loans, insurance, education, clubs and associations, sport and transport. In addition, consideration will be given to age discrimination in the broader operation of the law such as the age of consent.

The discussion paper will provide an overview of relevant Commonwealth, State and Territory laws and policies and will look at some of the issues to be considered in the development of comprehensive national legislation on age discrimination.

Sexual preference

Homosexual men and women as a class have suffered considerable disadvantage and discrimination in employment, access to services and benefits and in the application of laws which distinguish between same sex and different sex couples. Some have experienced public harassment, verbal abuse and crimes of violence. These practices are not things of the past but continue to be part of the lives of many people in Australia today.

[Discrimination on the grounds of sexual preference Report of Inquiry into Complaints of Discrimination in Employment and Occupation, March 1998 (HRC Report No. 6), page 5]

Tasmanian laws

In 1998 the Commissioner provided comments and advice on the Anti-Discrimination Bill 1998, under consideration by the Tasmanian Parliament. This legislative proposal follows the repeal in 1997 of provisions in the Tasmanian Criminal Code which had made certain forms of homosexual activity a criminal offence. The Commission worked closely with the Tasmanian Gay and Lesbian Rights Group on that reform and will continue to support the Group in its efforts to achieve effective anti-discrimination laws in Tasmania.

Report to Parliament

In March 1998, under section 31(b) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), the Commissioner reported to the Attorney-General on an inquiry into a complaint of discrimination in employment on the grounds of sexual preference (HRC Report No. 6). The right to freedom from discrimination on the basis of sexual preference is also protected under ILO III and falls within the Commission's complaint jurisdiction.

The complaint concerned the refusal by the respondent, the Catholic Education Office of the Archdiocese of Sydney, of an application by the complainant for classification as a teacher in Catholic schools in the Archdiocese. The principal reason for the refusal advanced by the respondent was the complainant's 'high profile as a co-convenor of the Gay and Lesbian Teachers and Students' Association and her public statements on lesbian lifestyles'. The respondent submitted that its actions were justified under the religious institutions exception in section 3(1) of the Act which permits distinctions made 'in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed'.

The Commissioner found that the acts complained of amounted to discrimination on the grounds of sexual preference within the terms of the Act. He found no evidence that the complainant had ever publicly advocated a position at variance with Catholic teaching. On the contrary, all her public statements related to discrimination and violence and were fully consistent with Catholic teaching. He concluded that she was not unable to comply with the inherent requirements of being a teacher in the Catholic school system. He found that the respondent's actions were not protected by the religious institutions exception in the Act. The respondent's actions were based on unproven assumptions about the complainant's behaviour and were in fact contrary to the doctrines and teachings of the Catholic Church.

In his report to the Attorney-General the Commissioner noted that more broadly the current state of federal law in relation to discrimination based on sexual preference was inadequate to ensure protection of human rights. He recommended again the enactment of a comprehensive national law to prohibit this form of discrimination and to provide enforceable remedies similar to those available under the *Racial Discrimination Act 1975* (Cth), the *Sex Discrimination Act 1984* (Cth) and the *Disability Discrimination Act 1992* (Cth). The need for legislation applies not just to sexual preference discrimination but to all grounds in respect of which the Commission has jurisdiction but which are not yet covered by effective enforceable remedies.

Trade union activity

The rights of workers and employees to establish, join and participate in trade union activity without interference and discrimination are recognised in a number of international treaties ...

[*Discrimination on the Grounds of Trade Union Activity* Report of Inquiry into a Complaint of Discrimination in Employment and Occupation, October 1997 (HRC Report No. 3), page 7]

In October 1997, under section 31(b) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), the Commissioner reported to the Attorney-General on an inquiry into a complaint of discrimination in employment and occupation on the grounds of trade union activity (HRC Report No. 3). The right of workers to participate in trade union activity without interference and discrimination is protected under International Labour Organisation *Discrimination (Employment and Occupation) Convention 1958* (ILO III). This and other grounds of discrimination in ILO 111 fall within the Commission's complaint jurisdiction.

The complainant submitted that her participation in trade union activity was improperly taken into account by employees of the respondent, Australia Post, in assessing her application for promotion. The respondent, a federal government agency, submitted that the complainant was unsuccessful in her application for promotion for reasons other than her trade union activity.

The Commissioner found that the complainant suffered discrimination in employment within the terms of the Act because her trade union activity was taken into account improperly in assessing her application for promotion. He did not find that she was denied promotion solely because of this improper consideration of her trade union activity. However, the fact that her trade union activity was at least a partial consideration, was sufficient to sustain the complaint. He recommended that the respondent pay the complainant \$2,000 as compensation for injury suffered as a result of the discrimination. The respondent accepted the recommendation for the payment of compensation to the complainant. The Commissioner welcomed this response and congratulated the respondent on it.

Education and promotion

The Commission has functions to promote understanding and acceptance of the Act and observance of its provisions.

Publications and reports

The reports and publications produced by the Commission for the purpose of public inquiries, reporting to the Attorney-General and specific projects also play an important educational role. They help inform and promote public discussion on human rights issues.

Speaking engagements

During 1997-98 the Commissioner gave 71 speeches and presentations on a variety of human rights and social justice issues. The increasing number of requests for speeches by the Commissioner and his staff reflects a growing awareness of and concern about issues such as racism and intolerance, the rights of children and young people, poverty and homelessness and the economic insecurity faced by people in rural Australia. A list of major speeches made by Commissioner Sidoti during the year is available in appendix three.

Increasingly, speaking engagements are taking the Commissioner further from the cities and to non-metropolitan centres and towns to address and listen to the concerns of Australians in their own communities.

Human Rights and Equal Opportunity Commission homepage (<http://www.hreoc.gov.au>)

Additional information about the work of the Human Rights Commissioner is now available on the internet. The Commission's homepage contains information about a wide range of human rights issues including treatment of asylum seekers, freedom of religion, and the rights of gay men and lesbians, children, older Australians, rural Australians and people with mental illness.

The homepage explains the operation of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) and describes the international human rights instruments for which the Commissioner has responsibility under that Act.

People can now access through the homepage many of the publications and reports produced by the Commission in both summary and full version. The homepage also contains contact information for a range of other organisations working in the area of human rights.

The Commissioner welcomes feedback from members of the community about the homepage and human rights issues generally. There is a mechanism on the homepage for people to express their views. On the basis of this feedback, the Commissioner will be making further changes and improvements to the homepage in the coming year.

International activities

While principally concerned with protection and promotion of human rights in Australia, the Commission undertakes an important role in providing practical assistance for the development of independent national human rights institutions that comply with the Paris Principles¹.

Australia's foreign policy and its official development assistance increasingly support the development of systems of good governance, including national institutions to protect and promote human rights. National human rights institutions are a relatively recent development among mechanisms for the protection and promotion of human rights. They are a means whereby nation states can work more effectively to guarantee human rights within their own jurisdictions.

In the Asia-Pacific region, efforts toward the establishment and strengthening of national human rights institutions are proceeding vigorously. The scope of the Commission's international activities has therefore increased significantly over the last few years.

In undertaking this work, the Commission seeks to support the work of the United Nations international human rights treaty system and the development of regional machinery for the promotion and protection of human rights. The development and operation of national human rights institutions can play an important role in securing human rights standards and advancing regional cooperation. Work in this area is a practical way to translate international human rights instruments into tangible national and regional observance and protection.

The Commission's international work incorporates a range of activities; it receives visitors from many countries interested in learning how the Commission works, provides assistance to other human rights commissions to strengthen their operational effectiveness, provides expert advice and assistance to governments wanting to establish national human rights institutions, participates in major international human rights meetings, and liaises with other human rights commissions from around the world through regional and international networks.

Asia-Pacific Forum of National Human Rights Institutions

The 1996-97 Annual Report provided information on the establishment of the Asia-Pacific Forum of National Human Rights Institutions (the Forum). There are now six national human rights institutions in the region that are members of the Forum: New Zealand (established 1977), Australia (1981), the Philippines (1987), India (1993), Indonesia (1993) and Sri Lanka (1997). The Secretariat of the Forum is located at the Australian Commission, and is funded by the Australian and New Zealand Governments.

During 1997-98 the Secretariat's operations focused on three main areas of activity: (i) the development and delivery of technical assistance cooperation projects, (ii) information dissemination and (iii) administrative support for the Forum.

Technical assistance cooperation projects

Technical assistance projects are developed in cooperation with partner institutions or governments. The objectives of technical cooperation are to:

- improve the levels of appropriate skills and knowledge among the staff of national institutions in the region;
- enhance national institution structures and procedures in accordance with the Paris Principles to facilitate a more effective system to protecting and promote human rights; and
- provide governments in the region wishing to establish a national institution with assistance and information as requested to facilitate the development of a national institution in accordance with the Paris Principles.

The Secretariat's approach to developing technical cooperation projects is a very practical one. Forum members help and support each other to strengthen human rights observance through the provision of joint training, advice and institutional capacity building programs.

Technical cooperation projects developed within the framework of the Forum generally fall into two categories; (i) country-based or bilateral projects and (ii) regional projects.

Country-based or bilateral projects are developed between the Secretariat and a particular country. They tend to be medium to long-term technical assistance activities focused on the development and strengthening of national human rights institutions.

Regional projects tend to be issue-based and short term. These projects are developed by the Forum and focus on identified regional areas of common need or concern.

The Forum is currently developing programs for

- Human rights law courses
- Strategic planning workshops
- Training in alternative dispute resolution
- Development of computerised complaints processing systems
- Training in basic computer applications
- Training in the investigation of allegations of human rights violations
- Training in project management, administration and financial skills
- The development of legal advocacy skills
- English language learning
- Strengthening public affairs and information programs
- Training community human rights workers

Information dissemination

The Forum Secretariat disseminates information on the role and functions of national human rights institutions and the activities of the Forum. The objectives in this area are to

- improve awareness among political and administrative decision-makers and the wider community of the value and importance of national human rights institutions
- improve awareness among relevant regional governments and agencies of appropriate functions, powers, structures and legislation for national institutions established in accordance with the Paris Principles
- improve awareness among regional national human rights institutions of the legislation, casework, techniques, procedures and outcomes of other national institutions both within and outside the region
- provide information about Forum activities to member institutions, governments (inside and outside the region), United Nations agencies, non-government organisations and the general community.

The Forum encourages the participation as observers of governments and human rights non-government organisations in the annual Forum meetings as observers. This has been an important process to encourage the establishment of new institutions, the effectiveness of existing institutions and greater awareness of the Forum's activities.

The Secretariat has produced and distributed an information booklet titled *The Asia Pacific Forum of National Human Rights Institutions ... a partnership for human rights in our region* and created a Forum website to increase access to information about the role and activities of the Forum.

Forum administrative support

The primary functions in relation to the Secretariat's administrative support role are to organise and service the annual meetings of the Forum, disseminate information, undertake research, develop technical cooperation projects and other proposals, seek funding for projects, organise staff exchanges between national institutions, facilitate the provision of expert assistance to governments concerning the establishment of national institutions and to promote the work of the Forum.

Second Asia-Pacific Regional Meeting of National Institutions

In September 1997, the Asia Pacific Forum held its Second meeting in New Delhi, India. This was considerably larger than its first meeting held in Darwin in July 1996, indicating the strong interest in the Asia Pacific region in the promotion of national human rights institutions. The national institutions from Australia, India, Indonesia, New Zealand, the Philippines and Sri Lanka attended the meeting. In addition, observers from the governments of Australia, Bangladesh, Fiji, Indonesia, Iran, Jordan, the Republic of Korea, Mongolia, Nepal, New Zealand, Papua New Guinea, the Philippines, Sri Lanka, Thailand and Vietnam and a range of international, regional and national non-government organisations participated.

The New Delhi meeting welcomed to full membership of the Forum, two national institutions those of the Philippines and Sri Lanka. The Forum members reaffirmed the commitment of participants to the universal, indivisible, interdependent and interrelated nature of human rights contained in the Universal Declaration of Human Rights and other international instruments. This was significant given the debate in the region about the Universal Declaration. In reaffirming the indivisible character of human rights, the meeting also emphasised that no category of rights takes priority over another and that national institutions should take a broad approach to their work, giving attention to economic, social, cultural, civil and political rights. It considered that the Asia Pacific Forum should increase its efforts as a focus of regional, multilateral and bilateral programs of practical technical assistance. The meeting gave special emphasis to the need to develop a culture of human rights through grass-roots work and wide dissemination of information about human rights and the role of national institutions.

While affirming the importance of thorough investigation of allegations of human rights abuse and effective redress, the Forum expressed concern about the rapidly increasing caseload of complaints experienced by many national institutions. It also stressed the importance of collating, disseminating and developing human rights jurisprudence and agreed in principle to set up an international human rights law advisory panel. The Forum condemned the practice of child sexual exploitation as a gross abuse of human rights, undertook to collate and disseminate information on relevant laws and programs to address these abuses and supported the proposed *Optional Protocol to the Convention on the Rights of the Child* on child sexual exploitation.

The next Forum meeting will be hosted by the Indonesian Human Rights Commission in Jakarta, Indonesia in September 1998.

Regional projects

Workshop on media and public affairs

In February 1998 the Forum conducted a regional workshop in Jakarta, Indonesia on the role of the media and public affairs in the promotion of human rights. The workshop was developed and organised by the Forum, funded by the New Zealand government and hosted by the Indonesian National Commission on Human Rights.

This workshop was in response to the recognition of the importance of using media and other public affairs processes to reach large and diverse communities with human rights information and education programs. The workshop focused on providing participants with practical skills such as effective media liaison, video presentations, interview techniques, writing press releases and evaluating community education campaigns.

The workshop was attended by human rights commission staff from Australia, India, Indonesia, New Zealand and the Philippines. Government representatives from Bangladesh, Fiji, Papua New Guinea, Hong Kong, Latvia, Mongolia and Nepal also participated in the workshop. The workshop proceedings were observed by representatives from the United National Development Program, the United Nations High Commissioner for Refugees, the International Red Cross and the Friedrich Naumann Stiftung. The workshop was run by the Commission's media staff on behalf of the Forum in association with media representatives from New Zealand, Indonesia and India.

Workshop on national human rights institutions

In February 1998 a representative of the Forum was a presenter in a regional training course held in the Philippines on the role and functions of national institutions. The training course was conducted by the Canadian Human Rights Foundation.

Country-based projects

Bangladesh

The government of Bangladesh intends to establish a national human rights commission to protect and promote human rights; it will have investigative, educational, reporting and analytical functions. To ensure the success of the commission, the government of Bangladesh wishes to develop its institutional capacity and expertise in the theoretical basis of human rights and their practical application. The government has requested assistance to accomplish this.

In October 1997 the Human Rights and Equal Opportunity Commission hosted a senior delegation from Bangladesh including the Minister and Shadow Minister for Justice, various members of the Bangladesh Parliament, a representative from the government and a representative from the United Nations. The purpose of the visit was to examine the role and operation of the Australian Commission. The delegation visited the New Zealand Commission.

In June 1998 three officers from the Human Rights Project Team of the Bangladesh Department of Law, Justice and Parliamentary Affairs commenced a human rights training internship in Australia for three months. The Forum is responsible for the design, delivery and management of this training project, which consisted of practical work placements within three functional units of the Australian Commission - conciliation, human rights policy and public affairs. This is combined with academic course work specially designed by the Forum in consultation with the University of Sydney. The three Bangadeshi officers are Mr Zayed Mahmood, Mr Aziz Masud and Mr Mohith Ikram.

China

In July 1997, Dr Fanny Cheung, Chairperson, Mr Andrew Leung and Dr Josepg Kwok of the Hong Kong Equal Opportunity Commission visited the Commission and met with Commissioners and staff to familiarise themselves with Australia's anti-discrimination legislation and mechanisms.

In December 1997 the Commission participated in an AusAID program design mission to China. The mission was a result of the bilateral human rights dialogue between Australia and China. The establishment of a formal regular bilateral human rights dialogue was proposed to Premier Li Peng by Prime Minister Howard during his 1997 visit to China. The mission held consultations with key judicial, prosecutorial, administrative and research agencies in China to develop a series of activities under the Human Rights Technical Assistance (HRTA) program. Under an agreement with the

AusAID, the Commission was responsible for the implementation of the following activities under the HRTA program.

From 16-19 June 1998 two Australian judges presented lectures to the National Judges College (NJC) in Beijing. The National Judges College (NIC) is a graduate school which trains senior judges and future senior judges. Former Chief Justice of the High Court Sir Anthony Mason AC KBE addressed the NJC on the Australian legal system with emphasis on the separation of powers and judicial independence. Justice Jane Mathews, President of the Administrative Appeals Tribunal, presented an overview of the various aspects of the criminal justice process in Australia.

From 9-22 June 1998 the Commission hosted a study tour of officials from the Supreme People's Procuratorate (SPP) and the Ministry of Justice. The SPP is a key legal and prosecuting supervisory organ of the Chinese State established under Article 130 of the Constitution of the People's Republic of China. The Ministry of Justice is a key department charged with the administration of the Chinese legal and correctional systems, with three broad functions of legal protection, legal service and legal education. The delegation examined the processes of Australia's criminal justice system, including additional study of Australia's legal system and human rights protection mechanisms. The objective of the study tour was to develop an understanding of the demarcation of powers and functions, balances and checks, within the Australian criminal justice system.

Fiji

The Fijian Government is moving towards the establishment of a national human rights commission. The Fijian Constitution Amendment Act 1997, which commenced in July 1998, establishes a commission.

From 19-22 February 1998 the Human Rights Commissioner participated in a workshop to discuss the establishment of a Fijian Human Rights Commission. The workshop was organised by the University of the South Pacific and held in Suva, Fiji. In addition to participating in the workshop the Commissioner met with government and non-government representatives to discuss the role and functions of the proposed Fijian commission.

From 23-34 February 1998 a senior adviser to the Fijian Ombudsman visited the Secretariat to hold discussions about the work of the Forum and the potential for the development of technical assistance projects.

India

In July 1997 the Forum organised a study visit to the Australian Commission for Mr Jain, Director of the Complaints Division of the Indian National Human Rights Commission. Mr Jain met with representatives of the Commission's legal, conciliation, information technology and privacy sections.

A study tour to Australia by the Chairperson of the Indian Commission and former Chief Justice of the Indian Supreme Court, Justice Venkatachaliah, and the Secretary-General of the Indian Commission, Mr Pillai, was planned during the reporting period. Unfortunately due to a combination of illness and pressing work demands at the Indian Commission this study tour was postponed. It is anticipated that it will be undertaken in the second half of 1998. The study tour will be funded by the Australia-India Council.

Indonesia

In 24 June - 2 July 1997 five representatives of the National Human Rights Commission of Indonesia (Komnas HAM) participated in a training program at the Australian Commission organised by the Forum and funded by AusAID. The Komnas HAM delegation comprised First Vice-Chairperson Professor Miriam Budiardjo, Second Vice-Chairperson Mr Marzuki Darusman, Commission members Mr Clementino dos Reis Amaral and Mr Soegiri and a staff member, Ms Roichatul Aswidah. In addition to a range of training/information sessions at the Commission, the delegation met with the

Attorney General, the Minister for Foreign Affairs, the Minister for Immigration and Multicultural Affairs, members of the Parliamentary Human Rights Sub-committee, Justice Michael Kirby of the High Court and other members of the legal profession, government and non-government representatives and academics. On the last two days of the program the Indonesian Ambassador and officers from AusAID and the New Zealand Ministry for Foreign Affairs joined the delegation to discuss future collaborative bilateral and multilateral projects under the auspices of the Asia-Pacific Forum.

From 15 to 27 September 1997 the Director of the Forum Secretariat, and the consultant to the Forum Secretariat, conducted a needs assessment mission to Komnas HAM. Over a two week period the team met with members of Komnas HAM, representatives from various Indonesian government departments (including Foreign Affairs, the Department of Justice and the Military), non-government organisations, regional and international institutions, and other government embassies. The subsequent needs assessment report was approved by the Australian Minister for Foreign Affairs and AusAID allocated approximately \$2 million to the program.

From 22 to 26 June 1998 the consultant to the Forum Secretariat again visited Komnas HAM to discuss the implementation of the technical assistance program and to gather further information on Indonesian costs and Komnas HAM's responsibilities.

From 29 June to 12 July 1998 the Australian Commission hosted a second five person Komnas HAM study tour. The first week of the program included an academic component and meetings with Canberra based Ministers, government and non-government representatives and Justices of the High Court. The second week was based at the Australian Commission focusing on policy, legal and conciliation issues.

Moldova

From 11 to 15 August 1997 Chief Justice Victor Puscas, Chairman of the Supreme Court of the Republic of Moldova, visited the Commission. The program focused on the role of national human rights institutions and how human rights issues were dealt with by the Australian justice system. Chief Justice Puscas met with Commissioners and staff, representatives from the NSW Director of Public Prosecutions, the International Commission of Jurists, Australian Legal Resources International, Australian Law Reform Commission, NSW Law Reform Commission, the Department of Foreign Affairs, Attorney-General's Department and the (then) Chief Justice Brennan and Justice Kirby of the High Court.

Mongolia

The Mongolian government has announced its intention to establish a national human rights commission. From 8 December to 15 December 1997 at the request of the Mongolian Government AusAID funded a visit to Mongolia by the Director Mr Kieren Fitzpatrick to conduct a technical assistance needs assessment mission. The objective of the mission was to explore the scope for cooperation and support for a proposed Mongolian Human Rights Commission and human rights legal reforms. The Director of the Forum Secretariat met with parliamentarians, government representatives, members of the legal profession and non-government organisations involved with human rights and legal reform issues and made a presentation to a parliamentary seminar on the establishment of the Mongolian Human Rights Commission. The resultant needs assessment report was approved by AusAID but has not yet been funded.

New Zealand

Relations between the Australian and New Zealand Commissions have always been close and remain so. There are regular exchanges between the two and close cooperation in the work of the Forum.

As part of a continuing staff exchange program between the Australian and New Zealand Commissions, the New Zealand Commission hosted a senior member of staff of the Australian Commission for a three month period commencing in May 1997. Activities undertaken during this period included evaluations

of New Zealand legislation and government administration to assess its compliance with New Zealand's human rights requirements.

Philippines

From 12 to 19 February 1998 the Forum arranged for the consultant to the Forum Secretariat to be a presenter in a regional training course held in the Philippines on the role and functions of national institutions. The training course was conducted by the Canadian Human Rights Foundation. While in the Philippines, the consultant met with representatives of the Philippines Human Rights Commission to discuss the implementation of Forum technical assistance projects relating to human rights training and education. As a result of these discussions, and with the financial assistance of the New Zealand Government, two projects are currently underway with the Philippines Commission to produce several video programs on human rights issues and to assist with the training of local community human rights contact officers.

South Africa

National human rights institutions outside the Asia Pacific region have expressed great interest in the work of the Forum and of commissions in this region, particularly their expertise in the area of cooperative technical assistance projects. Although the focus and priority of international activities are in the Asia Pacific region, consideration is given to requests for assistance to commissions outside the region. This is the case for South Africa.

From 19 July to 2 August 1997 the Director of the Forum Secretariat visited South Africa to conduct a needs assessment of the South African Human Rights Commission (SAHRC) on behalf of AusAID. The report of the visit was subsequently approved by AusAID and funding has been provided for some projects.

From 14 to 22 February 1998 the Director, in association with the Commonwealth Secretariat, conducted a strategic planning workshop with SAHRC. This workshop was the first component of the AusAID program of technical assistance with South Africa.

From 21 March to 5 April 1998 two conciliation officer from the Commission, undertook the second project in the South Africa technical assistance program. The project was to provide advice and assistance to develop a complaints procedure manual for SAHRC.

From 3 to 16 May 1998 the Commission hosted a visit by the Information Technology Officer of SAHRC, Mr Binu Iducalla. The visit was part of the overall complaints technical assistance project. The purpose of the visit was to provide the South African representative with an overview of the Australian Commission's computerised complaints management and tracking system and to hold discussions with the software developers regarding the implementation of the system in South Africa. The first week of the visit was based at the Australian Commission with visits to other complaint handling agencies to view their software systems. The second week was based at the software developer, Powernet Pty Ltd.

From 10 to 11 June 1998 representatives of the South African Commission on Gender Equality met with the President, the Sex Discrimination Commissioner and representatives of the Forum Secretariat. The visit was in response to the recommendations contained in the South African needs assessment and strategic planning reports that a program of assistance be developed with the Gender Commission focusing on gender specific projects prepared by the Director of the Forum Secretariat. During their visit the representatives of the Gender Commission agreed on the need for a specific program of technical assistance.

Sri Lanka

From 15 to 17 September 1997 the Human Rights Commissioner visited Sri Lanka to provide information to the new Sri Lankan Human Rights Commission on the functioning of the Australian

Commission, the Forum and the general role of national human rights institutions. The Commissioner met with representatives of government and non-government organisations and members of the new Sri Lankan Commission.

From 3 to 15 May 1998 the Australian Commission hosted a visit by the Chairperson of the Sri Lankan Human Rights Commission, Justice Seneviratne. The purposes of the visit were to provide the Chairperson with knowledge of Australia's institutional mechanisms for the protection and promotion of human rights and to develop linkages between the Sri Lankan Human Rights Commission, the Forum and the Australian Commission. The Chairperson met with the Minister for Foreign Affairs, the Chief Justice of the High Court, government representatives from the Attorney-General's Department, the Department of Foreign Affairs and AusAID, and non-government organisations. At the conclusion of the visit the Chairperson and the Forum concluded an 'in principle' agreement for the future development of mutual cooperation and technical assistance under the auspices of the Forum.

Vietnam

On 12 November 1997 the Forum Secretariat hosted a delegation from Vietnam. The delegation was headed by the Vice Chairwoman of the Vietnamese National Assembly. The delegation discussed gender discrimination and human rights issues.

International Co-ordinating Committee of National Institutions

From 31 March to 7 April 1998, the International Co-ordinating Committee of National Institutions met in Geneva parallel to the 54th session of the United Nations Commission on Human Rights. Major issues addressed at the meeting included the constitution and membership of the International Co-ordinating Committee and arrangements for the third meeting of the Asia-Pacific Forum to be held in Jakarta, Indonesia, in September 1998.

Fourth international conference of national institutions

From 24 November to 3 December 1997 the Human Rights Commissioner attended the Fourth International Conference of national human rights commissions in Merida, Mexico. National human rights institutions from around the world as well as government and non-government organisations were represented at the conference. The Commissioner presented two papers at the conference and participated in meetings of the International Co-ordinating Committee of National Institutions.

Improving international human rights law

The Commission plays 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.

Sixth United Nations workshop on human rights arrangements in the Asia Pacific region

From 25 February to 5 March 1998 the Director of the Forum Secretariat participated on behalf of the Forum in the United Nations Sixth Asia Pacific Workshop on Regional Human Rights Arrangements held in Tehran, Iran. The workshop was attended by representatives from over 35 countries stretching from West Asia to the Pacific, a number of international experts, United Nations agencies and non-government organisations. The meeting agreed to a framework document for the provision of technical assistance to encourage and promote regional human rights arrangements. The framework document explicitly recognised the role of national human rights institutions and provided for funds to be allocated to meet Member States' requests for assistance to establish or strengthen national institutions.

54th session of the United Nations Commission on Human Rights

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

From 31 March to 7 April 1998, the Human Rights Commissioner and the Director of the Forum Secretariat attended the 54th session of the United Nations Commission on Human Rights in Geneva. Items of business of particular importance to the work of the Commission and the Forum were resolutions relating to national human rights institutions and regional human rights arrangements in the Asia Pacific. The Commissioner presented a formal statement to the UN Commission on the work of the Forum, the role of national institutions in United Nations meetings and the importance of the Paris Principles. In addition, the Commissioner and Mr Fitzpatrick met with representatives of the United Nations, including the High Commissioner for Human Rights, Mrs Mary Robinson, concerning UN activities in relation to national institutions.

International visitors

During the reporting period the Commission met with representatives from the following governments interested in learning more about the Commission and the role of national human rights institutions:

- Bangladesh
- China
- Fiji
- Hong Kong
- Japan
- Nepal
- Netherlands
- Republic of Korea
- South Africa
- Vietnam

Chapter 6 - Privacy

Statement from the Commissioner, Moira Scollay

As we move ever closer to becoming an information society, privacy has become the major issue for community, business and government.

This annual report marks the culmination of an extremely challenging year for my Office and a very interesting time for the issue of privacy in the community.

Privacy continues to be a prominent issue particularly as we move towards the new millenium and the rapid pace of technological innovation continues. These innovations, which herald tremendous advances in efficiency and communication, also pose threats to the fundamental right of the individual to have control over what others know about him or her. It remains clear worldwide that the privacy and security of personal information needs to be assured as part of the enabling framework for electronic commerce and the information economy. Surveys of Internet users in the community consistently reveal a reluctance to take full advantage of the opportunities offered by new technologies until they can be confident that their privacy is protected online. During 1997-98, my Office has been involved in

discussions at a national level to resolve some of these issues. For example, I was represented on an Inter-departmental Committee on Cryptography considering the issue of giving legal backing to digital signatures and to a public key authentication framework. We have been advising Commonwealth agencies on the privacy issues associated with utilising new technology such as smart cards in the area of benefits payments. I have also been called upon to comment extensively on the community impact of other emerging technologies such as intelligent transport systems and biometric scanning.

Developments overseas are also influencing the privacy debate in Australia. Australian businesses are particularly concerned about the impact of the impending European Union's directive on transborder flows of personal data. After October 1998, member states of the European Union have agreed not to transfer data to countries without an adequate level of privacy protection. The question of what constitutes 'adequate' will be a tough test for any privacy scheme adopted by Australia.

Within our borders, however, the extent to which privacy standards apply to private businesses remains the salient topic. As I noted in last year's report, the Federal Government announced that it would not proceed with extending the Privacy Act to cover the private sector. Instead, the Prime Minister offered my services to assist business in developing codes of conduct to meet privacy standards. Consequently, a major focus during the year was an extensive consultation process my Office undertook to develop a national privacy scheme with one set of standards that would apply across the business sector. In February 1998 I released the *National Principles for the Fair Handling of Personal Information* as the first stage of that process. As I write this report, I am involved in stage two which is concerned with establishing mechanisms for implementing the scheme.

My involvement in issues such as the electronic information economy and the development of privacy principles for the private sector is representative of an overall increase in new functions and activities directed to my Office during the year. Much of this growth has been related to new Government initiatives across a range of portfolio areas, both directly, through new functions conferred on me by legislation and indirectly, through the need to provide input and advice on new policies and legislation. Apart from my Office's involvement in the electronic economy and the private sector principles, we have also been heavily involved in initiatives ranging from outsourcing, telecommunications, health privacy issues, and the Commonwealth's new arrangements for service delivery and labour market assistance. The increased range of activities and the involvement of greater participation and consultation with the private sector, presents new challenges for the Office of the Privacy Commissioner.

Although my Office has undergone significant restructuring in the light of Government budgeting requirements, my staff and I continue to strive for new and innovative ways of meeting our statutory obligations. Unfortunately, the one third reduction in staffing levels and consequent loss of some skills has caused some difficulties in meeting my compliance role. In 1997-98 we have only been able to conduct seven audits, which is significantly down on the 34 conducted in 1996-97. This is of particular concern to me because I believe the audit function, in tandem with other strategies, is a particularly effective means of ensuring that Commonwealth agencies, and others subject to the Privacy Act, abide by its standards. However I anticipate that, with some replacement of skills, we should be able to increase, to some extent, the number of audits in 1998-99.

Clearly, given the constraints now placed on resources, my Office will have to be more creative in developing strategies to fulfil our traditional statutory role and meet the added challenge of my now expanded role with the private sector. To that end, we have been prioritising all aspects of work to better focus our resources. Nonetheless, the increase in work load anticipated for the forthcoming year makes it imperative that we continue to explore new ways to increase our funding base if we are to meet this demand.

Finally, readers will note that my section in the Commission's annual report is not as comprehensive as previous years. Under the Privacy Act, I am required to report separately to Parliament on the performance of my statutory functions. These existing arrangements complement the decision foreshadowed by Government to separate my Office from the Human Rights and Equal Opportunity

Commission. As a preliminary step a separate budget for the Office of the Privacy Commissioner has been established within HREOC.

Therefore, I direct readers to my own annual report for a full account of my functions in relation to policy advice to agencies and others subject to the Act, complaint handling and investigations, audit and compliance, and education and promotion activities.

Chapter 7 – Race Discrimination

Statement from the Race Discrimination Commissioner

I have tried to remind people and governments, that a commitment to non-discrimination must be a commitment to equal outcomes, not simply to identical treatment.

The past year, the fourth in my term, has seen Australia's debate on race escalate to new proportions. Feelings on race issues have seemed more heated than ever and I continued to be asked time and again at home and overseas whether Australia is a racist nation. Public comment and views were caught up in significant social pressures and economic uncertainties which led to emotive and sometimes offensive statements. The demands on us in the race area to provide advice, information and community education have been greater than ever before.

These increased demands came at a time of major change in the Commission. In January I was given additional responsibilities to act in the position of Aboriginal and Torres Strait Islander Social Justice Commissioner. Stretching my time across two full-time positions has meant that I have been unable to fulfil the requirements of each as I would have wished. At the same time, downsizing and restructuring has meant that there is less than half the number of staff (now three people in the Race Discrimination Unit) working with me in community education, policy and research. The achievements outlined in this report are therefore all the more significant and I wish to acknowledge at the outset the enormous commitment and hard work of those who have worked closely with me this past twelve months.

In the complaints area the year was marked by a significant decrease (37 per cent) in formal complaints lodged under the Racial Discrimination Act. Interestingly, the extent of the decrease was identical to the decrease in complaints received about sex discrimination. Substantial decreases were reported in all areas bar disability in all state offices around the country. To some extent the decrease in race complaints was expected specifically in racial hatred complaints which saw a large influx in the year before which immediately followed the introduction of the new amendments. Additional factors would no doubt have been at play. One possibility remains that the decrease reflects a decrease in the incidence of race discrimination. However, this is incongruent with anecdotal evidence which suggests for example that where race discrimination might occur in employment, high levels of job insecurity and scarce opportunities for alternative employment have resulted in a real reluctance by employees to lodge complaints for fear of victimisation. Anecdotal evidence also suggests that where racist abuse or racist harassment occurs in public, this is frequently committed by strangers and in the absence of a name and contact details it is simply not possible for a complainant to name a respondent and therefore pursue a remedy.

One of the disturbing trends during the year is the extent to which the so-called debate has retreated to personal accusations and vilification. Racist views and policies must always be rejected but the mode of rejection should always be consistent with the values embedded in human rights objectives. It is simply morally unacceptable and counterproductive to use intemperate, inflammatory language and behaviour

Myths continued to be peddled as facts throughout the year. Accordingly, I placed an even higher priority on developing resources for community information and education. I significantly increased my public speaking schedule around the country and focussed media work particularly on regional radio in an effort to reach as broad an audience as possible.

I took every opportunity to meet with members of the public and it has been encouraging to see the number of grassroots initiatives across the country that have sought to bring all Australians together to reject racism.

In many of my speeches I asked Australians to think more deeply about the various meanings of equality and to examine their commitment to those who are disadvantaged. Australia has a fine tradition of looking out for the underdog and providing support for those who need it. This commitment to meeting people's needs has often meant that people are treated differently to ensure that they have an equal place at the table.

The same applies to matters of race. A truly fair society means treating people as we find them and providing the support required to enjoy the kind of basic human rights we all value so strongly. Throughout this year, I have tried to remind people and governments that a commitment to non-discrimination must be a commitment to equal outcomes, not simply to identical treatment. It is a message that I expect I will continue to labour in the coming year.

One area where this has been especially important is in considering the future of the policy of multiculturalism. I appreciated the opportunity to work this year with members of the Prime Minister's National Multicultural Advisory Committee in reviewing the policy of multiculturalism and discussing directions for the future. The rights and obligations underpinning multiculturalism have been an essential part of our national commitment to non-discrimination. The challenge for policy makers now is to find ways to develop the policy which has generally served Australia well to meet the many demands of the present. I look forward to continuing to work in partnership with government on this issue.

In a further effort to foster productive debate, I reprinted the publication *Face the Facts*. We produced *Face the Facts* in early 1997 to dispel some of the myths clouding debate on race issues and multiculturalism. Demand for the publication has not slowed and in fact increased during the year. We are now into our fourth reprint and over 50,000 original copies have been distributed across the country. Countless numbers of these have been copied and excerpts have appeared in many other publications.

I also worked this year with the education sector to develop anti-racism materials for schools nationally. Anti-racist education in schools is an investment in the future of Australian society. Recent studies suggest that young people are generally very committed to non-discrimination and are comfortable with Australia's cultural diversity. I will be maintaining links with educators and policy workers in this field in the coming year to ensure that this remains the case.

The support of many business leaders for rational discussion of issues such as multiculturalism, native title and reconciliation demonstrates that non-discrimination is both an economic and a social justice imperative. I continued to work with business leaders and employers of all sizes to take action to prevent racial discrimination in employment. The majority of complaints made under the Racial Discrimination Act have been consistently in the area of employment. Yet most of these complaints are preventable and my contact with employers revealed an enormous degree of goodwill but little practical knowledge of where to start in addressing the problem. This year we worked to finalise a number of resources to help employers and managers prevent racial discrimination in the workplace. These include a training video and training package, a brochure for small business and detailed guidelines for larger employers all of which will be launched in August 1998.

As I enter the final year of my term I take some comfort in the achievements to date. At the same time I have a sense of urgency to complete other tasks. For some time I have been concerned about the human rights of members of small refugee and immigrant communities. There has been compelling anecdotal evidence that black refugees in particular are the targets of serious overt forms of race discrimination particularly in access to housing and employment. I plan to release the results of some preliminary research into this area in the first half of 1999. I also want to monitor the implementation of recommendations made by my predecessor in the Water Report. There are few human rights more basic than access to safe water and the Water Report highlighted serious failings which cannot be left aside.

The racial hatred amendments have been operating now for nearly two years and there are some trends emerging from complaints received which warrant closer analysis and comment than has been possible to date. Accordingly, resources permitting, I intend to publish a report before my term expires examining the operation of the amendments and the outcomes of racial hatred complaints.

Finally, I again offer special commendation to staff of the Commission who have worked tirelessly to accomplish the worthwhile results outlined in this report. My unexpected and extended absence due to surgery during the year placed additional burdens on them all when it was least needed and I remain grateful for their support and hard work. I also extend my thanks to the myriad of people within and outside the Commission for their generosity of spirit, cooperation and contributions to these important tasks.

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Research and Policy

The Race Discrimination Commissioner is responsible for developing, conducting and fostering research programs to promote the provisions and purpose of the *Racial Discrimination Act 1975*.

Community Development Employment Program and the Racial Discrimination Act 1975

The Human Rights and Equal Opportunity Commission continued its inquiry into the Community Development Employment Scheme. 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 Scheme compared to other low income earners. The aim of the inquiry was to examine this issue in light of the proscription of racial discrimination under the Racial Discrimination Act. The inquiry report had been delayed for a range of reasons including the need for lengthy consultation with stakeholders given the complexity of the issues.

The final report was completed early in 1998 and tabled in federal Parliament by the Attorney-General on 1 April 1998. The Attorney is currently considering the report's recommendations and major conclusions. The report found that the Community Development Employment Program is beneficial to Indigenous people. It contains elements that could be described as "special measures" but they do not in any way disadvantage non-Indigenous people. The report also found that the program is adapted to the concrete circumstances of Indigenous communities, for example assisting Indigenous communities address difficulties that arise out of their remote location. Some specific concerns with the administration of the program which were highlighted included the absence of Social Security appeal rights and the exclusion of program participants from participation in the Disability Support Scheme.

Multiculturalism

In December 1997, the National Multicultural Advisory Council released an issues paper *Multicultural Australia: the Way Forward* which sought community input into a range of matters relating to the policy of multiculturalism. The Race Discrimination Commissioner prepared a detailed submission on the positive role multiculturalism has played in meeting Australia's human rights and non-discrimination obligations. The submission addressed the lack of understanding and confusion in the community about what multiculturalism means and made a series of recommendations for a policy framework for the future of multiculturalism. This included the promotion of Australian citizenship, respect for diversity, the elimination of racism and discrimination and improved access to government for people of different cultural backgrounds. The submission also reinforced the need to emphasise the economic benefits of harnessing workplace diversity. An important element of the submission was its emphasis on the unique place which Aboriginal and Torres Strait Islander peoples hold in Australian society. The submission recommended that there should continue to be separate policies and programs which respond to the particular circumstances of Indigenous peoples. The Race Discrimination Commissioner was subsequently invited to address members of the Council on matters raised by the submission.

Small and Emerging Communities

The Race Discrimination Commissioner is undertaking a project to document the experiences of small and emerging immigrant and refugee communities as they relate to the *Racial Discrimination Act 1975*.

The impetus for the project derived from community consultations which pointed to serious breaches of the Act in a number of areas particularly housing and accommodation.

Due to resource constraints this project was only possible through assistance given by a number of social work students. The first phase of the project which began in May 1998 examines a number of specific communities, such as northern African, Iraqi, Iranian, Afghani, Pacific Islander and smaller Asian communities in Sydney, Melbourne and Perth. This phase will be completed by the end of 1998. The final report is expected to be completed by June 1999.

Alcohol

Alcohol continues to be a significant issue affecting the human rights of Aboriginal and Torres Strait Islander Australians. The 1995 *Alcohol Report* affirmed the right of Aboriginal and Torres Strait Islander communities to negotiate restrictions on the supply of alcohol. The Commission has continued to promote the findings of the *Alcohol Report* with Aboriginal and Torres Strait Islander communities and to monitor 'special measures' certificates issued since the publication of the report.

The Commission has been concerned that efforts to regulate the consumption of alcohol can be racially discriminatory in their enforcement, especially when developed without consultation with Aboriginal communities. In the past year the Race Discrimination Commissioner wrote to the Adelaide City Council highlighting the need to work with Indigenous peoples after renewed calls for a 'dry-zone' in Victoria Park and its surrounds. The Commissioner noted that 'dry-zones' were likely to result in higher levels of incarceration for Aboriginal people and did not address the health problems of alcohol use. Following the Commissioner's representations the Adelaide City Council resolved not to implement the 'dry-zone' proposal, but to address the issue of a detoxification centre and gathering place for Aboriginal people in the city centre.

A new 'special measures' certificate was issued in relation to restrictions on the sale of alcohol from the Curtin Springs roadhouse in the Northern Territory. In December 1996, it was issued for a twelve month trial period. Evidence collected indicated that the trials resulted in improvements to the health and well being of local Indigenous communities, including reductions in road accidents, alcohol related injury and domestic violence. The trial period is currently the subject of an evaluation being conducted by the Menzies School of Health Research.

In December 1997, the parties to the 'special measures' certificate reached an agreement to continue alcohol restrictions from Curtin Springs, extending the restrictions to a complete ban on sale to Aboriginal people. The Race Discrimination Commissioner issued a further 'special measures' certificate in relation to this agreement. The new certificate expires on 30 June 1999. These arrangements have also been incorporated into the licencing conditions in Curtin Springs. The Pitjantjarra community at Curtin Springs reported that since the 'special measures' certificate took effect, there has been a reduction in problems caused by drinking in that area.

Good results have also been reported as a result of the introduction of alcohol restrictions in Wiluna, where 'special measures' certificates continue to be in place. The Aboriginal community of Wiluna in Western Australia reported that compared with the same period in 1996, the 1997 figures indicate a 71% reduction in the number of Indigenous people charged with assault; a 41% reduction in the number of Indigenous people detained for alcohol-related incidents and a 34.6% reduction in the number of Indigenous people seen for alcohol-related trauma.

In addition, the Commission has received requests from a number of other sources regarding the Special Measures Certificate process. Information has been supplied to several communities in Queensland and effort is being made to work with liquor licensing authorities to encourage greater involvement of Indigenous communities in responding to alcohol-related problems.

Education and Promotion

Over the past twelve months the Commissioner has given high priority to her education and promotion role. The Commissioner has responsibility for:

- promoting understanding, acceptance and observance of the *Racial Discrimination Act 1975*; and
- developing, conducting and fostering educational programs and other programs to promote the provisions of the Act.

The Commissioner places enormous importance on her public education responsibilities. Over the past year she has been continually in demand as a speaker, particularly as the so-called 'race debate' generated strong interest from a broad cross-section of society. This resulted in the Commissioner regularly being asked to contribute perspectives on racial discrimination as it relates to issues like health, tourism, domestic violence, schools, employment, native title and Australian law. Given that her role is a national one, this heavy stream of requests led to her delivering substantive speeches and keynote addresses on an almost weekly basis to diverse audiences all around Australia.

Of the 33 formal speeches given by the Commissioner during 1997/98, some of the more significant speeches were *Lessons from Australia - the Experience of the Australian Human Rights and Equal Opportunity Commission*, to the University of Hong Kong; *Workplace Diversity: What Role for EEO?*, to the Public Service Merit Protection Commission Conference in Canberra; the address on *Multiculturalism: The Way Forward*, to the National Multicultural Advisory Council in Canberra; *Countering Racism Through Developing Cultural Understanding*, to the Multicultural Education Coordinating Committee in Adelaide; and speeches in support of Jane Elliott's *Anatomy of Prejudice* Tour in Brisbane, Melbourne and Sydney (with audiences of up to 1500 participants). She also gave informal presentations in a variety of settings including at conferences, seminars, panel discussions, symposiums and training forums. A full list of the Commissioner's speaking engagements is available upon request.

The Commissioner was also called upon regularly to provide comments to the media on a broad range of topical issues. This heavy demand from the media resulted in the Commissioner giving three to four interviews and statements each week to radio, television and the print media.

The following provides an overview of the Commissioner's other work in the area of education and promotion.

Employment

As has been the case in previous years, a significant proportion of formal race complaints continue to relate to the area of employment. In early 1996 work began on the production of a comprehensive package of resources for employers on eliminating racial discrimination and harassment in the workplace.

The process involved close consultation with employers and representatives of employer organisations. The package is near completion and includes:

- detailed guidelines and advice for employers on the *Racial Discrimination Act 1975* and cultural diversity in the workplace;
- a plain English brochure on federal anti-discrimination law specifically for small business; and
- a training video on racial discrimination and accompanying training program and manual.

The development of these resources came about through close cooperation with industry bodies including the Australian Chamber of Commerce and Industry, Council of Small Business Owners of Australia, Australian Chamber of Manufacturers, Business Council of Australia and the Council for Equal Opportunity in Employment. A national launch of the package is planned for August 1998 with the Minister for Immigration and Multicultural Affairs.

Right to Equality

Recent debate on a number of important human rights issues in Australia led the Race Discrimination Commissioner to address and seek to clarify, in the public arena, the nature of the right to equality and fairness. A chief concern is the belief that treating people identically in all situations is fair and achieves equality.

To counter this, the Race Discrimination Commissioner is developing an information resource which addresses equality and fairness. Among other things, the goal is to foster greater debate and understanding in the general community that the right to equality is not restricted to formal equality but is a right to substantive equality and may require people to be treated differently to address specific disadvantage.

Community Harmony

The Race Discrimination Commissioner entered into a partnership arrangement with the Ethnic Affairs Commission of NSW to fund a pilot project to provide a model of community harmony which would be transferable to other parts of Australia. Expressions of interest were sought from community groups to participate in this initiative. A project involving the Stocklands Mall shopping complex in the Sydney suburb of Wetherill Park has been chosen which aims to work with the local community, business and youth who use the local shopping mall as a meeting place. The project will generate a range of activities to meet the recreational, cultural and educational needs of young people such as talent quests, basketball competitions, bicycle riding, BBQs, English language and literacy support and computer and Internet training. In addition, the project aims to develop a best practice model for the use of privately-owned public space by young people.

Cross-Cultural Training

During 1997 the Commission continued its work on the production of a book on best practice models of cross-cultural training. Due to resource constraints during this period final production of the publication was delayed.

The book is now nearing completion and has progressed to examine a number of additional issues. The book will include chapters from a number of well known Australian cross-cultural trainers and a number of pieces which set the context for cross-cultural training in Australia.

Dealing with racist violence

Using the Dealing with Racist Violence kit produced by the Race Discrimination Commissioner in 1996-97, a successful pilot training program was run at the Goulburn police academy in January 1998. The result was the incorporation of training modules from the kit into the New Constable Education Program for all NSW police recruits. A second pilot training program will be conducted in the next few months when consideration will be given to using the package for Local Area Command Training. The Commissioner will be encouraging other police forces to follow suit.

Schools and Education

In addition to attending several teacher, student and school conferences, the Race Discrimination Commissioner has worked this year with members of the NSW Department of Education and the Committee of Education Systems Chief Executive Officers (CESCEO) to discuss ways of cooperating on the production of anti-racism materials for schools. The CESCEO is an organisation chaired by the NSW Department of Education that includes as members all Australian states and territories, New Zealand, Papua New Guinea and representatives from both the National Catholic Education Commission and the National Council of Independent Schools Association.

Evaluation of *Takin' A Stand*

In June 1997, the Race Discrimination Commissioner launched a comic designed to educate young people on issues of racial hatred. Over 18,000 copies of the comic, *Takin' A Stand*, were distributed nationally through schools, TAFEs and youth services.

An evaluation of the comic was commissioned in March 1998. The independent evaluator conducted focus groups with a range of stakeholders to assess the effectiveness of the comic in conveying its message to young people. The evaluation also considered the impact of using racist terminology in anti-racist educational materials.

The evaluation report found that the comic was an effective tool for anti-racist education, particularly when used as part of facilitated discussions about racist attitudes and behaviour. While the young people surveyed did not appear to consider that the use of racist terminology was inappropriate or encouraged racism, two stakeholders expressed reservations.

Tour of Anti-racism Trainer Jane Elliot

The Race Discrimination Commissioner was invited to participate in the Australian tour by American anti-racism trainer Jane Elliot in Brisbane, Melbourne and Sydney. The Commissioner outlined the Australian context before Ms Elliott's presentations. Ms Elliott's speaking tour was well attended by a wide range of people and provided an opportunity to encourage attendees to value the skills required for working in a cross-cultural environment.

Face the Facts

In 1996-97, in response to the myths and misinformation about race-related issues which have recently emerged publicly, the Race Discrimination Commissioner published *Face the facts: some questions and answers about immigration, refugees and Indigenous affairs*. This publication was reprinted several times in 1997-98. The publication continues to be in strong demand across a range of organisations and is being widely used as a resource in education and cross-cultural training in a number of institutions.

Legislative Reform and Assessment

Social Security

In March 1998 the Commissioner made a statement to the Senate Legal and Constitutional Legislation Committee inquiry into the operation of special benefit provisions relating to the "newly arrived residents waiting period". The Commissioner expressed concern that the operation of the waiting period in relation to special benefits may breach the RDA. The Commissioner submitted that it may be possible to bring evidence demonstrating that the waiting period was either discriminatory on the grounds of immigrant status or indirectly discriminatory on the grounds of national origin.

The submission was noted by the Committee and referred to the Attorney-General's Department for more detailed consideration of the issues.

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

As a State Party to the *International Convention on the Elimination of All Forms of Racial Discrimination*, Australia is required to report regularly on progress in implementing the articles of the Convention. Australia last formally reported to the Committee on the Elimination of All Forms of Racial Discrimination in 1992, with its ninth periodic report.

Staff of the Race Discrimination Commissioner participated in an interdepartmental committee convened by the Department of Foreign Affairs and Trade to prepare Australia's tenth, eleventh and twelfth periodic reports and later contributed drafts for inclusion. The report is due for completion and submission to the UN CERD Committee by October 1998.

Australian Bureau of Statistics (ABS)

A continuing concern of the Commissioner has been the inadequacy of the collection of ethnicity data. Recommendations in each of the past *State of the Nation* reports have reflected this concern. During the year Commission staff prepared a submission to the ABS on its review of the *Australian Standard Classification of Countries for Social Statistics* as well as a response to the ABS discussion paper *Developing Improved Statistical Measures of Cultural Diversity in Australian Society*. The discussion paper examined means of developing and promoting statistical standards for the collection of data on cultural diversity in statistical and administrative settings.

Chapter 8 – Sex Discrimination

Statement from the Sex Discrimination Commissioner

There remain many individuals and some sectors of community who require information about the basic first principles of equality

Following the announcement of my appointment on International Women's Day, 8 March 1998, I took up my role as Sex Discrimination Commissioner on 28 April, aware of the successful work undertaken by my predecessors and the challenges that lay ahead.

I would like first to pay tribute to the work of the previous Sex Discrimination Commissioners. In particular, I am grateful to my colleague the Privacy Commissioner, Moira Scollay, who acted in the position of Sex Discrimination Commissioner from June 1997. Moira took up her dual role during a difficult period of restructure for the Commission. During that time she saw a number of important projects to completion and initiated others that will both provide valuable insights and stimulate the debate around sex discrimination.

The work of Sue Walpole during her term as Sex Discrimination Commissioner resulted in significant advances for women in Australia. Her work in the industrial relations jurisdiction contributed to the sophistication of the industrial relations system in dealing with discrimination issues and saw the anti-discrimination and industrial relations systems begin to work more closely together.

I began my term as Commissioner with a new policy unit. Our work in addressing the changes and opportunities of the coming years will be immeasurably assisted by the thorough work done by the previous staff of the Sex Discrimination Unit. Many of the projects in this report were initiated, managed and seen to fruition by previous members of the unit.

Employment issues will be the primary focus of the work of the Sex Discrimination Unit. Over 90% of current complaints under the *Sex Discrimination Act 1984* deal with discrimination, harassment and victimisation in employment. This is a consistent statistic that sadly reflects the reality that there remain many individuals and some sectors of society who require information about the basic first principles of

equality. I believe that “[e]quality is a meaningless abstraction unless it is founded on economic security and economic strength”

I am hence committed to developing strategies for continuing the progress towards pay equity. During the 1996/97 year, the Sex Discrimination Unit has been involved as a party in the recent NSW Pay Equity Inquiry and is closely monitoring other relevant cases such as the Equal Pay Case being run in relation to HPM Industries before the Australian Industrial Relations Commission.

International Labor Organisation Convention 100 states

Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

With Australia having ratified this Convention over 25 years ago, it is time industrial tribunals, governments and employers fully addressed the pay inequities that remain. At present, women employed full time earn on average 79% of the equivalent male earnings. While this statistic has had peaks and troughs over time, the gap has remained remarkably consistent throughout the last decade. More recently, however, there is some evidence that the gap has actually been increasing.

My years in business and industry have provided me with a broad and extensive range of contacts with employers and employer organisations. Utilising these links to pursue the goals of education and cultural change, the Sex Discrimination Unit and I have embarked on a broad ranging educative program. Regular public presentations plus formal and informal discussions with employers and employer groups, unions, employees, school students, non-government organisations and government agencies have been on the agenda during the first months of my term. Members of the unit and I have been consulting with targeted groups and the broader community in several capital cities and intend to visit all capitals and as many regional areas as possible. Communication with a range of media outlets, including the popular press and women’s magazines, is a high priority already being addressed. I believe there is much to be gained in using such outlets when it comes to adding my voice to the growing numbers who realise that the promotion of diversity and the prevention of sex discrimination and sexual harassment makes good business sense.

This educative role strongly focuses on sexual harassment. Some 60% of complaints under the Sex Discrimination Act that cross my desk concern sexual harassment. It remains a serious issue for women workers of all ages and backgrounds. I am disseminating the Unit’s *Sexual Harassment Code of Practice* as widely as possible to employers, employer organisations, unions and individuals. While the message that sexual harassment is not acceptable is increasingly being heard, there remains a significant number of people who need to be reminded of contemporary social norms, community expectations and their legal obligations under anti-discrimination law.

The extent to which pregnant women continue to suffer discrimination has been made abundantly clear to me in the first few months of my term. Pregnancy complaints under the Sex Discrimination Act run at about 15%, which is a large proportion, considering how few women are pregnant at any one time. There is an urgent need for society and organisations of all kinds to focus on ensuring that work practices take account of the pregnancy and family responsibilities. There is a need for the broader community to accept that work and family responsibilities cannot be divorced. Policies and practices should encourage, not penalise, men and women for parenting. I aim to contribute to work on this issue during my term as Sex Discrimination Commissioner and have an interest in working to see breastfeeding explicitly covered by the Act.

I am mindful of the perspectives of particular groups of women, including women of non-English speaking background, Indigenous women and rural and remote women, and would like to take an intersectoral approach to policy work wherever possible. It is important to attend to the problems and

challenges facing women at different times of life - those facing young women, for example in education, in entering and adapting to working life, are quite different to those faced by older women who are seeking to work part time or planning for retirement. I am also conscious that the Sex Discrimination Act does not cover issues of concern for transgender people. This oversight needs attention and the passage of the Sexuality and Gender Status Discrimination Bill would be a positive step forward.

My role involves a careful balancing act between strongly pursuing the adoption of suitable practices that meets legislative minimum standards and continuous expansion of best practice. While my preference is for proactive, preventative work and early intervention strategies, my complaints function provides the backbone for establishing and enforcing minimum standards. The Act remains the most effective mechanism to assist the pursuit of gender equality.

Education and Promotion

The Sex Discrimination Commissioner is firmly committed to ensuring issues of gender equity are on the community agenda. In particular, employment issues are to be targeted with education and early intervention measures and programs. The Commissioner will build upon the previous work of the Sex Discrimination Unit and Commissioners and work closely with employers, unions and women's organisations to address discrimination and sexual harassment in the workplace. The Commissioner asserts that discriminatory work environments cost money and reduce efficiency.

National Consultations

Over the next 6-12 months the Sex Discrimination Commissioner and the Sex Discrimination Unit intend to consult widely with targeted groups and the community generally to raise awareness of sex discrimination and equity issues. Particular groups to be targeted include schools, employers, employees and unions, women's organisations, community groups and government.

The Equal Pay Handbook

On 16 February 1998, the Hon. Judi Moylan, Minister for the Status of Women, launched a new publication by the Sex Discrimination Unit entitled *The Equal Pay Handbook*.

Since early this century, women in Australia have been pursuing their right to equal pay. In 1969, the principle of equal pay for work of equal value was introduced nationally. This was a significant achievement for Australian women, but true pay equity remains elusive. The challenge is to ensure that all employees are accorded equal remuneration for work of equal value. What this actually means is paying men and women equally for work that is of equal skill and responsibility and is performed under comparable conditions.

The Equal Pay Handbook is designed to assist employers to meet their obligations under federal industrial and anti-discrimination legislation. It is also relevant to employees, human resource practitioners and unions. It contains essential equal remuneration principles, explanatory material, case law, case studies and an equal remuneration audit methodology. The Handbook is intended to contribute to an understanding of pay equity and the implementation of equal remuneration in the workplace.

Sexual Harassment: A Code of Practice

The Sexual Harassment Code of Practice was originally launched in November 1996. An evaluation form was included with the initial distribution to assist the Commission conduct a review after a twelve month trial implementation period. The Code proved immensely popular and everyone who returned the evaluation form stated that the Code had been both easy to use and easy to understand. The initial print

run was exhausted within 12 months. On completion of the evaluation, minor amendments were made to the Code and it was re-printed.

Aboriginal and Torres Strait Islander Women - Cairns Project

This project, which was initially funded by the Sex Discrimination Commissioner in the 1993/94 financial year, was developed to conduct consultations and report on the level of awareness of the Sex Discrimination Act among Aboriginal and Torres Strait Islander women.

Additional funding was allocated in the 1994/95 financial year and carried over into the 1995/96 financial year in order to implement one of the report's recommendations. This recommendation, which encompassed the development of an information package for Aboriginal and Torres Strait Islander women, resulted in the production of the video *Sex Discrimination Act 1984 - Which Way? An Information Video for Aboriginal and Torres Strait Islander people*. A tool for raising awareness of rights and responsibilities under the Sex Discrimination Act, the video provides guidance as to how complaints can be lodged for Aboriginal and Torres Strait Islander people. It is hoped that, once familiar with the role and scope of the Sex Discrimination Act, people will be more likely to use it to address relevant discrimination they experience.

The video was launched in Cairns by the Acting Sex Discrimination Commissioner, Moira Scollay, in November 1997.

General Brochure

A further 50,000 brochures entitled *The Sex Discrimination Act* were re-printed for dissemination to the wider public and target sectors.

Research and Policy

The Affirmative Action Regulatory Review

As part of an agreement between the federal, state and territory governments, the Commonwealth conducted a review of all Commonwealth legislation which may restrict competition and/or is costly for business. The *Affirmative Action (Equal Employment for Women) Act 1986* (Cth) was reviewed in that process.

Based on a cost/benefit model, the Review aimed to assess the costs and benefits to business of the paperwork involved in reporting to the Affirmative Action Agency and of developing an affirmative action program. It considered the enforcement mechanisms associated with affirmative action and balanced them against the costs and benefits to the community, taking into account equity, broad economic considerations and consumer interests. The Review Committee also looked at the impact of the legislation on business competition, the efficiency of the Act and alternatives to the legislation.

The Sex Discrimination Commissioner and her policy unit provided a submission to the Review, participated in discussions with the Review Committee and consulted widely with business, industry and other relevant groups. The submission emphasised the complementary roles of affirmative action and sex discrimination legislation. Together the legislation of the two bodies addresses both existing employment discrimination and the institutional barriers that are the legacy of past discrimination. The Sex Discrimination Act addresses individual acts of discrimination, while affirmative action legislation offers an opportunity to be more proactive by addressing entrenched discrimination that prevents equal opportunity.

Review of Policy and Procedures to deal with Sexual harassment and Sexual Offences at the Australian Defence Force Academy

Moira Scollay, the former Sex Discrimination Commissioner, made a lengthy submission to this review, including recommendations for improving the Australian Defence Force policy on sexual harassment, dealing with complaints and effecting cultural change at the Australian Defence Force Academy (ADFA).

While ADFA is an educational institution that falls within the jurisdiction of the Sex Discrimination Act, it has unique characteristics due to the involvement of defence force personnel. Consequently ADFA faces more complex sex discrimination issues than other educational institutions.

The Sex Discrimination Commissioner's submission addressed legal issues of sexual harassment and related them to ADFA as an institution, its staff and students. The submission provided guidelines on developing effective sexual harassment policies and gave practical suggestions about the application of ADFA's current harassment policies. Looking beyond legal responses to sexual harassment, the submission examined institutional means of preventing harassment and gender-hostile environments through organisational change. Finally, the submission provided advice on complaint procedures, privacy issues and record keeping.

Research Project - Women's Labour Market Participation in Regional Australia

The first stage of a project into women's labour force participation in regional, rural and remote Australia has been completed. The research, conducted by Professor Roy Green of the University of Newcastle, identified potential issues of discrimination in non-metropolitan women's employment policy. Further stages of research are presently being considered.

Public Sector Research Centre

Research into the effects of contracting out of public sector services on women's employment conditions and the services offered to women is being undertaken by the Public Sector Research Centre. Two areas from which case studies will be drawn are federal employment services and Victorian childcare services. Draft interim reports have been provided. The final report is due in 1999.

The research, which is intended to explore whether such contracting out has any discriminatory effects on either the level of services offered to women or the employment conditions of women, also examines the handling of change by managers involved in the areas.

Australian Post Graduate Industry Award

As part of an Australian Postgraduate Award Collaborative Grant, Sara Charlesworth is conducting research into the handling of complaints of sex discrimination in the banking and finance industries. The research, in which the Commission is the industry partner with La Trobe University, is due for completion in the 1998/99 year.

Superannuation

The Sex Discrimination Unit intended to produce a brochure for women on the effects of legislation allowing opting out of superannuation funds. The introduction of the relevant legislation has been postponed until the 1999/2000 year. The production of the brochure has been deferred until that time.

Three draft papers focusing on three exemptions from the Sex Discrimination Act have also been prepared: Exemptions for Discrimination in Superannuation and Insurance based on Actuarial and Statistical Data; Exemptions for Indirect Discrimination in Vesting, Portability and Preservation of

Benefits; and Exemptions for Discrimination in the Death and Disability Benefits Components of Superannuation.

Legal Review

NSW Pay Equity Inquiry

One of the key recommendations of the 1997 NSW Pay Equity Taskforce Report, *Pay Equity and the Undervaluation of Women's Skills in NSW*, was that an inquiry into pay equity matters be undertaken by the NSW Industrial Relations Commission (IRC) by Ministerial Reference.

This inquiry was undertaken by the IRC under Justice Glynn. The Human Rights and Equal Opportunity Commission has intervened as a party. A number of other key organisations were involved, including Crown parties, employer representative groups, unions and the NSW Labour Council as well as women's community organisations.

The inquiry selected a number of pairs of industries for comparison, one male dominated and one female dominated, to determine whether women are paid less than men. The selected industries were child care workers and metal workers, seafood processors and seafood general hands, public sector librarians and geoscientists, clerical workers and metal workers, hairdressers and motor mechanics, public hospital nurses and miners, clothing industry outworkers and factory process workers. The inquiry heard evidence about substantive aspects of each of these professions, or segments of the professions, as well as expert evidence on broader economic and social aspects of pay equity.

The Sex Discrimination Commissioner and the Sex Discrimination Unit on behalf of HREOC contributed to the inquiry by providing a human rights and international perspective on pay equity. Australia is signatory to international conventions that make reference to pay equity issues, such as the *Convention on the Elimination of Discrimination Against Women* and the *Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*. While these conventions are not binding on NSW, they should be considered highly influential in interpreting Australian law.

Final submissions were made to the Inquiry in June 1998.

Allowable Award Matters Case

The *Workplace Relations Act 1996* requires federal awards to be stripped back to a total of 20 allowable award matters (s.89A(2)). Matters incidental to these allowable provisions may be retained where they are "necessary for the effective operation of the award" (s.89A(6)). The first test case that went to hearing at the Australian Industrial Relations Commission (AIRC) concerned the Hospitality Industry Award. HREOC intervened in this matter because:

- the objects of the *Workplace Relations Act 1996* require the need to prevent and eliminate discrimination on wide ranging grounds (s.3j) and HREOC was in a position to assist the AIRC give effect to Australia's international obligations in relation to labour standards;
- the Act requires the removal of discriminatory clauses in industrial awards; and
- disadvantaged groups of workers, such as women, people of non-English speaking background and young people should not be disproportionately or negatively affected by this case.

The Sex Discrimination Unit made a submission on behalf of HREOC. HREOC's submission covered issues of both direct and indirect discrimination and recommended that the AIRC consider issues of discrimination in the exercise of all its powers. The AIRC decision, which was handed down in December 1997, established principles for the simplification of other awards using the Hospitality Industry Award to illustrate these principles. These simplification principles required a model anti-discrimination clause to remain in all awards.

HREOC has standing to intervene in further award simplification cases and is currently monitoring the progress of these matters. To date HREOC has not considered it necessary to participate in the award review cases.

The Equal Pay Case

In December 1995, the first ever equal pay cases under the 1993 equal remuneration provisions of the federal industrial relations legislation were lodged by the ACTU and the Manufacturing Workers Union. All three cases concerned possible discrimination in over-award payments made to men and women workers. Two of those cases settled prior to hearing. The remaining equal remuneration case involving a printing manufacturer, HPM Industries, and women process workers proceeded to final hearing. The former Sex Discrimination Commissioner, Sue Walpole, sought leave to intervene on behalf of HREOC.

A submission was forwarded to the AIRC and parties on 18 September 1997. The submission consisted of a letter setting out the key issues for consideration with attachments including the draft *Equal Pay Handbook*, applicable House of Lords and European Court decisions and *Just Rewards*, the report of HREOC's 1992 inquiry into sex discrimination in over-award payments.

The decision was handed down on 4 March 1998, following arbitration that began on 22 September 1997. The AIRC found there was insufficient evidence that HPM indirectly discriminated in the relevant way and refused to make any order. A further application was made on 26 March 1998 by the union in relation to HPM Industries. The Sex Discrimination Unit will monitor the progress of those proceedings that concern the appropriate valuation of work.

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 1997-98

General

About the Human Rights and Equal Opportunity Commission - Information Sheet

Annual Report 1996-97 Human Rights and Equal Opportunity Commission

Aboriginal and Torres Strait Islander Social Justice Commissioner

Fifth Annual Report 1996-97

Native Title Report 1997

Indigenous Legal Studies A product of the National Indigenous Legal Curriculum Development Project

National Community Education Resource - Tracking Your Rights NSW, VIC, ACT, TAS, NT, SA, WA
A handbook for Aboriginal and Torres Strait Islander People

Human rights

Bush Talks: Human Rights in Regional and Remote Australia Information Sheet

Redundancy Arrangements and Age Discrimination Report of Inquiry into Complaints of Discrimination in Employment and Occupation HRC Report No.2

Discrimination on the Ground of Trade Union Activity Report of Inquiry into a Complaint of Discrimination in Employment and Occupation HRC Report No.3

Age Discrimination in Trade Union Membership Rules Report of Inquiry into a Complaint of Discrimination and Occupation HRC Report No.4

Preliminary Report on the Detention of Boat People HRC Report No.5

Discrimination on the ground of sexual preference Report of Inquiry into Complaints of Discrimination in Employment and Occupation HRC Report No.6

Those who've come across the seas - Detention of unauthorised arrivals Report of the Commission's inquiry into the detention of unauthorised arrivals in Australia.

Seen and Heard: priority for children in the legal process Report of the National Inquiry into Children and the Legal Process

The Asia Pacific Forum of National Human Rights Institutions

Sex discrimination

Sexual Harassment Code of Practice (Revised)

Equal Pay Handbook

Aboriginal and Torres Strait Islander Women - Cairns Project Video

Race discrimination

The CDEP Scheme and Racial Discrimination Inquiry into the human rights issues raised by the CDEP (Community Development Employment Projects) scheme

Disability Rights

Advisory Notes on Access to Premises - DDA

The Sterilisation of Girls and Young Women in Australia

Revised Disability Discrimination Act Employment Standards Second Draft for Public Comment

Advisory Notes on World Wide Web Access HTML

Advisory Notes on Public Transport HTML

Medicare benefits for Psychiatric Services HTML

Guidelines for providers of Insurance and Superannuation HTML

Developing an effective action plan HTML

Complaints

The Complaint Guide An introduction for people considering making a complaint, or responding to a complaint, before the Human Rights and Equal Opportunity Commission.

Privacy

Revised guidelines for the use of data-matching in Commonwealth administration

Community advice - "Who's Calling? Your Privacy and Calling Number Display"

Guidelines to Information Privacy Principles 4-7 (Published in the revised Privacy Handbook)

Federal Privacy Handbook A guide to Federal Privacy Law and Practice, reformatted and reissued as a CCH publication.

Minding Our Own Business Privacy protocol for Commonwealth agencies in the Northern Territory handling personal information of Aboriginal and Torres Strait Islander people

National Principles for the Fair Handling of Personal Information

Appendix 3: Commissioners' speeches**Chris Sidoti, Human Rights Commissioner (Major Speeches)**

August 1997, 'Sorry Day' address to Australians for Reconciliation, Bathurst, NSW

September 1997, 'Responding to people on the margins in Australia', Perth

December 1997, 'Young people and racism in Australia', Melbourne

December 1997, 'Human rights in rural and regional Australia', Kempsey, NSW

February 1998, Launch of 'Working it Out' report on needs of sexual minority youth, Ulverstone, Tas

February 1998, 'Understanding and caring: human rights in Australia', Canberra

April 1998, 'Responsibility for the future', graduation address, Sydney

May 1998, 'Health as a human right', Sydney

May 1998, 'Culture and human rights', Port Macquarie, NSW

May 1998, 'Bush Talks: human rights in regional, rural and remote Australia', Coffs Harbour and Wagga Wagga, NSW

June 1998, 'Services for country children - a matter of human rights', Canberra

Zita Antonios, Race Discrimination Commissioner

7 August 1997, addressed senior management at the University of Western Sydney (Nepean) on race issues, Sydney

25 October 1997, presented a paper on 'Embracing the Challenge of Changing Times' to the Tasmanian Ethnic Communities Council's Cultural Diversity and Anti-Racism Forum, Tas

30 October 1997, presented a paper on the 'Impact of the Commonwealth's Native Title Amendments on the RDA' to the Australians for Native Title and Reconciliation at the University of New South Wales Law School, Sydney

31 October 1997, keynote speaker at the NSW Department of School Education's 'Spokeswomen's Induction Day', Sydney

6 November 1997, presented a paper on 'First People: Past Stories and Future Action the Stolen Children' to the Australian Council of Social Services Conference, Melbourne

12 November 1997, presented a paper on 'Lessons from Australia -The Experience of the Australian HREOC' to the University of Hong Kong's seminar on *Equal Opportunities Law From an International and Comparative Perspective*, Hong Kong.

19 November 1997, presented a paper on the 'Impact of the Commonwealth's Native Title Amendments on the RDA' to the Australians for Native Title and Reconciliation at Melbourne University, Melbourne

20 November 1997, presented a paper on the 'Contemporary Issues Affecting Arabic Youth' to the Australian Arabic Youth Conference, Melbourne

3 December 1997, presented a paper on the 'HREOC restructure' and the report on the 'Separation of Indigenous Children from Their Families' to the Attorney-General's Department and Non-Government Organisations, at the Domestic Forum on Human Rights, Canberra

10 December 1997, launched the Ethnic Communities Council of NSW, 'Strategies Against Racism' Forum Papers to the Ethnic Communities Council of NSW Inc, Sydney

11 December 1997, presented a paper to the Launch of the Newtown Women's Domestic Violence Court Assistance Scheme at the Marrickville Legal Centre, Sydney

16 December 1997, gave an address to Liverpool Girls' High School, Annual Presentation Day, Sydney

20 January 1998, addressed Ingleburn Rotary Club on 'Cultural Diversity', Sydney

24 January 1998, addressed the St James Ethics Centre, on 'Human Rights and Ethical Dilemmas in the role of the RDC', Canberra

6 February 1998, opened an EEO seminar for multinational corporations with offices in Hong Kong, Sydney

10 February 1998, presented a paper to the national Public Service Merit Protection Commission Conference, on 'Workplace Diversity: What Role for EEO?', Canberra

2 March 1998, presented a paper to the South Australian Ethnic Affairs Commission's Multicultural Forum to mark the 50th Anniversary of the Declaration of Human Rights with Premier Olsen and Anglican Archbishop, Ian Grace, Adelaide

5 March 1998, launched 'Changing Justice', a cultural awareness training package prepared by South Brisbane Immigration and Community Legal Service Inc, Brisbane

6 March 1998, addressed the Ethnic Communities Council of Logan Inc 'Responding to the Challenges of the Multicultural Australia Program', Logan City, Qld

10 March 1998, addressed the University of Sydney, Department of Social Work Year 4, Social Policy and Sociology Strand, 'Human Rights, Culture and Difference', Sydney

11 March 1998, addressed the Australian National University - Fenner Hall residents on 'Living with Diversity -the Tension Between Theory and Practice', Canberra

15 March 1998, addressed a 'Wik-Ed' Forum on Native Title, Melbourne

29 March 1998, participated in a debate at the FECCA Annual National Conference, Sydney

27 April 1998, addressed The University of Sydney, Centre for Continuing Education on 'Multiculturalism in Australia', Sydney

30 April 1998, addressed the National Multicultural Advisory Council meeting, Canberra

4 May 1998, addressed the Department of Education and Training teachers conference on 'Multicultural Education Curriculum Development - Targeted Projects in Schools', Sydney

7 May 1998, addressed the Multicultural Education Coordinating Committee South Australia on 'Countering Racism through Developing Cultural Understanding', Adelaide

8 May 1998, addressed the Jane Elliott, 'The Anatomy of Prejudice' Tour, Brisbane

11 May 1998, launched the Women's Domestic Violence Court Assistance Program - Multicultural Media and Communication Campaign, Sydney

14 May 1998, addressed the Jane Elliott, 'The Anatomy of Prejudice' Tour, Sydney

21 May 1998, participated as panel member in 'Tourism, Anti-Discrimination and Human Rights', Central Australian Tourist Industry Association, Alice Springs, NT

28 May 1998, addressed the Jane Elliott, 'The Anatomy of Prejudice' Tour, Melbourne

19 June 1998, addressed the Canadian National Ombudsman Conference - Fairness and Good Governance, Yellowknife, Canada

Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner (January 1998 - Major Speeches)

4 July 1997, 'Implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody', National Indigenous Deaths in Custody Summit, Parliament House, Canberra

22 July 1997, Human Genetics & Biodiversity Conference, Fremantle, WA

8 August 1997, 'Looking for Indigenous Rights', Indigenous Rights, Political Theory & The Reshaping of Institutions Conference, Research School of Social Sciences, Australian National University, Canberra

22 August 1997, Quetzal Resource Development Organisation, Rigoberta Menchu Tum Foundation, Tepoztlan, Mexico

4 September 1997, 'Indigenous Rights & Parliamentary Legitimacy: The Case for Constitutional Recognition & Protection', Constitutional Foundations Conference, Darwin

16 September 1997, 'Overcoming Discrimination Against Indigenous People - Australia's Experience', Australasian Law Reform Agencies Conference, Melbourne

17 September 1997, 'Native Title, Wik & The Law's Role in Reconciliation', Monash University Law Students Society, Melbourne

18 September 1997, 'Extinction or Co-Existence: A Crucial Choice for Australia', Freehill Hollingdale & Page, Melbourne

19 September 1997, 'How Does the Law Cope with Cultural Differences, How Should It? Australian Indigenous People & the Law', Australian Legal Convention, Melbourne

3 October 1997, Parliamentary Joint Committee on Native Title, Canberra

8 October 1997, 'Stolen Generations', Child Protection Management Forum, Ballarat, NSW

10 October 1997, 'Native Title', Foundation for Aboriginal & Islander Research Action Conference, Brisbane

11 October 1997, Briefing to Aboriginal communities on *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Sydney

13 October 1997, 'Social Justice for Aboriginal Communities in the New Millennium', NSW Local Government Community Services Association Conference, Coffs Harbour

16 October 1997, Launch of National Indigenous Legal Curriculum Development Program & Joint Disability Project, Sydney

21 October 1997, Launch 1996-97 Native Title Report and 1996-97 Social Justice Report, Parliament House, Canberra

27 October 1997, United Nations Centre for Human Rights Intercessional Working, 1997 Group Meeting, and Advisory Group Meeting for the Voluntary Fund for Indigenous Populations, Geneva

2 December 1997, 'Stolen Generations', Chevalier College, Bowral, NSW

12 December 1997, Hand-Over of Bowral Apology Petition, Parliament House, Canberra

20 January 1998, Launch of the National Aboriginal and Torres Strait Islander Community Education Project *Tracking Your Rights*, The Glen, Chittaway Bay. Final public event as Aboriginal & Torres Strait Islander Social Justice Commissioner.

Maira Scollay, Sex Discrimination Commissioner (June 1997 - March 1998)

3 November 1997, 'Launch of the video: Sex Discrimination Act 1984: Which Way? An Information Video For Aboriginal And Torres Strait Islander People', Cairns

28 November 1997, 'The Sex Discrimination Act: What It Tells Us About Issues For Women In Employment' 6th Women & Labor Conference, Sydney

12 February 1998, 'Women In the Super Network' Canberra

16 February 1998, 'Launch of *The Equal Pay HandBook*', Sydney

Susan Halliday Sex Discrimination Commissioner (Major speeches)

7 May 1998, 'Awards for Women in Non-Traditional Areas', National Centre for Women, Melbourne

4 June 1998, 'The Occasional Address', Swinburne TAFE Graduation, Melbourne

23 June 1998, 'Pregnancy Discrimination and *Hickie v Hunt & Hunt*', Business Law Education Centre, Sydney

29 June 1998, 'Good Luck or Good Management', Insights into Successful Women, Brisbane Parliament House, Canberra

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

complaints infoline: 1300 656 419

privacy hotline: 1300 363 992

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

Hobart

AMP Society Building

27 Elizabeth Street

Hobart TAS 7000

GPO Box 197

Hobart TAS 7001

phone: (03) 6234 3599

toll free: 1300 362 231

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
 Level 2, Mercantile Mutual Building
 45 Pirie St
 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 1997-98, the Commission received 46 requests for access to documents under the Freedom of Information Act. Of these:

- 41 requested access to documents relating to complaints;
- 2 related to research matters; and
- 3 related to administrative matters.

A total of 60 applications were processed, including the resolution of applications from 1996-97.

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 matters including minutes of Commission meetings, administrative and operational guidelines;
- operational matters including files on formal inquiries; and
- reference materials including press clippings, survey and research materials, documents relating to conferences, seminars and those contained in the library.

Freedom of Information procedures

Initial 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 manages all media work for the Commission; conducts education and other projects; organises special events including the Human Rights Medal and Awards; provides publications support to the Commission; represents the organisation on committees including the UN Decade of Human Rights Education Working Group; conducts research; develops and manages the Commission's website; provides advice and support to the President, Commissioners and other sections of the Commission including the international work of the organisation; provides training in media and communications, and external training to the government and private sector.

Media

Engagement in public discussion, education and promotion of human rights through effective use of the media is a primary responsibility of the Public Affairs Section. The Section has extensive liaison with Australian and international media organisations through the dissemination of media releases, news conferences, interviews and special events.

Education

Education, promotion and awareness-raising of human rights issues is a priority of the Commission, reflecting the government's commitment to human rights education services. In addition to its education role through media, the Public Affairs Section conducted two major education initiatives in the past year. The Commission's website is being revised, re-designed and re-written. The website will be far more user-friendly and accessible and is to include a number of new features including the School Page - a section on general human rights education written specifically for school students; Employers Page - a section spelling out the rights and responsibilities of employers under anti-discrimination legislation; a new Privacy site and the website of the Asia-Pacific Forum of National Human Rights Institutions. The new website will be launched by the Attorney-General in August 1998.

Through *Studies* Magazines, the Section has provided a curriculum-linked general human rights education program to all schools in the country. The *Studies* Magazine materials are linked to the Commission's website.

Annual Human Rights Medal and Awards

The Public Affairs Section manages this major education and awareness-raising initiative. The 1997 Awards ceremony was the largest in its history with 550 attendees. Hosted by SBS news-reader, Indira Naidoo, the event was honoured by the presence of His Excellency, the Governor-General, who in his speech paid special tribute to the work of retired President Sir Ronald Wilson. The Human Rights Medal was presented to Faith Bandler in recognition of her lifetime's work for Aboriginal and Torres Strait Islander people. Awards were presented in the following categories to Link-Up (NSW) and the Tasmanian Gay and Lesbian Rights Group (Community); Tammy Williams (Youth); John Harding (Arts); Working Dog Productions, the Apunipima Cape York Health Council and Kowrawa Aboriginal Community Organisation (Television); David Busch (Radio); Wilson da Silva, Gerard Ryle and Gary Hughes (Print); Ricky Maynard (Photography) and Coles Myer Ltd (Corporate). Twelve certificates of commendation were also presented.

Library and Information Service

The Library and Information Service provides a high quality, timely and responsive information and research service to the Commission. To fulfil the information needs of our clients, the Library Service utilises both internal and external resources in a variety of formats, including the Internet, online and CD-ROM databases and the national inter-library lending network.

During the past year, the Internet has emerged as the single most significant mechanism for delivering a wide range of Library services to our clients within the Commission. To assist us to utilise the Internet more efficiently, we have developed a Library Intranet which contains links to our most frequently accessed sites organised under topical headings. The Internet is a flexible tool for supporting a diverse range of functions within the Library and Information Services area. It is used to provide a rapid, full text document retrieval service to our clients, to identify locations of relevant resources for acquisition either by inter-library loan or purchase, and to import records into the catalogue. Indeed, use of the Internet by Library staff has nearly trebled over the past twelve months, as has client demand for training in its use.

Apart from its research responsibilities, the Library also provides an extensive current awareness service, utilising resources such as the Internet and serials abstracts. This service assists clients both to maintain a current knowledge in their areas of interest and to provide them with references to journal articles and reports. Inter-library loans is yet another means by which the Library provides information.

Development and maintenance of the Library collection is a major area of responsibility for the Library and Information Service. In the latter part of the year, the Library commenced a comprehensive review of the collection resources in preparation for its impending relocation to an area more closely situated to its clients. It is Library policy that selection of resources be undertaken in liaison with its clients, thus ensuring that the collection continues to fulfil their information needs. The principal subject areas of the collection are human rights and discrimination, including legal material relevant to these areas. There is also a separate collection of materials which relates to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.

Training and Staff Development

The 1997/98 year saw an increase in the use of outside agencies to provide training courses for staff, a direct result of the Commission no longer having a dedicated Staff Development Officer. Staff are now encouraged to access the courses conducted specifically for public sector agencies.

Training has concentrated on skills enhancement and has included policy development, speech writing, media training, supervision skills, computer training and participation in various Public Service and Merit Protection Commission, Department of Workplace Relations and Small Business and Department of Finance courses.

Studies assistance continues to be approved for staff who are participating in tertiary study which is relevant to their Commission work. The Commission encourages staff who have been unable to complete higher school or tertiary study because of personal reasons to apply for assistance.

Occupational Health and Safety

An Occupational Health and Safety committee continues to operate as part of the Commission's overall OH&S Agreement. Two members of the committee undertook training conducted by Comcare.

15 staff members undertook the two day St Johns Ambulance First Aid Certificate course ensuring that there are adequate numbers of first aid officers in the Commission.

The Commission's Employee Assistance Program continued providing free and confidential counselling for staff and their families.

The Commission continued to use a Rehabilitation Advisor to provide ongoing assistance and support on OH&S and ergonomic issues to new and existing staff.

Equal employment opportunity

The Executive Director has overall responsibility for equal employment opportunity matters in the Commission. The Personnel Manager is responsible for equal employment opportunity coordination and grievance handling within the Commission.

The Commission will be developing and implementing a Workplace Diversity Program in accordance with the Public Service Commissioner's guidelines.

Industrial relations

As noted earlier in this Report, the Commission undertook a significant restructure during 1997/98, reducing overall staff numbers from 230 to 120. The Commission undertook to consult with all staff and the CPSU at all stages during the process. Senior management met with staff and union delegates in various forums, including regular meetings and information sessions.

The Commission commenced negotiating a Certified Agreement with all staff during the first half of 1998 and it is hoped an Agreement will be finalised by August 1998.

The Commission has information sites on its network to keep staff informed of developments with the Workplace Relations Act and its draft Certified Agreement.

Staffing overview

An overview of the Commission's staffing profile as at 30 June 1998 is summarised in the following tables.

Staffing overview as at 30 June 1998

Classification	Male	Female	Full-time	Part-time	Temp	NSW	ACT	Tas
Statutory office holder	1	4	4	1	-	5	-	-
SES Band 2	-	1	1	-	-	1	-	-
SES Band 1	2	-	2	-	-	2	-	-
SPAO 2	-	1	1	-	-	1	-	-
SOG A	-	1	1	-	-	1	-	-
SOG B	6	6	12	-	-	11	1	-
Legal 2	-	1	1	-	-	1	-	-
SOG C	6	8	14	-	-	13	-	1
SPO C	-	1	1	-	1	1	-	-
SITOC	1	-	1	-	-	1	-	-
Legal 1	3	7	10	1	4	10	-	-
ASO 6	14	13	24	3	1	26	1	-
PO 2	1	-	1	-	1	1	-	-
ITO 2	2	-	2	-	-	1	1	-
ASO 5	3	5	8	-	2	8	-	-
ITO 1	1	-	1	-	1	1	-	-
ASO 4	2	5	6	1	2	6	-	1
ASO 3	3	19	21	1	5	21	-	1
ASO 2	2	7	8	-	1	8	1	-
ASO 1	1	-	-	1	-	1	-	-
Total	48	79	119	8	18	120	4	3

Senior Executive Service information as at 30 June 1998

SES level	Male	Female	Total
SES Band 2	-	1	1
SES Band 1	2	-	2