

Human Rights and Equal Opportunity Commission

Annual Report 1998-99

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Significant achievements for 1998-99

- Conference to mark the 50th Anniversary of the Universal Declaration of Human Rights. **See page 15**
- The Commission was awarded a tender to provide technical assistance to the Indonesian National Human Rights Commission. **See page 24**
- Release of the Aboriginal and Torres Strait Islander Social Justice Commissioner's sixth Social Justice and Native Title reports. **See page 59**
- Submission to the United Nations Committee on the Convention on the Elimination of All Forms of Discrimination (CERD). **See page 59**
- Public Inquiry into closed captioning of TV and video. **See page 62**
- Changes resulting from a report into unlawful sterilisations. **See page 63**
- Launch of the National Inquiry into Rural and Remote Education. **See page 70**
- Government response to *Those who've come across the seas: detention of unauthorised arrivals*. **See page 71**
- Launch of Outlink – rural, lesbian, gay and bisexual youth network. **See page 74**
- Publication of *Age matters? A discussion paper on age discrimination*. **See page 75**
- Report on the Third Annual Meeting of the Asia Pacific Forum of Human Rights Institutions. **See page 81**
- Compensation of former Palm Island employees. **See page 90**
- Launch of *Race for Business*. **See page 91**
- Released guidelines for recruitment advertising. **See page 96**
- Pregnancy and Work Inquiry. **See page 96**

Statement from the President

On 10 December 1998, worldwide celebrations marked the 50th Anniversary of the Universal Declaration of Human Rights. In Australia, a three day national conference convened by the Human Rights and Equal Opportunity Commission provided an important opportunity to reflect on the development and realisation of human rights, both on the world stage and in the life of our own nation. With a range of national and international speakers present, it was also a forum to explore the challenges that face us as we seek to promote and protect basic, universal human rights into the new millennium.

Such a task must be based on genuine respect and a commitment to ensure fair and just outcomes for each member of our community. The Secretary-General of the United Nations, Kofi Annan, highlighted this point, in his message to the conference. 'At the centre of human rights is the concept of fairness, which I know is well understood by all Australians: fairness within communities and fairness between them.'

Reconciliation was another central theme of the conference. Justice Albie Sachs, of the Constitutional Court of South Africa, and Marzuki Darusman, Chairperson of the Indonesian Human Rights Commission, both emphasised that respect for human rights lies at the heart of true reconciliation. This is particularly vital as countries forge a new identity in a time of fundamental political and social change. Such concerns could not be more relevant to Australia at this time in our history as we strive to establish meaningful reconciliation between Indigenous and non-Indigenous Australians.

These themes – respect for human rights, reconciliation and fairness for all Australians – have been the primary goals underlying the Commission's work in the past year. An ongoing challenge has been for the Commission to give practical form and content to the concept of human rights. I believe that, thanks to the expertise of the current Commissioners and the Commission's skilled and dedicated staff, we have succeeded admirably in this task. Highlights below of activities of each Commissioner and areas of focal attention provide evidence of this.

Throughout this past year, the Human Rights Commissioner, Chris Sidoti, led a series of *Bush Talks* in rural and remote communities around Australia. The purpose has been to listen to individuals and representative organisations about their concerns, as well as to share information, ideas and strategies with those communities. Access to health, education and other services, as well as unemployment, youth suicide and matters affecting Indigenous people were the principal issues raised. The *Bush Talks* report was released in March 1999. The Commission has subsequently initiated a National Inquiry into rural education and has launched 'Outlink', a support network for young gay men and lesbians living in rural and regional Australia. The Commissioner also launched *Age matters*, a discussion paper on discrimination on the basis of age, as part of the International Year of Older Persons.

Commissioner Sidoti was also the Acting Disability Discrimination Commissioner during this period. The focus of his work was principally on identifying means by which the Commission's own processes could be made more effective instruments for achieving the objects of the Disability Discrimination Act.

The main strategy adopted was to provide broader public participation, using the possibilities offered by the internet in the processes by which the Commission forms opinions and makes decisions. Processes such as considerations of exemption applications have been opened to wider public participation through publication on line not only of the application and the Commission's notice of inquiry but of submissions from interested parties so that the public has access to as full

a range of views as possible. The Commissioner has been pursuing extension of similar processes to investigation of complaints in appropriate cases. A framework for this approach was set out in a Practice Note on public inquiry into disability discrimination complaints, issued by the Commissioner in March 1999.

Other work undertaken by Commissioner Sidoti included discussion with all interested parties in relation to access to premises for people with a disability and a public inquiry process which looked at closed captioning of TV and video. Proposals and possible legislative changes were discussed with Federal government departments as a follow up to the commissioned report *Sterilisation of Girls and Young Women in Australia*.

Over the past year, Susan Halliday, the Sex Discrimination Commissioner, continued to build strong links with business and industry and to draw attention to workplace issues. In August 1998 she received a request from the Attorney-General to inquire into and report on discrimination against women in Australian workplaces on the grounds of pregnancy or potential pregnancy. The report will be presented to the Attorney-General in the second half of 1999. In addition, Commissioner Halliday has produced a range of educative materials for employers on their responsibilities under the Sex Discrimination Act, including *Harsh Realities*, a series of case studies about sex discrimination in the workplace, and guidelines for writing and publishing recruitment advertisements.

One of the primary functions of the Commissioner under the Sex Discrimination Act is to undertake educational programs on a range of issues, including promoting recognition and acceptance within the community of the principle of the equality of men and women, and to promote an understanding and acceptance of the Sex Discrimination Act. To this end Commissioner Halliday targeted all aspects of the media, from academic, professional or trade journals, through mainstream news outlets to popular print and broadcast media. Over the last year the issues she raised received generally supportive coverage in at least 180 outlets. She has worked closely with state and territory anti-discrimination agencies, as well as the Affirmative Action Agency, in maintaining effective links to achieve common goals and avoid unproductive duplication of work.

Zita Antonios, the Race Discrimination Commissioner, has worked closely with leading industry groups to produce *Race for Business*, a training package to eliminate racial discrimination in the workplace. This package was launched to employers and industry groups around Australia over the last year. As Acting Aboriginal and Torres Strait Islander Social Justice Commissioner, she produced the annual *Native Title Report* and the *Social Justice Report*, the latter being a comprehensive study of the manner in which Australian governments have responded to the recommendations of *Bringing them home: The Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Commissioner Antonios also provided a key submission to the United Nations Committee on the Elimination of Racial Discrimination in its inquiry into the operation of Australia's Native Title Act.

In May this year, Dr William Jonas, AM, commenced as Aboriginal and Torres Strait Islander Social Justice Commissioner. Dr Jonas has served as the Director of the National Museum of Australia and Principal of the Australian Institute of Aboriginal and Torres Strait Islander Studies, as well as holding a number of academic and government positions. The Commission will benefit greatly from the breadth of his experience.

Commissioner Jonas sees a commitment to equality for all people, to the exercise and enjoyment of human rights of all people, and to the end of all forms of discrimination as a necessary prelude to and an ongoing part of the reconciliation process. By any measuring stick most Aboriginal and

Torres Strait Islander people continue to experience as a group the worst socio-economic conditions of all Australians. What is especially clear is that Indigenous people themselves wish this situation to change; the fact that marginalisation occurs and exists is not the preference of the marginalised nor is it caused by them. The ongoing nature of such disadvantage has human rights implications, especially since much of it is historically derived, through overt and structural forms of discrimination. What this means is that in order to break out of these conditions and in the pursuit of everyone being equal, we must ensure that everyone is **not** treated the same. When we have the advantaged and disadvantaged, the haves and the have nots, treating people 'the same' simply results in the gaps widening and inequality increasing. Positive intervention is needed and special measures must be adopted.

In social life as in law, we must, as Aristotle put it some 2 300 years ago, treat like cases alike and unlike cases differently, according to their differences.

Malcolm Crompton took up his position as the Privacy Commissioner in April 1999. He has pursued with energy and dedication his role as Commissioner and has made immediate contributions to the functioning of the Commission. His statement about specific programs undertaken and being undertaken by him can be found elsewhere in this Report.

The Commission's Complaint Handling Section worked diligently to substantially increase the number of conciliated outcomes to complaints of discrimination, conciliated outcomes rising by 9 percent. In addition, a training course designed by the Commission, *Statutory Investigation: Discrimination and Human Rights*, has been nationally accredited and was presented to agencies throughout Australia and overseas.

Community education continues to be a central function of the Commission. Whether it is part of broader projects, such as those already listed, or education programs for secondary school students, the Commission has an important role in informing, engaging in and stimulating discussion of human rights within the Australian community. Preventing discrimination before it happens through cultivating a culture of respect and tolerance is of inestimable value. Promoting an understanding that human rights are universal and belong to all Australians as humans, regardless of one's race, gender, national or ethnic origin, age or where one lives, is fundamental to protecting those rights. Education is not about indoctrination, moralising or sloganising. Rather, the end result and chief goal of education is to learn, grow and become more sensitive, understanding members of our community, learning how to bridge differences between each other rather than erecting greater barriers. This is the philosophy of education that guides our work.

The Commission continues to await the necessary reforms proposed by the Federal Government following the High Court's *Brandy* decision. I am confident that once the Bills are debated, amended and eventually passed, the proposed changes will serve to make the Commission's complaint handling process more effective. The organisation's ability to work cooperatively and effectively with government, business, employers and community organisations, as well as to advocate strongly on behalf of those most vulnerable in the community, remains undiminished.

As the Commission heads into the coming year, and indeed into a new millennium, our goal is to address the human rights issues facing Australians in a complementary, interdisciplinary fashion. Indigenous, sex, race and disability issues will continue to be addressed and advocated by a specific Commissioner; however, we will also work as a body to build a broad understanding within the Australian community of the interrelatedness and universality of human rights. The Commissioners will continue to work collaboratively, pooling their knowledge, expertise and experience to ensure that each project undertaken by the organisation has a multi-disciplined and intellectually rigorous approach.

To conclude, I would like to draw attention to the international work of the Commission. In addition to my organisational functions, this is an area in which I am very actively involved. Since 1996 the Commission has hosted the Secretariat of the Asia Pacific Forum of National Human Rights Institutions. This Forum facilitates consultation and assistance between the national human rights institutions of India, Indonesia, New Zealand, Sri Lanka and the Philippines. In addition to this role, our Commission provides human rights technical assistance on a bilateral basis with countries as diverse as Indonesia, South Africa and China. The Commission is widely respected as a model for national human rights institutions in our region – and beyond – and for the quality of assistance that it provides to other institutions.

I mention this aspect of the Commission's work to make the very simple and obvious point that human rights are both a domestic and an international concern. As last year's 50th Anniversary of the Universal Declaration of Human Rights makes very clear, we have a duty to our own community, and to our community of neighbours, to promote and protect human rights. The pace of globalisation over the past decade has forced all nations to realise that sovereignty must now be balanced with a duty of participating in the world. The same is true for our commitment to human rights. We must work both within and outside our borders if we are to be successful in promoting a conception of justice, fairness and equality that will bring tangible, material and lasting results for our own community and the world community.

Chapter 1: The Commission

Vision

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

Mission

To provide leadership on human rights through:

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

To ensure that Australians:

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

As an effective organisation, we are committed to:

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

Structure

The Commission is an organisation established under the *Human Rights and Equal Opportunity Commission Act 1986*. It has a President and six Commissioners. The six positions are currently held by five persons.

President, Professor Alice Tay

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

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

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

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

Human Rights Commissioner and Acting Disability Discrimination Commissioner, Chris Sidoti

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

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

Race Discrimination Commissioner, Zita Antonios

Zita Antonios 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 (NSW) as a full-time member who heard 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.

Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr Bill Jonas

Until his appointment as Social Justice Commissioner, Dr Bill Jonas was Director of the National Museum of Australia and from 1991–96 was Principal of the Australian Institute of Aboriginal and Torres Strait Islander Studies in Canberra. Dr Jonas comes from an academic background. Before becoming Director of Aboriginal Education at Newcastle University in 1990, he was a lecturer in geography at the University of Newcastle and before that at the University of Papua New Guinea.

In the mid-1980s, Dr Jonas was a Royal Commissioner with the late Justice Jim McClelland on the Royal Commission into British Nuclear Tests in Australia. He has held positions on the Immigration Review Tribunal, the Australian Heritage Commission and the Joint Ministerial Taskforce on Aboriginal Heritage and Culture in NSW.

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

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, coordination of research and member company employee relations, employment, human resource management and education and training activity.

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

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

Privacy Commissioner, Malcolm Crompton

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

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

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

Mr Crompton has also served on various other Government Committees, including the Steering Committee on the Rewrite of the Public Service Act (1995–1996), the Steering Committee on the Evaluation of Working Nation (1995–96) and the International Monetary Fund Panel of Fiscal Experts.

Legislation

The Commission is responsible for implementing the following Acts:

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

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

Other legislation administered through the Commission includes functions under the *Native Title Act 1993* performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner.

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

Human Rights and Equal Opportunity Commission Act

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

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

Racial Discrimination Act

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

Its main areas are to:

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

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

Sex Discrimination Act

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

Its main aims are to:

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

Disability Discrimination Act

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

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

Privacy Act

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

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

Proposed legislative changes to the Commission

The Human Rights Legislation Amendment Bill 1998 (Cwlth) was introduced into Federal Parliament and passed by the House of Representatives on 11 March 1999. As stated in last year's Annual Report, the Amendment Bill had been originally introduced into Parliament on 5 December 1996. As the legislation had not been enacted prior to the federal election in October 1998, the Amendment Bill had to be reintroduced following the federal election and is currently before the Senate.

The main features of the Bill are:

- to remove the determination of complaints from the Commission to the Federal Court;
- the transfer of all complaint handling powers from the Race, Sex and Disability Discrimination Commissioners to the President;
- to remove the internal Presidential review function from the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act and provide that where a complaint is declined by the President, the complainant will be able to go direct 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 (Cwlth) was introduced into the House of Representatives on 17 February 1999 and is currently being debated.

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 Senate Legal and Constitutional Legislation Committee, which examined this Bill and reported in February 1999, agreed with the Commission's submission to the Committee. It was argued that the removal of the Commission's power to intervene in proceedings before the Courts and the failure to provide transitional provisions would compromise the Commission's independence and integrity.

Functions and powers

The Commission's responsibilities fall within four main areas:

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

In order to fulfil its obligations, the Commission:

- fosters public discussion, and undertakes and coordinates research and educational programs to promote human rights and eliminate discrimination in relation to all Acts;
- investigates alleged infringements under the anti-discrimination and privacy legislation, and attempts to resolve these matters through conciliation, where this is considered appropriate. Where conciliation is unsuccessful or is inappropriate, matters may be referred for formal hearing or consideration by Hearing Commissioners. After further discussion, determinations are issued to resolve matters. This applies to the Racial, Sex, Disability Discrimination and Privacy Acts;
- 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; and
- may advise on legislation relating to human rights and monitor its implementation; may review existing and proposed legislation for any inconsistency with human rights or for any discriminatory provision which impairs equality of opportunity or treatment in employment or occupation; may examine any new international instruments relevant to human rights and advise the Federal Government on their consistency with other international treaties or existing Australian law; and may propose laws or suggest actions the Government may take on matters relating to human rights and discrimination. This applies to all Acts.

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

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

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

Specific functions of Commissioners

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

Aboriginal and Torres Strait Islander Social Justice Commissioner

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

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

Privacy Commissioner

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

- that the Commissioner administers Part VIIC of the *Crimes Act 1914*, the Commonwealth ‘Spent Convictions Scheme’. This law provides protection for individuals with old minor convictions in certain circumstances. The Privacy Commissioner has a role to investigate breaches of the legislation. The Commissioner is also required to provide advice to the Attorney-General in relation to exemptions under the scheme;
- that the *Data-matching Program (Assistance and Tax) Act 1990* regulates data-matching between the Tax Office and four assistance agencies to detect overpayments, ineligibility for assistance and tax evasion. Under the Act, the Commissioner is responsible for issuing guidelines for protecting privacy, investigating complaints and monitoring agency compliance;

- that under the *National Health Amendment Act 1993*, the Commissioner is required to issue guidelines which cover the storage, use, disclosure and retention of individuals' claims information under the Pharmaceutical Benefits Scheme and the Medicare program; and
- that the Commissioner has a range of monitoring and compliance functions under the new *Telecommunications Act 1997*.

Sex Discrimination Commissioner

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

The Minister

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

The most significant are:

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

50th Anniversary of the Universal Declaration of Human Rights

The 50th Anniversary of the Universal Declaration of Human Rights was celebrated around the world on 10 December 1998. In Australia the Human Rights and Equal Opportunity Commission honoured the occasion by hosting an International Conference in Sydney from 8–10 December 1998.

With the theme *Human Rights, Human Values: What do we think now?* the 50th Anniversary Conference reflected on achievements, failures and future challenges in human rights. There were five plenary sessions and thirteen specialist focus groups. The themes for the plenary sessions, as listed below, were taken from the Preamble of the Declaration.

The Universal Declaration: a common standard of achievement for all peoples and nations

The Hon. Sir Zelman Cowen, Governor-General of Australia, 1977–82
Misha Schubert, Youth Delegate to the Constitutional Convention
Associate Professor Gracelyn Smallwood.

Human Rights: proclaimed as the highest aspiration of the common people

Olga Havnen, Director, Indigenous Program Rights and Development, Hollows Foundation
Rodney Boschman, Actor
Bryan Brown, Actor.

Friendly Relations Between Nations

The Hon. Alexander Downer, Minister for Foreign Affairs
Marzuki Darusman, Indonesian Human Rights Commission
Greg Sheridan, Foreign Editor, *The Australian*.

Corporate Responsibility: promoting social progress

Elizabeth France, UK Data Protection Commissioner
Elizabeth Cham, Association of Philanthropy, Australia
Mark Paterson, Chief Executive, Australian Chamber of Commerce and Industry
Chris Leptos, former General Manager, Western Mining Corporation.

Rule of Law: human rights protection

Wang Genliang, Director-General, Foreign Affairs Bureau of the Supreme People's Court of China
Justice Albie Sachs, South African Constitutional Court
Jim Spigelman, Chief Justice of the Supreme Court, NSW
The Hon. Daryl Williams, Federal Attorney-General.

The following are a selection of the specialist focus groups and speakers:

Citizenship and the Democratic Process

Jason Yat-Sen Li, Lawyer, Constitutional Convention Delegate
Bill Gray, Electoral Commissioner, Australian Electoral Commission
Professor Cheryl Saunders, Director, Centre for Comparative Constitutional Studies.

Rural Issues

Margaret Smith, National President, Country Women's Association
 Dr Wendy Craik, President, National Farmers Federation
 Ros Wiese, Australian Rural Youth.

The Military: peacekeeping, conflict and cooperative ventures

Major General Peter Phillips, National RSL President
 Sister Patricia Pak Poy, Land Mines Campaigner
 Major General J.C. Hartley, Land Commander, Australia Defence Forces.

The Role of Sport in Promotion of Human Rights

Garry Ella, Program Manager, Sydney Organising Committee for the Olympic Games
 Roy Masters, Journalist, *Sydney Morning Herald*
 Donna Richie, Manager Community Relations, Sydney Paralympic Organising Committee.

Business and Labour

Rohan Squirchuk, Managing Director, Council for Equal Opportunity in Employment
 Captain David Elridge, The Salvation Army
 Jennie George, President, Australian Council of Trade Unions.

A copy of the full program and selected papers are available on the Commission's website at http://www.hreoc.gov.au/news_info/conference.

Sir Anthony Mason, former Chief Justice of the High Court in his closing address summing up the themes of the Conference said 'that if after fifty years, we consider a recommitment to human rights, as I believe we should, then we should think primarily of human rights in terms of dignity and the personality of the human being, both individually and collectively and as precepts or standards which inform and influence our behaviour towards others'.

The Commission is grateful to AusAID, the Department of Foreign Affairs and Trade and the Law Council of Australia for their generous support of the Conference and in enabling the attendance of our international speakers and guests.

At the Conference the Attorney-General, Daryl Williams, launched *Human Rights Explained* an Internet-based, easy-to-read guide to human rights in Australia and the world. The guide was funded by the Attorney-General's Department and the Law Foundation and is published on the Commission's website. It explores the successes, setbacks and challenges for human rights in Australia and around the globe. Designed in a question and answer style, *Human Rights Explained* also contains a chapter-by-chapter bibliographic resource graded for the beginner student of human rights through to the more learned researcher.

The Conference was preceded by a Youth Challenge where one hundred secondary school students from all over Australia worked together to untangle and find solutions to a human rights 'hypothetical'. The one day seminar involved teachers, community representatives and students working together to examine links between human rights and responsibilities and to discover how democratic processes can solve human rights infringements. The Youth Challenge was supported by the NSW Minister for Education, the NSW Department of Education and the Federal Parliamentary Education Office.

The Commission also ran a Schools Poster Competition to celebrate the 50th Anniversary. The winning entry was by Joetta Perrett, 17, from Fairholme College in Toowoomba, Queensland.

The 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 1998 Medal and Awards presentation ceremony was held on Thursday 10 December at the conclusion of the 50th Anniversary Conference at the Dockside Conference Centre at Darling Harbour. The luncheon was attended by approximately 600 people. John Doyle (aka ABC TV celebrity Roy Slaven), acted as MC for the event.

Because the Awards coincided with the 50th anniversary of the Universal Declaration of Human Rights, the Commission felt it was an appropriate time to honour some of the many Australians, both recognised and unsung, who have made a significant contribution to the promotion of human rights in Australia. Some of the individuals honoured, or their family representatives, were present at the ceremony.

The Awards were presented by a representative of each judging panel. The Commission extends its appreciation to the judges of the Medal and Awards: Doug Anderson, Michael Antrum, Lee Burton, Michael Cordell, Michael Curtotti, Jacqueline Gillespie, Liz Jackson, Damien Keogh, Ningali Josie Lawford, Michael Lynch, Sarah McDonald, Brian Pickett, Ulrike Schuermann, Adam Spencer, Rohan Squirchuck, Greg Thompson, Helen Vatsikopoulos, Maureen Wheeler, Sue Williams, Susan Wyndham and Tom Zubycki.

Winner of the Human Rights Medal

This year 23 nominations were received for the Human Rights Medal. The judging panel consisted of Archbishop Peter Carnley (Anglican Archbishop of Perth), Carol Kendall (formerly of Link-Up) and John Foote (Chairman and Managing Director of Dupont Australia Ltd).

The Medal was presented by the Governor-General, Sir William Deane, to Vivi Germanos Koutsounadis, in recognition of her three decades of advocacy and community work across a broad range of social welfare areas. Vivi is a founding member of the Ethnic Communities Council and has also worked at both a grass roots and policy level, in the areas of Aboriginal welfare, childcare, women's issues, aged care and disability.

Winners of the Human Rights Awards

The Human Rights Awards recognise significant contributions made across a range of areas by a wide variety of people and organisations, particularly in media, the arts, and community and corporate organisations.

Arts – Literature

Archie Weller, Land of the Golden Clouds

A novel set in Australia, 3 000 years into the future, where an unlikely band of travellers from different civilisations join forces to defeat a common enemy. To do this, however, they must first overcome their own prejudices while traversing a vast continent. One of the novel's achievements is that it promotes greater harmony between individuals and groups of different race, colour and ethnic origin through an entertaining medium.

Commendation – Loose Kangaroos

Sandy Jeffs, Michael Crane, Graeme Doyle, Michael Gray Dugan and Geoffrey Keith Prince.

Arts – Non fiction**Belinda Mason, Little Brother, Little Sister**

This documentary explored why an Australian family chose to adopt an orphaned Ethiopian sister and brother and how they were all transformed by the experience. Writer/director Belinda Mason documented the unfolding story of this extraordinary family as they underwent momentous change over an eighteen month period. *Little Brother, Little Sister* is a film about the power of family ties – both those out of sight and those in full view.

Commendation – Maybe Tomorrow

Boori Pryor with Meme McDonald

Community**Australians for Native Title and the ‘Sea of Hands’ reconciliation campaign**

One hundred and twenty thousand coloured, larger than life-sized hands, pitched into the ground, became a widely recognised symbol of justice and reconciliation both in Australia and overseas over the last year. As the ‘Sea of Hands’ travelled around the country, close to two hundred thousand Australians signed a statement to support justice and recognition of native title as well as reconciliation between Indigenous and non-Indigenous Australians.

Commendations

Amnesty International Australia
Australian Quadriplegic Association
The National Children’s and Youth Law Centre

Corporate**Berri Ltd, ‘Talking Fruit’ TV commercial**

In August 1998, Berri, the Australian-owned fruit juice manufacturer, ran television advertisements with talking fruit. The advertisement called on its audience to celebrate Australia’s cultural diversity and reject intolerance. The company then followed up with newspaper advertisements calling on readers to ‘label fruit, not people’. The company was acknowledged by the judging panel for its courageous, high risk strategy that provoked a significant amount of public discussion and comment.

The Body Shop (Australia) for the ‘Thumbs Up for Reconciliation’ campaign

This in-store campaign involved over 100 000 people leaving their thumb print as a sign of their commitment to a ‘united Australia which respects this land of ours, values our Indigenous heritage and provides justice and equity for all’. The judging panel was impressed by the Body Shop’s commitment to reconciliation through its vibrant and community-oriented campaign that included a comprehensive staff training program.

Print media**Karen Kissane, The Age**

Karen is a senior writer from *The Age* who submitted a range of feature articles, opinion pieces and editorials. The articles covered a broad spectrum of human rights issues including

privatisation of prisons, protection of children in care, suicide prevention, reconciliation, the rights of gay couples, maternity leave and disability. Karen's work was acknowledged by the judging panel for its consistent quality of investigation and excellence in reporting on a diverse range of issues.

Commendations

Pamela Bone, *The Age*

Margo Kingston, *Sydney Morning Herald*

Debra Jopson, *Sydney Morning Herald*

Radio

Anne Arnold, Deaf Blindness, 'Life Matters', ABC Radio National

Carleeta Manser, an exceptional deaf blind person, was the subject of this powerful human story and unique form of radio interview. Having had sight until her early twenties, she knows sign language. In the interview, Carleeta communicated through holding the hands of her interpreter to interpret the questions put to her by Anne. She then signed her own responses and coloured the silence with expressive noises. The interview also examined the broader context of deaf blindness and gave a rare insight into that little known world.

Commendations

Anne Deveson, *The Hole in My Head Has Gone*

'The Science Show', ABC Radio

Toni Hassan, *Disability Funding Impasse*

'AM' Program, ABC Radio

Eddie McGuire and Triple M, *HIV discrimination in sport*

The Grill Team, Triple M Radio

Television

Margot O'Neill and Lisa McGregor, Death Sentence, 'Four Corners', ABC TV

This program screened on 30 March 1998. It investigated the deaths of two teenagers in the West Australian prison system in the light of a dramatic jump in the number of prison deaths in that state, especially among young white men. It uncovered a brutal system out of touch with the increasing number of unemployed and illiterate street kids flooding the jails.

Commendations

John Millard, *Camilla's Conversion*, 'Australian Story', ABC TV

John Hughes, Debra Annear and Richard Frankland, *After Mabo*

Youth

Australian Association of Young People in Care

The Australian Association of Young People in Care was established in 1993 to ensure that children and young people in care are afforded the same life opportunities as all of Australia's children. The organisation focuses on empowering young people to advocate for themselves and each other within the care system. This is to ensure their voices are heard by service providers and governments so that the latter may become more responsive to their needs.

Commendation

The CHAMPS Youth Forum

Chapter 2: Complaint Handling and Legal Services

Introduction

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. The complaints are then referred to the relevant Commissioner, who is responsible for inquiring into the complaint. The Commissioner must decide whether to decline the complaint or attempt to conciliate the complaint [if appropriate]. Complaints lodged under the Racial, Sex and Disability Discrimination Acts, which appear to have substance but cannot be conciliated can be referred to the Commission for hearing and determination. Complaints lodged under the Human Rights and Equal Opportunity Commission Act which cannot be conciliated do not proceed to hearing and determination but may, after further inquiry, be made the subject of a report to the Attorney-General for presentation to Parliament.

A determination following public hearing under the Racial, Sex and Disability Discrimination Acts, 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* remains before Parliament. This legislation will remove the Commission's hearing and determination role. Complainants whose complaints have been terminated by the Commission will have access to the Federal Court, whose judgements on complaints will be binding.

Complaints from throughout Australia are made directly to the Commission through the office in Sydney. Complaints are also made through the regional office in Tasmania and through State anti-discrimination and equal opportunity agencies with whom the Commission has a cooperative arrangement.

Continued improvement of complaint handling services

Previous annual reports have detailed the reform and development of the complaint handling practice that has occurred over the past few years. This year the Sydney office saw an increase in the number of complaints conciliated with a large majority of complaints finalised within 12 months of receipt. The average time to finalise a complaint was eight months from receipt. The Complaint Handling Section's customer satisfaction survey showed an increased satisfaction with the overall complaint process and with the courtesy and helpfulness of staff.

Service improvement also continued through the use and review of the following.

Service charter

The Complaint Handling Section's Service Charter has now been in operation for a second year. The charter provides a clear and accountable commitment to service and provides an avenue

through which users can understand the nature and standard of service they can expect, and contribute to future improvement. All complainants are provided with a copy of the Charter and respondents receive a copy if they are notified of a complaint against them.

In 1997-98 the Commission received one complaint about its services through this mechanism. During 1998-99 the Commission again received one formal complaint under the Charter.

Customer satisfaction survey

As previously reported, in December 1997, the Commission implemented a service evaluation strategy using a customer satisfaction survey as a part of its approach to service development. The survey is used to obtain feedback from complainants and respondents (or their advocates) involved in the complaint handling process. The 1998-99 results provide information which will be used to identify areas for further improvement.

Survey results for the period 1 July 1998 to 30 June 1999 indicate that:

- 59 percent of complainants and 80 percent of respondents were satisfied with the process used to deal with the complaint;
- 62 percent of complainants and 54 percent of respondents were satisfied with the timeliness of the complaint handling process;
- 83 percent of complainants and 95 percent of respondents found Commission staff to be courteous and helpful;
- 80 percent of complainants and 90 percent of respondents felt that staff provided information in a way that was easy for them to understand;
- 82 percent of complainants and 95 percent of respondents felt that forms and correspondence from the Commission were easy to understand; and
- 79 percent of complainants and 93 of respondents described complaint handling staff as unbiased.

Survey results for 1998-99 are generally similar to survey results for the previous year. However, the 1998-99 figures indicate increased satisfaction with the overall complaint handling process and the helpfulness and courtesy of staff.

Training

During 1998-99 the complaint handling section continued to develop and provide a range of training programs for internal staff and external agencies. As previously reported, the Commission has developed 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. The Commission's *Course in Statutory Investigation: Discrimination and Human Rights* was accredited by the New South Wales Vocational Education and Training Accreditation Board in May 1999. During 1998-99 the Commission also worked with an external consultant to develop and pilot a one day advanced conciliation workshop.

During the past year three training programs were held in Sydney for Commission staff and staff from state anti-discrimination and equal opportunity agencies. In March 1999 the *Course in Statutory Conciliation* was conducted at the Victorian Equal Opportunity Commission, and the *Course in Statutory Investigation* was run for the staff of the Hong Kong Equal Opportunity Commission. The *Course in Statutory Investigation* will also be conducted for staff of the Indonesian Commission of Human Rights in August and September 1999. Information about the Commission's training programs is available on the Commission's website.

Access to services

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

An outreach project was undertaken in Mount Isa during November 1998. The Sex Discrimination Commissioner, with the assistance of staff from the Complaint Handling Section, Public Affairs and the Social Justice Unit, visited Mount Isa and met with key employer, community and advocacy organisations to discuss the Commission's role and functions and to consider specific issues raised by the organisations. Following this visit on going contact with some of the organisations has been established. Complaints concerning breaches of the federal legislation were received during and following the visit.

During the year the Commission asked some key Commonwealth agencies to assist it in meeting its access to service goals. A number of agencies agreed to display and distribute the Commission's *Complaint Guide* and general commission brochure.

Where the Commission does not have a cooperative arrangement in place with a state anti-discrimination agency, Complaint Handling Section staff ensure that interstate and regional users of the service are offered the same standard of service as parties based in Sydney. During 1998-99 the Commission received 550 complaints from Queensland (467 relating to the same subject matter and same respondent), 30 complaints from the ACT and 35 complaints from the Northern Territory during the year.

The Complaint Handling Section also conducted 78 conciliation conferences outside New South Wales and the greater Sydney region during 1998-99. Of these, 17 were held in South Australia; 10 in Western Australia; 4 in the ACT; 15 in Queensland; 4 in Victoria; 1 in the Northern Territory and the remainder in regional New South Wales. Additional statistics regarding the state of origin of complaints will be available in the next reporting year.

The Complaint Handling Section's website was restructured during the 1998-99 year and now provides extensive information about the complaint process, information for parties to complaints, the *Complaint Guide*, a complaint form, the Charter of Service and information concerning professional training.

CHARMS

The Complaint Handling and Records Management System (CHARMS) developed by the Commission in 1996 has been implemented, under licence from the Commission, in the Queensland, Victoria and South Australia state anti-discrimination agencies. The New South Wales Anti-Discrimination Board has recently been granted a licence to implement the database. A National Users Group has been convened, pursuant to the licence agreement, and a number of

meetings conducted to discuss the use of the database and to develop consistent and relevant reports.

Conciliation register

Last year the Commission reported it approved the commencement of work to enhance the CHARMS database to provide for a register of conciliation outcomes. The specifications have been completed and the report is currently being tested on the Commission's internal network and will be available on the Commission's website, which already provides information about the Commission's hearing determinations, by the end of 1999. The report contains de-identified information about the outcomes in conciliated complaints under each Act administered by the Commission. This report will be a valuable resource for parties to complaints, academics and professionals practicing in the area of anti-discrimination law. It is hoped that improved public access to this information will better inform parties and their advocates about the outcomes in conciliated matters and assist them to resolve complaints satisfactorily.

International work

In early 1998 the Commission was awarded a tender to provide technical assistance to the Indonesian National Human Rights Commission. A component of the technical assistance project involved assisting the Indonesian Commission in the development of a Complaint Handling Procedures Manual. The Director of the Complaint Handling Section visited the Indonesian Commission in August and November 1998 to undertake this work. Further assistance by way of investigations training will be provided during the first half of the 1999-2000 year by senior investigation officers from the Complaint Handling Section.

The Commission conducted investigation training for the Hong Kong Equal Opportunity Commission in May 1999.

During the past twelve months the Complaint Handling Section has also been involved in providing information about the Commission's complaint handling work to a number of visiting delegations from human rights institutions and non-government organisations.

Cooperative arrangements

Tasmania

The Tasmanian Government has introduced comprehensive anti-discrimination legislation and is establishing an Office of the Anti-Discrimination Commissioner. The Commission has entered into an arrangement with Tasmania to assist it deliver services for people lodging complaints under the federal legislation. We expect that the Commission will transfer its regional office, including its staff, accommodation and equipment to Tasmania, without cost, for the use of the new State agency. The Office of the Tasmanian Anti-Discrimination Commissioner will act as a referral centre for this Commission. Tasmanians wishing to lodge a complaint under federal jurisdiction may lodge a complaint directly with this Commission through the Sydney office or through the Tasmanian Referral Centre.

Victoria

During 1998-99 the Commission undertook a review of the cooperative arrangement it had with the Victorian Equal Opportunity Commission. Following that review it was decided, in light of

the proposed legislative amendments and in the interest of consistency of practice, that new arrangements would be implemented for the handling of federal complaints. As of 1 August 1999 the Equal Opportunity Commission will act as a referral centre for the Commission. Victorians who elect to lodge a complaint under federal legislation may lodge a complaint directly with the Commission through the Sydney office or through the Victorian Equal Opportunity Commission Referral Centre.

Western Australia and South Australia

The Commission continues its current cooperative arrangements with the South Australian and Western Australian Equal Opportunity Commissions whereby the Equal Opportunity Commissions investigate and conciliate complaints lodged under the Sex Discrimination Act and the Racial Discrimination Act. Complaints from these states under the Disability Discrimination Act, the Human Rights and Equal Opportunity Commission Act, and racial hatred complaints continue to be managed through the Sydney office of the Commission.

Central office (Sydney) complaint statistics

The overall number of complaints received by the Sydney office increased significantly (66 percent) compared to the previous year. A large number of complaints received (467) were against the same respondent and related to the same subject matter. When these complaints are excluded from the overall number received there is a 12 percent increase from the previous year.

The number of complaints finalised over the year was 30 percent lower than the previous year. This result was expected given there is no backlog in the Sydney office. Backlog strategies of previous years significantly increased the outcomes for those years.

As in the past three years a greater percentage of complaints finalised for the year were conciliated. Overall, 31 percent of complaints were conciliated compared to 22 percent the previous year. All Acts saw an increase in the conciliation rate with 47 percent conciliated under the Sex Discrimination Act, 33 percent conciliated under the Disability Discrimination Act, 25 percent conciliated under the Racial Discrimination Act and 14 percent conciliated under the Human Rights and Equal Opportunity Commission Act.

Also a greater percentage of complaints finalised for the year were referred for public hearing. This year 12 percent of complaints finalised were referred for public hearing compared to 7 percent the previous year.

The percentage of complaints finalised that were declined or withdrawn for the year decreased. 38 percent of complaints were declined compared to 46 percent the previous year and 19 percent of complaints were withdrawn compared to 25 percent the previous year.

Around 50 percent of complaints are finalised within six months of receipt. The average complaint processing time from receipt to finalisation is eight months.

Chart 1: Complaints received and finalised in the Sydney office

96-97

Received	1414
Finalised	1393

97-98	
Received	855
Finalised	1410

98-99	
Received	1421
Finalised	988

Chart 2: Outcomes of complaints finalised in the Sydney office during 1998-99

Referred	12%
Conciliated	31%
Withdrawn	19%
Declined	38%

Chart 3: Outcomes of complaints finalised in the Sydney office during 1997-98

Referred	7%
Conciliated	22%
Withdrawn	25%
Declined	46%

Chart 4: Outcomes of complaints finalised in the Sydney office during 1996-97

Referred	9%
Conciliated	24%
Withdrawn	24%
Declined	43%

National complaint statistics

Total complaints

The overall number of complaints received nationally under federal legislation increased by 17 percent compared to the previous year. In 1998-99 44 percent of complaints were lodged under the Racial Discrimination Act, 29 percent under the Disability Discrimination Act, 19 percent under the Sex Discrimination Act and 8 percent under the Human Rights and Equal Opportunity Commission Act.

The number of complaints finalised over the year was 20 percent lower than the previous year.

The overall number of complaints finalised through conciliation was 27 percent. The overall conciliation rate has increased by 3 percent compared to the previous year.

Under the current cooperative arrangements, the Sydney and Tasmanian Commission offices handle complaints under all 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 (except for racial hatred complaints) and the Equal Opportunity Commission in Victoria handles complaints under the Disability Discrimination Act, Sex Discrimination Act and Racial Discrimination Act (except for racial hatred complaints).

Table 1: Complaints received by location of office

Act	Sydney office	Tas	Vic	SA	WA	Total
Disability Discrimination Act	366	25	121	-	-	512
Human Rights and Equal Opportunity Commission Act	146	2	-	-	-	148
Racial Discrimination Act	695	4	49	21	15	784
Sex Discrimination Act	214	16	46	45	15	336
Total	1421	47	216	66	30	1780

Table 2: Complaints finalised by location of office

Act	Sydney office	Tas	Vic	SA	WA	Total
Disability Discrimination Act	376	42	318	-	-	736
Human Rights and Equal Opportunity Commission Act	153	4	-	-	-	157
Racial Discrimination Act	223	6	116	44	12	401
Sex Discrimination Act	236	29	98	59	12	434
Total	988	81	532	103	24	1728

Chart 5: Complaints received by Act

Human Rights and Equal Opportunity Commission Act	8%
Racial Discrimination Act	44%
Sex Discrimination Act	19%
Disability Discrimination Act	29%

Racial Discrimination Act

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

The number of complaints received under the Act for the year increased by 113 percent compared (467 complaints were against the same respondent and related to the same subject matter) to the previous year although the number of racial hatred complaints decreased by 13 percent compared to the previous year. Employment related complaints represented the largest area of complaint under the Act (67 percent), followed by racial hatred (10 percent) and the provision of goods and services (9 percent).

The number of complaints finalised under the Act for the year decreased by 33 percent compared to the previous year. However, of those finalised 21 percent were finalised through conciliation. The conciliation rate has increased by 8 percent compared to the previous year. The withdrawal rate decreased by 20 percent.

Table 3: Complaints received and finalised by location of office

Racial Discrimination Act*	Sydney office	Tas	Vic	SA	WA	Total
Received	695	4	49	21	15	784
Finalised	223	6	116	44	12	401

*Includes complaints lodged under the racial hatred provisions.

Table 4: Outcomes of complaints finalised

Racial Discrimination Act	Sydney office	Tas	Vic	SA	WA	Total
Declined	137	3	97	25	9	271
Not unlawful	14	2	3	1	-	20
Withdrawn, does not wish to pursue, advised Commission	39	-	15	3	-	57
Withdrawn, does not wish to pursue, settled outside Commission	-	-	-	-	1	1
Withdrawn or lost contact	12	-	3	4	-	19
More than 12 months old	4	-	14	-	-	18
Vexatious, misconceived, lacking in substance or frivolous	68*	1	62	17	8	156
Conciliated	53	3	10	16	1	83
Referred for hearing	23	-	8	2	-	33
Terminated**	8	-	-	1	-	9
Transferred***	2	-	1	-	2	5
Total	223	6	116	44	12	401

* Of the 68 Sydney office complaints, 56 were declined as lacking in substance and 12 were declined as misconceived. No complaints were declined as vexatious or frivolous. 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.

Chart 6: Racial Discrimination Act outcomes of complaints finalised

Referred	9%
Conciliated	21%
Withdrawn	20%
Declined	50%

Table 5: Complaints received by area

Racial Discrimination Act	Sydney office	Tas	Vic	SA	WA	Total
Rights to equality before the law	28	-	-	3	-	31
Access to places and facilities	8	-	-	1	-	9
Land, housing, other accommodation	6	1	1	1	4	13
Provision of goods and services	48	-	27	10	1	86
Right to join trade unions	-	-	-	-	-	-
Employment	562	2	17	12	8	601
Advertisements	-	-	-	-	-	-
Education	15	-	4	-	-	19
Incitement to unlawful acts	3	-	-	-	-	3
Other	46	-	-	-	2	48
Racial hatred*	82	1	5	-	-	88
Total**	798	4	54	27	15	898

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

**One complaint may have multiple areas.

Chart 7: Racial Discrimination Act complaint areas

Provision of goods and services	9%
Racial hatred	10%
Other	14%
Employment	67%

Table 6: Complaints received by ethnicity of complainant

Racial Discrimination Act	Sydney office	Tas	Vic	SA	WA	Total
Non-English speaking background	105	3	34	-	1	143
Aboriginal and Torres Strait Islander	477	1	7	21	2	508
English speaking background	57	-	5	-	4	66
Unknown	56	-	3	-	8	67
Total	695	4	49	21	15	784

Racial hatred

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

The number of racial hatred complaints received decreased by 13 percent compared to the previous year. The percentage of racial hatred complaints that were finalised through conciliation increased by 9 percent compared to the previous year. The percentage of complaints that were withdrawn decreased by 26 percent and the referral to public hearing rate increased by 12 percent.

Table 7: Racial hatred complaints received and finalised

Received	82
Finalised	86

Table 8: Outcomes of racial hatred complaints finalised

Declined	44
Not unlawful	7
Withdrawn, does not wish to pursue, advised Commission	17
Withdrawn, does not wish to pursue, settled outside Commission	-
Withdrawn or lost contact	4
More than 12 months old	1
Vexatious, misconceived, lacking in substance or frivolous*	15
Conciliated	21
Referred for hearing	17
Terminated	4
Transferred	-
Total	86

*Of the 15 complaints in this category, 12 were declined as lacking in substance and 3 were declined as misconceived.

Chart 8: Outcomes of racial hatred complaints finalised

Referred	20%
Conciliated	26%
Withdrawn	26%
Declined	28%

Table 9: Racial hatred complaints received by area

Media	25
Disputes between neighbours	24
Personal conflict	4
Employment	5
Racist propaganda	2
Entertainment	1
Sport	-
Public debate	5
Other	16
Total	82

Chart 9: Racial hatred complaints received by area

Racist propaganda	2%
Personal conflict	5%
Public debate	6%
Other	27%
Disputes between neighbours	29%
Media	31%

Case studies

Complaint of racial vilification and assault

Two prisoners lodged complaints of racial discrimination against their custodial officers. The complainants claimed that during an altercation with the officers, derogatory comments were made about their country of origin and they were called 'black disease'. One complainant also

alleged that he was physically assaulted by one of the officers. The respondent confirmed that an altercation had occurred but claimed that an internal investigation had found no evidence to support the allegations.

The matter was resolved through the conciliation process. The complainants had been released from prison when settlement negotiations took place. The respondent agreed to provide the complainants with a written apology and financial compensation of \$ 5 500 and \$9 500.

Complaint of discrimination in selection for employment

The complainant alleged he had been discriminated against on the basis of his race and national origin during the selection process for a position as a University lecturer. The complainant stated that he was the only applicant for the position but was not considered for the position because he was of a particular race. The University denied that the selection process was discriminatory but did concede that there had been administrative problems with the process.

The matter was resolved by payment of \$7 000 compensation to the complainant.

Complaint of racial vilification and assault

The complainant claimed that he had been racially vilified when he double parked his vehicle to load some deliveries. The complainant claimed the respondent swore at him, told him to 'go back to China' and then got out of his car and punched him. The respondent did not dispute that the assault took place but alleged that he was provoked. The respondent denied that he assaulted the complainant because of his race.

The complaint was resolved through the conciliation process for a written apology and payment of \$1 500 to the complainant.

Complaint regarding journal advertisement

The complainant claimed that a medical journal and a pharmaceutical company were inciting racial hatred when the journal published an advertisement for a non-steroidal medication. The photograph accompanying the advertisement was of a Chinese swimmer with the caption 'at least some things in this world are still steroid free.' The respondent acknowledged that the advertisement could be perceived to be offensive to Chinese people and agreed to provide a written apology in two journals within two months of the date of the agreement.

Complaint of discrimination in employment

The complainant claimed that she was the subject of a racially offensive comment made by the wife of the owner of the shop in which she worked. The complainant claimed that the owner's wife instructed the supervisor to 'chop that Asian bitch's hours until we get rid of her.' The complainant claims that she resigned because of the pressure placed on her by the owners and was so distressed that she sought counselling. The complainant provided two witness statements in support of her complaint. The respondent denied that the complainant was treated less favorably because of her race and claimed that the complainant resigned because she could not do the work.

The complaint was resolved through the conciliation process. The respondent agreed to provide the complainant with a written apology and financial compensation comprising four weeks wages and reimbursement of counselling expenses.

Complaint of discrimination due to accent

The complainant claimed he was discriminated against on the basis of his national origin when he applied for a job as a telephone customer service officer. The complainant claimed that during the

telephone interview the manager said 'you have an accent and I find it difficult to understand you'. This led to a dispute between the two and the complainant claimed that he was told that he would not be given the job. The manager denied making the comment and did not recall speaking to the complainant.

After further inquiries the matter settled with the respondent providing the complainant with a written apology for any hurt feelings.

Complaint of assault and vilification

The complainant, an Aboriginal woman, claimed that she was racially vilified and assaulted by a security guard. The complainant claimed she was called 'gin' and beaten around the face. The complainant further claimed that the local police did not pursue her complaint against the security guard on the night of the assault nor later when she attended the station to make a statement.

The complaint was resolved through the conciliation process. The complainant was provided with a statement of regret and \$2 000 compensation. It was also agreed that the police would undertake cultural awareness training within six months of the date of the agreement.

Complaint of racial vilification in radio broadcast

The complainant, who is Maori, alleged that a radio announcer, when referring to a sporting team said 'all those filthy, dirty Maoris'. Shortly after the broadcast, the radio station directed the announcer to provide an on-air apology and terminated the announcer's employment. The complainant was satisfied with the action taken by the radio station.

Sex Discrimination Act

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

The number of complaints received under the Act in 1998-99 decreased by 20 percent compared to the previous year. Sexual harassment and sex discrimination remain the most common grounds of complaint. The percentage of complaints concerning pregnancy discrimination increased by 7 percent compared to the previous year. Employment related complaints (84 percent) continue to represent the dominant area of complaint under the Act.

Women represent 84 percent of complainants lodging complaints under the Act.

The number of complaints finalised under the Act decreased by 31 percent compared to the previous year. However, 41 percent of complaints were finalised through conciliation. This represents an increase of 6 percent compared to the previous year. The percentage of complaints referred for public hearing increased by 5 percent compared to the previous year and withdrawal rates decreased by 6 percent.

Table 10: Complaints received and finalised by location of office

Sex Discrimination Act	Sydney office	Tas	Vic	SA	WA	Total
Received	214	16	46	45	15	336
Finalised	236	29	98	59	12	434

Table 11: Outcomes of complaints finalised

Sex Discrimination Act	Sydney office	Tas	Vic	SA	WA	Total
Declined	71	10	49	31	7	168
Not unlawful	9	1	1	1	-	12
Withdrawn, does not wish to pursue, advised Commission	21	2	15	16	2	56
Withdrawn, does not wish to pursue, settled outside Commission	1	2	1	1	-	5
Withdrawn or lost contact	11	2	1	6	-	20
More than 12 months old	4	-	7	-	-	11
Vexatious, misconceived, lacking in substance or frivolous	25*	3	24	7	5	64
Conciliated	97	15	25	20	4	161
Referred for hearing	37	1	22	8	-	68
Terminated**	17	-	-	-	-	17
Transferred***	14	3	2	-	1	20
Total	236	29	98	59	12	434

*Of the 25 Sydney office complaints, 19 were declined as lacking in substance and 6 were declined as misconceived. No complaints were declined as either vexatious or frivolous. 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.

Chart 10: Sex Discrimination Act outcomes of complaints finalised

Referred	17%
Conciliated	41%
Withdrawn	20%
Declined	22%

Table 12: Complaints received by ground

Sex Discrimination Act	Sydney office	Tas	Vic	SA	WA	Total
Sex discrimination	151	2	29	24	4	210
Marital status	42	1	10	5	-	58
Pregnancy	92	9	1	4	1	107
Sexual harassment	174	4	12	14	10	214
Parental status, family responsibility	20	-	1	6	-	27
Total*	498	16	59	56	16	645

*One complaint may have multiple grounds.

Chart 11: Sex Discrimination Act complaints received by ground

Other	9%
Marital status	9%
Pregnancy	17%
Sex	32%
Sexual harassment	33%

Table 13: Complaints received by area

Sex Discrimination Act	Sydney office	Tas	Vic	SA	WA	Total
Employment	438	15	28	54	14	549
Goods, services and facilities	28	1	19	7	1	56
Land	2	-	4	-	-	6
Accommodation	6	-	4	-	-	10
Superannuation, insurance	-	-	-	-	-	-
Education	4	-	-	-	-	4
Clubs	4	-	-	1	-	5
Administration of federal laws and programs	16	-	-	4	-	20
Application forms etc	-	-	-	-	-	-
Trade unions, accrediting bodies	-	-	-	-	-	-
Total*	498	16	55	66	15	650

*One complaint may have multiple areas.

Chart 12: Sex Discrimination Act complaints received by area

Other	7%
Goods and services	9%
Employment	84%

Case studies

Complaint of sex discrimination in employment

The complainant claimed that her employer, a supermarket chain, discriminated against her on the basis of her sex. The complainant claimed she was given an inferior position when she applied to work as a butcher and was not given the same information and support as her male colleagues. The complainant also alleged that despite her good work performance the manager criticised her work and belittled her in front of other staff. The respondent company agreed that the manager needed to improve his communication skills but denied that the complainant was treated less favourably because of her sex.

The matter was resolved by conciliation, with the respondent agreeing to pay the complainant \$20 000 compensation.

Complaint of pregnancy discrimination in employment

The complainant claimed she was discriminated against in employment on the basis of her pregnancy by her employer. The complainant took three months leave to have her baby. During the leave period her position was filled by another typist. The complainant claimed that when she attempted to return to work, she was only offered part time work and so decided to resign. The respondent argued that the complainant was indecisive about the hours she wanted to work. The respondent denied any discrimination against the complainant on the grounds of pregnancy but agreed that the issue of her return to work could have been handled better.

The complaint was settled for payment of \$4 500 compensation and provision of a work reference.

Complaint of sexual harassment in employment

The complainant claimed that during the two years of her employment with a transport company she had been discriminated against on the basis of her sex and sexually harassed. The complainant claimed that co-workers continuously subjected her to suggestive behaviour, sexual jokes and sexual innuendo about her private life. The complainant also claimed the workplace was decorated with pornographic posters and magazines and that this caused her distress. The company stated that they had conducted an investigation into the complainant's claims and taken action to remove the pornographic material from the workplace. The company stated that they could not find any evidence to support the complainant's allegation regarding the actions of co-workers.

The complaint was resolved with payment of \$49 000 compensation to the complainant. The complainant's associated workers compensation claim was also settled through the conciliation process.

Complaint of sexual harassment in provision of accommodation

The complainant's husband was employed by the respondent as a caretaker. The complainant and her husband lived in accommodation provided by the respondent. The complainant alleged that she had been sexually harassed by her husband's supervisor and other personnel. The complainant alleged that the supervisor and other personnel commented on her breast size and her appearance. The respondent confirmed that the complainant had lodged an internal complaint about one particular employee, that this had been investigated and the complainant had received an apology from this individual. The respondent argued that they had no relationship with the complainant, as she was not an employee and that they had taken all reasonable steps to rectify the issue.

The matter was settled through conciliation with a payment of \$5 000 compensation to the complainant.

Complaint of pregnancy and sex discrimination in employment

The complainant alleged that her employer discriminated against her on the basis of her sex and pregnancy. The complainant claimed that after returning from 12 months maternity leave, her employer advised that her previous job was no longer available and offered her a job at a lower level with hours that did not suit her. The complainant also claimed that there was a general hostility within the work place towards women who returned from maternity leave. The complainant ultimately resigned from her employment.

The respondent company denied that it had discriminated against the complainant on the basis of her sex or pregnancy. The company submitted that the complainant's experiences after she returned from maternity leave resulted from personality clashes and misunderstandings. The company claimed that the ability to work flexible hours was an essential requirement of the job. The company also claimed that it had taken all possible steps to accommodate the complainant's family responsibilities by offering her other positions at the same remuneration level as her original position.

The matter was resolved through the conciliation process with payment of \$7 000 compensation to the complainant.

Complaint of sexual harassment in employment

The complainant claimed she was sexually harassed by her manager while working as a casual employee at a farm. The complainant claimed the manager would touch the female staff, tickle them and pat their buttocks. The complainant also claimed that the manager pulled down her top and commented on her breasts. The complainant resigned and sought counselling. The complainant provided witness statements from two fellow employees that supported her allegations. The respondent denied sexually harassing the complainant. The respondent stated that the complainant was not a good employee and was told to leave work after making a costly mistake.

The complaint settled with a written apology and payment of \$7 500 compensation to the complainant.

Complaint of sex discrimination and less favourable treatment by supervisor

The complainant worked for a government department. The complainant alleged that her work supervisor treated her less favourably because of her sex. The complainant claimed that her supervisor called her 'girlie', encouraged a 'boy's club' culture and made inappropriate jokes and comments about women. The complainant provided witness statements to support her claims about comments made by her supervisor. The complainant ultimately resigned. The supervisor denied that he had treated the complainant less favourably because of her sex and claimed that the complainant resigned of her own accord.

The complaint was resolved by conciliation with a payment of \$8 000 compensation to the complainant.

Complaint of dismissal because of pregnancy

The complainant alleged that she was dismissed from employment because of her pregnancy. The complainant stated that she was employed with the respondent company for a three month probationary period. The complainant claimed that during the probation period she did not receive any complaints about her work performance. Near the end of her probation period the complainant informed one of her supervisors that she was pregnant. The complainant claimed that the next day she was advised that her employment would be terminated but was not given any reason for this decision.

The respondent stated that the complainant was not terminated because of her pregnancy but because of her poor work performance and poor attendance record.

The complaint was settled by payment of \$750 compensation to the complainant.

Complaint of discrimination on the grounds of marital status

The complainant and her husband were employed as farm hands. The complainant alleged that when her husband resigned from his position, she was dismissed because she was his wife. The respondent denied that the complainant was dismissed because of her marital status. The respondent stated that the complainant and her husband were employed to do one job and when the complainant's husband resigned there was no position available for the complainant.

The complaint was settled by conciliation with the respondent agreeing to provide the complainant with a written reference and compensation of \$2 128.

Disability Discrimination Act

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

The overall number of complaints received under the Act for the year decreased by 13 percent compared to the previous year. The main areas of complaint were employment (54 percent) and provision of goods, services and facilities (25 percent).

The overall number of complaints finalised for the year increased by 15 percent compared to the previous year. Of those finalised, 26 percent were finalised through conciliation which represents a 3 percent decrease from the previous year.

*Table 14: Complaints received and finalised by location of office **

Disability Discrimination Act	Sydney office	Tas	Vic	Total
Received	366	25	121	512
Finalised	376	42	318	736

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

Table 15: Outcomes of complaints finalised

Disability Discrimination Act	Sydney office	Tas	Vic	Total
Declined	192	12	253	457
Not unlawful	34	1	1	36
Withdrawn, does not wish to pursue, advised Commission	55	4	163	222
Withdrawn, does not wish to pursue, settled outside Commission	3	-	2	5
Withdrawn or lost contact	2	2	5	9
More than 12 months old	7	-	10	17
More appropriate remedy available	18	-	-	18
Adequately dealt with already	12	1	4	17
Vexatious, misconceived, lacking in substance or frivolous	61*	4	68	133
Conciliated	116	30	37	183
Referred for hearing	44	-	22	66
Terminated**	11	-	-	11
Transferred***	13	-	6	19
Total	376	42	318	736

*Of the 61 Sydney office complaints, 55 were declined as lacking in substance and 6 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.

Chart 13: Disability Discrimination Act outcomes of complaints finalised

Referred	9%
Conciliated	26%
Withdrawn	34%
Declined	31%

*Table 16: Complainant's type of disability**

Disability Discrimination Act	Sydney office	Tas	Vic	Total
Physical disability	67	13	31	111
A mobility aid is used (walking frame or wheelchair)	29	-	15	44
Physical disfigurement	10	-	-	10
Presence in the body of organisms causing disease (HIV/AIDS)	5	-	-	5
Presence in the body of organisms causing disease (other)	7	-	4	11
Psychiatric disability	23	1	14	38
Neurological disability (epilepsy)	26	2	1	29
Intellectual disability	10	2	11	23
Learning disability	10	-	-	10
Sensory disability (hearing impaired)	19	-	2	21
Sensory disability (deaf)	10	-	-	10
Sensory disability (vision impaired)	13	1	1	15
Sensory disability (blind)	4	-	-	4
Work related injury	32	4	14	50
Medical condition (diabetes)	16	2	5	23
Other	10	-	23	33
Total	291	25	121	437

*A complainant may have multiple disabilities.

Table 17: Complaints received by area

Disability Discrimination Act	Sydney office	Tas	Vic	Total
Employment	326	12	69	407
Goods, services and facilities	145	8	36	189
Access to premises	43	5	9	57
Land	-	-	-	-
Accommodation	15	-	6	21
Incitement to unlawful acts or offences	-	-	-	-
Advertisements	-	-	-	-
Superannuation, insurance	6	-	-	6
Education	27	-	7	34
Clubs, incorporated associations	10	-	6	16
Administration of federal programs	20	-	-	20
Sport	2	-	-	2
Application forms, requests for information	1	-	-	1
Trade unions, registered organisations	1	-	-	1
Unlawful to contravene disability standards	-	-	-	-
Total*	596	25	133	754

*One complaint may have multiple areas.

Chart 14: Disability Discrimination Act complaints received by area

Education	4%
Access	8%
Other	9%
Goods and services	25%
Employment	54%

Case studies

Unwilling to re-employ person with epilepsy

The complainant who has epilepsy alleged that he had been discriminated against on the grounds of his disability. The complainant had worked for the respondent as a gardener for a number of years. The complainant resigned from this employment to take up another position. Several months later the complainant re-applied for a position with the respondent but his application was unsuccessful as the respondent was of the view that the complainant's work performance and attendance had been unsatisfactory. The respondent stated that the complainant's epilepsy had been the cause of a number of work accidents. The complainant provided medical evidence to demonstrate that his epilepsy was under control.

The complaint was resolved by conciliation. The respondent agreed to provide the complainant with an apology, remove certain documents from the complainant's personal file and assist the complainant secure casual employment. The respondent also paid the complainant financial compensation of \$5 500.

Access to restaurants

This complainant alleged discrimination against her and her daughter by a chain of restaurants. The complainant claimed that her daughter, who uses a wheelchair, did not have equal access to local restaurants and facilities within the restaurants.

In conciliation the respondent agreed to make modifications to the local restaurants to ensure access for the complainant's daughter. The respondent also agreed to lodge an action plan with the Commission. The action plan provides for an audit of all restaurants throughout Australia, action to modify restaurants to accommodate people with disabilities and disability awareness training for staff.

Complaint of discrimination on the grounds of imputed disability

The complainant alleged that she had been discriminated against on the basis of an imputed disability. The complainant claimed that her employer told her that a person purporting to be a doctor had telephoned him and said that the complainant had a contagious sexually transmitted disease and should not be working near customers. The complainant stated that she was devastated by the imputation that she could be at risk of infecting customers and left work immediately. The respondent confirmed that the telephone call had been received but offered no explanation as to why the credentials of the caller had not been checked or why the message was passed to the complainant.

The complaint was settled with the provision of an apology, a reference and payment of \$3 000 compensation.

Complaint of discrimination in the provision of goods and services

The complainant has a speech impediment resulting from neurological damage. The complainant alleged that three attendants at a retail store laughed at her, mimicked her and made gestures to each other when she approached them for assistance. The complainant stated that she was humiliated, embarrassed and severely distressed as this was her first outing after acquiring the speech impediment. The respondent interviewed the relevant staff, each of whom denied the allegations.

The complaint was settled with payment of \$2 000 compensation to the complainant.

Provision of government documents in alternative format

The complainant is unable to read due to a childhood learning disability. The complainant claimed that publicly available reports from a government department were not provided to him in audio tape format. He stated that the department advised it would provide the materials in written format and that he would then be obliged to pay to have them taped. After preliminary investigation by the Commission, the department agreed that its policy regarding the provision of materials in alternative formats had been ignored by the particular section the complainant had contacted. The department immediately provided the complainant with audio tapes of the requested reports. The department also assured the complainant that its policy concerning the provision of publications in a range of formats would be implemented in the future.

Adaptive equipment in employment

The complainant has a severe vision impairment and requires adaptive computer equipment. The complainant claimed he applied for a position with a private company and at the interview requested that, if appointed, he be able to use his adaptive technology. The complainant stated he was advised that he was the successful applicant for the job, but on the following day was told he could not be employed as there was a risk that the adaptive computer equipment might corrupt the company's computer network.

The matter was resolved by conciliation. The complainant was provided with an apology and paid \$6 000 compensation.

Access to financial institution

The complainant has a physical disability and uses a wheelchair. The complainant alleged that she could not enter the local branch of a financial institution. She claimed that she was required to wait outside on the footpath while her associate sought assistance from staff. She stated that while waiting, she felt embarrassed and feared for her safety. Further, she claimed that when the manager came out he ignored her and addressed his comments to her associate. The complainant complained that people walking along the footpath stopped to stare while she was speaking to the manager and this caused her embarrassment and compromised the privacy of her business affairs.

The matter was resolved by conciliation with the respondent agreeing to carry out modifications to provide a low service counter in an accessible position. The respondent also agreed to pay the complainant \$3 000 compensation and engage a disability organisation to provide disability awareness training for staff.

Refusal of membership

The complaint was lodged by a support worker on behalf of the complainant. The complainant has an intellectual disability. The support worker stated that she accompanied the complainant to a local video store to assist her become a member. The support worker alleged that the manager of the store refused to give the complainant membership as he was concerned that the complainant might lose the videos or forget to bring them back.

The matter was resolved by conciliation. The manager provided the complainant with a verbal apology and agreed to arrange disability awareness training for staff. The respondent also offered the complainant membership of the video store but the complainant refused this offer, as by this time she had already become a member of another store.

Refusal of insurance claim

The complainant has a depressive disorder and has been unable to return to work. The complainant stated that a claim on her mortgage repayment insurance policy had been refused because the policy in force at the onset of her illness specifically excluded mental, nervous, psychiatric or anxiety disorders. The complainant stated that the insurer altered the policy in late 1997 to include these disorders but the new policy does not cover any condition pre-existing at the time of its introduction. The complainant claimed that as she has been a continuous policy holder she should be covered by the terms of the current policy.

This matter was resolved by conciliation with the respondent agreeing to pay the complainant the amount she would have been paid had her initial application been approved.

Human Rights and Equal Opportunity Commission Act

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

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

- International Covenant on Civil and Political Rights;
- Declaration on the Rights of the Child;
- Declaration on the Rights of Mentally Retarded Persons;
- Declaration on the Rights of Disabled Persons;

- Convention on the Rights of the Child; and
- Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.

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

If a complaint of alleged discrimination or alleged breach of a human right is neither conciliated nor declined the Commission can conduct an inquiry. If the Commission is satisfied that the subject matter of the complaint constitutes discrimination in employment or is a breach of a human right, it reports its findings to the Attorney-General for tabling in Parliament.

A similar number of complaints were received under the Act to the previous year.

Alleged breaches of the International Covenant on Civil and Political Rights are the highest single category of complaint. The percentage of complaints received concerning religion increased by 2 percent, the percentage of complaints concerning age increased by 4 percent and there was a 5 percent increase in the percentage of complaints concerning trade union activity. A significant proportion of complaints (20 percent) received under the Act do not relate to employment or acts or practices of the Commonwealth and therefore the Commission does not have the authority to inquire.

In relation to non-employment complaints, complaints from prisoners are the highest single category. The Commission may only inquire into complaints from prisoners if they are complaints from persons imprisoned under federal laws. Complaints regarding immigration are the next largest group of non-employment complaints.

The number of complaints finalised has decreased by 43 percent compared to the previous year. However, the percentage of complaints finalised by conciliation increased by 2 percent. The percentage of complaints withdrawn and declined has decreased in comparison with 1997-98.

Table 18: Complaints received and finalised by location of office

Human Rights and Equal Opportunity Commission Act	Sydney office	Tas	Total
Received	146	2	148
Finalised	153	4	157

Table 19: Outcomes of complaints finalised

Human Rights and Equal Opportunity Commission Act	Sydney office	Tas	Total
Declined	123	3	126
Does not constitute discrimination	9	-	9
Human rights breach, not inconsistent or contrary to any human right	40	-	40
Withdrawn, does not wish to pursue, advised Commission	23	-	23
Withdrawn, does not wish to pursue, settled outside Commission	-	-	-
Withdrawn or lost contact	8	1	9
More than 12 months old	3	-	3
Vexatious, frivolous, lacking in substance or misconceived	24*	2	26
More appropriate remedy available	8	-	8
Adequately dealt with	8	-	8
Conciliated	21	1	22
Referred for reporting**	7	-	7
Terminated	2	-	2
Transferred	-	-	-
Total	153	4	157

*Of the 24 Sydney office complaints, 22 were declined as lacking in substance and 2 were declined as misconceived. No complaints were declined as vexatious or frivolous. Breakdowns of data from other offices and state agencies 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.

Chart 15: Human Rights and Equal Opportunity Commission Act outcomes of complaints finalised

Referred	4%
Conciliated	14%
Withdrawn	21%
Declined	61%

Table 20: Complaints received by ground

Human Rights and Equal Opportunity Commission Act	Sydney office	Tas	Total
Race (ILO 111)	4	-	4
Colour (ILO 111)	4	-	4
Sex (ILO 111)	-	-	-
Religion (ILO 111)	18	-	18
Political opinion (ILO 111)	4	1	5
National extraction (ILO 111)	2	-	2
Social origin (ILO 111)	10	-	10
Age (ILO 111)	48	-	48
Medical record (ILO 111)	4	-	4
Criminal record (ILO 111)	26	-	26
Impairment (including HIV/AIDS status) (ILO 111)	2	-	2
Marital status (ILO 111)	-	-	-
Disability (ILO 111)	-	-	-
Nationality (ILO 111)	-	-	-
Sexual preference (ILO 111)	10	-	10
Trade union activity (ILO 111)	36	2	38
International Covenant on Civil and Political Rights	90	-	90
Declaration on the Rights of the Child	-	-	-
Declaration on the Rights of Mentally Retarded Persons	-	-	-
Declaration on the Rights of Disabled Persons	-	-	-
Convention on the Rights of the Child	10	-	10
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	4	-	4
Not a ground within jurisdiction	6	1	7
Not a human right as defined by the Act	34	-	34
Total*	312	4	316

*One complaint may have multiple grounds.

Chart 16: Human Rights and Equal Opportunity Commission Act complaints received by ground

Sexual preference	3%
Convention on the Rights of the Child	3%
Religion	6%
Criminal record	8%
Trade union activity	12%
Age	15%
Other	25%
ICCPR	28%

Table 21: Complaints received by area

Human Rights and Equal Opportunity Commission Act	Sydney office	Tas	Total
Acts or practices of the Commonwealth	48	-	48
Employment	68	2	70
Not act or practice of the Commonwealth (not employment cases)	30	-	30
Total	146	2	148

Chart 17: Human Rights and Equal Opportunity Commission Act complaints received by area

Other	20%
Commonwealth	33%
Employment	47%

Table 22: Non-employment complaints received

Human Rights and Equal Opportunity Commission Act	Sydney office
Prisons, prisoner	20
Religious institutions	1
Family court matters	-
Other law court matters	2
Immigration	19
Law enforcement agency	5
State agency	1
Other service provider (private sector)	4
Local government	4
Education systems	3
Welfare systems	3
Health systems	2
Other	35
Total*	99

*One complaint may have multiple areas.

Chart 18: Human Rights and Equal Opportunity Commission Act non-employment complaints received

Law enforcement agency	5%
Immigration	19%
Prisons	20%
Other	56%

Table 22 and **Chart 18** show the nature of complaints lodged at Sydney office alleging breaches of human rights under the various international instruments, excluding the ILO 111 Convention dealing with discrimination in employment.

Case studies

Complaint of discrimination on the ground of criminal record

The complainant claimed that he had been discriminated against because of his criminal record. The complainant applied for a position as a driver with a government organisation. The complainant was refused employment because he had a driving offence in 1982 and again in 1984. The respondent claimed that an inherent requirement of the job is a satisfactory driving record. The respondent claimed that the complainant was refused employment because he did not meet the inherent requirements of the position, not because of his criminal record.

The matter settled through conciliation with the respondent agreeing to review its policy in relation to the spent conviction scheme and reconsider the complainant's application.

Complaint of discrimination on grounds of sexual preference

Two employees made complaints alleging they had been discriminated against on the basis of their sexual preference in employment. The complainants claimed that over a number of years they had been subjected to comments and pictures that degrade gay people and people with HIV/AIDs. They also alleged that their personal property had been tampered with. In relation to the first complainant, the respondent agreed that some offensive remarks relating to his sexual preference had been made. However the respondent contended that the complainant provoked the behaviour and also harassed other staff. In relation to the second complainant, the employer was of the view that there was insufficient evidence to indicate that the alleged events occurred.

Both complaints were resolved through the conciliation process with payments of \$25 000 and \$13 000 to the complainants.

Complaint of discrimination in employment

The complainant claimed that his employer discriminated against him on the basis of sexual preference and imputed disability. The complainant claims that when he was on sick leave a co-worker told other employees that he had AIDS. The complainant claimed that when he returned to work he was ridiculed and ostracised because of his sexual preference.

The employer agreed that an inappropriate comment about the complainant's sexuality had been made but claimed that this comment was made in private. The company denied that the complainant was ridiculed and ostracised. The complaint was resolved by conciliation, with the provision of a written apology, payment of \$7 500 compensation and negotiation of a redundancy package.

Employment allowances for same sex partners

The complainant worked in a remote office of a government department. The complainant claimed that her application for allowances for her partner were refused because the department's allowance policy did not recognize a partner of the same sex as a dependant spouse.

The complaint was settled through conciliation. The department agreed to review its policy and change the definition of spouse to include same sex partners. The complainant also received a payment of \$2 000 compensation.

Complaint of discrimination on the grounds of trade union activity

The complainant was a union delegate in a large organisation. He alleged that management took his advocacy of industrial issues into account when assessing his performance and, as a result, downgraded his appraisal. The employer denied that the complainant's union activities were a factor in assessment of his performance.

The matter settled by conciliation. The respondent agreed to provide the complainant with a written apology, to review its performance appraisal procedures and pay financial compensation to the complainant.

Complaint of age discrimination in employment

The complainant who was employed with a large private organisation decided to work past the normal retiring age. Subsequently his position was made redundant. Under the terms of his employment he was no longer eligible for a redundancy package once he passed the normal retiring age.

In conciliation, the employer agreed to pay the complainant the redundancy package.

Complaint of religious discrimination

The complainant worked in the hospitality industry. The complainant claimed that on a day of special religious significance, she came to work wearing religious markings on her face. The complainant alleged that because of this she was repeatedly chastised by her manager and went home for the rest of the day.

In conciliation, the employer provided the complainant with a written apology and agreed to provide training to all managers and staff on accommodating religious practices in the workplace.

Age discrimination in application for employment

The complainant stated that he went to a Commonwealth employment agency to inquire about an advertised traineeship. The complainant alleged that an employee of the agency informed him that he could not apply for the position, as the employer did not want to employ anyone over the age of 25. Under the terms of service agreements, members of the Job Network are bound by all relevant Commonwealth laws and programs, including those in the Human Rights and Equal Opportunity Commission Act and other federal anti-discrimination legislation.

The employment agency admitted that its staff member had made a mistake and provided an apology to the complainant. The employment agency also advised that it had counselled the staff member. The complainant was satisfied with the response of the employment agency.

Complaint by prisoner

The complainant is a federal prisoner in protective custody in a state prison. The complainant alleged that his human rights were being infringed in that prisoners in protective custody were kept in maximum security and treated in the same manner as maximum security prisoners. The complainant claimed that prisoners in protective custody were made to wear the same uniforms as maximum security prisoners and subjected to strip searches whenever going to or returning from medical appointments or seeing visitors. The complainant alleged that prisoners in protective custody were not able to participate in work, educational programs or other rehabilitation schemes and did not have access to the prison library.

The Commission conducted a site visit of the prison and after a meeting with the complainant and various officers of the Department, the complaint was conciliated. The resolution of the matter involved various changes to the way prisoners in protective custody, and the complainant in particular, are treated. The terms of resolution included agreement that prisoners in protective custody, not classified as maximum security, are to be searched in accordance with rules for other mainstream prisoners of their classification, agreement that the department would explore options for work for prisoners in protective custody and agreement that prisoners in protective custody may access the library once a week. The terms of resolution also included establishment of procedures for improved communication between prison management and staff and guidelines for the exercise of discretion in relation to granting additional benefits to prisoners.

Complaint information

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's Sydney and Tasmanian offices.

In 1998-99 the Commission's offices received 8 965 telephone enquiries. Where it appears that a complaint can be made, callers are sent information about the legislation, the complaint handling process and a complaint form. Where it appears that the Commission cannot assist, every effort is made to refer the caller to another appropriate avenue of redress. In 1998-99 the Commission also responded to 171 in person enquiries and 544 written enquiries. Further information about written enquiries is provided below. For the coming year enquirers may also seek information about the complaint process by e-mailing complaintsinfo@hreoc.gov.au.

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 23: Written enquiries received by location of office

	Sydney office	Tas	Total
Written enquiries	491	53	544

Table 24: Issues raised by written enquiries received

Issue	Sydney office	Tas	Total
Race	44	5	49
Race (racial hatred)	19	-	19
Race (social origin)	1	1	2
Sex	6	1	7
Sexual harassment	4	2	6
Sexual preference, transgender, homosexuality, lawful sexual activity	9	-	9
Sex (marital status, family responsibilities or status, parental status)	7	-	7
Sex (pregnancy)	-	1	1
Disability (impairment)	35	7	42
Disability (medical condition, record, HIV/AIDS)	6	3	9
Disability (mental health)	24	2	26
Disability (other medical issues for example maltreatment)	16	1	17
Age	14	1	15
Privacy, data protection	3	2	5
Neighbourhood issues	3	2	5
Personality conflicts, favouritism	3	-	3
Victimisation	5	1	6
Union, industrial activity	3	1	4
Unfair dismissal, other industrial issues	25	-	25
Advertising	2	-	2
Religion, religious organisations	10	2	12
Criminal record, conviction	9	-	9
Prisons, prisoners	39	-	39
Police	16	2	18
Court (family matters)	23	-	23
Court (other law matters)	23	1	24
Immigration	30	2	32
Political opinion	2	-	2
Local government (administration)	2	-	2
State government (administration)	12	2	14
Federal government (administration)	15	1	16
International Covenant on Civil and Political Rights	4	1	5
Declaration on the Rights of the Child	-	-	-
Declaration on the Rights of Disabled Persons	-	-	-
Convention on the Rights of the Child	2	2	4
Other human, civil rights	33	5	38
Human rights, other equal opportunity issues	13	5	18
Career status	-	-	-
Other	57	-	57
Total*	519	53	572

*Enquiries may have multiple issues.

Table 25: Written enquiries received by area

Area	Sydney office	Tas	Total
Employment or business	95	12	107
Education	17	4	21
Goods, services and facilities	74	8	82
Access to premises, place, facilities or vehicles	6	1	7
Land, housing or accommodation	10	2	12
Superannuation and insurance	2	-	2
Finance and credit	-	2	2
Equality before the law	-	1	1
Incitement to unlawful	-	-	-
Acts or practices of the Commonwealth	11	1	12
Federal laws and programs	44	4	48
State laws and programs	59	1	60
Local government	4	1	5
Law enforcement agency	15	1	16
Clubs, incorporated associations	5	-	5
Sport	-	2	2
Trade unions, accrediting bodies, industrial organisations	-	-	-
Advertisements	2	-	2
Application forms, discriminatory requests for information or questions	-	1	1
Racial hatred (neighbourhood)	5	2	7
Racial hatred (personal conflict)	-	-	-
Racial hatred (public debate)	1	-	1
Racial hatred (media)	5	-	5
Racial hatred (entertainment)	1	-	1
Racial hatred (racist propaganda)	3	-	3
Immigration	17	2	19
Religious institutions	1	-	1
Family court matters	14	1	15
Court matters (other)	35	1	36
Welfare	2	6	8
Other	91	-	91
Total*	519	53	572

*Enquiries may have multiple issues.

Legal Services

The primary responsibilities of the Legal Section are to:

- schedule and facilitate the Commission's Inquiry into irreconcilable complaints of unlawful discrimination under the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*, and for its legal officers to provide associate and/or counsel assistance to Hearing Commissioners;
- assist the President (or 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 Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act;
- assist the Human Rights Commissioner in the preparation of notices and reports under the *Human Rights and Equal Opportunity Commission Act 1986*;
- act as Counsel or instructing solicitor for the Commission in Commission interventions in legal proceedings and in external litigation, such as applications for review of Commission decisions under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth);
- 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* (Cwlth) and the *Human Rights Legislation Amendment Bill No.2 1998* (Cwlth);
- respond to applications under the *Freedom of Information Act 1982* (Cwlth) on behalf of the Commission;
- remove the determination of complaints from the Commission to the Federal Court;
- transfer all complaint handling powers from the Race, Sex and Disability Discrimination Commissioners to the President;
- remove the internal Presidential review function from the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act, and provide that where a complaint is declined by the President, the complainant will be able to go directly to the Federal Court;
- remove the function of the President or Commission to grant interim determinations and vest that function in the Federal Court; and
- create the role of *amicus curiae* for all Commissioners in proceedings under the amending legislation that are before the Federal Court.

Amending legislation

The *Human Rights Legislation Amendment Bill 1998* (Cwlth) was introduced into Parliament and passed by the House of Representatives on 11 March 1999. As stated in the last Annual Report, the Amendment Bill had been originally introduced into Parliament on 5 December 1996. As the legislation had not been enacted prior to the Federal election in October 1998, the

Amendment Bill had to be reintroduced following the Federal election and is currently before the Senate.

The *Human Rights Legislation Amendment Bill No.2 1998* (Cwlth) was introduced into the House of Representatives on 17 February 1999 and is currently being debated. 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

The Commissioner responsible refers for public hearing by the Commission complaints which are unable to be settled by conciliation, in accordance with the requirements of the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act.

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

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

Hearing Commissioners

In the 1998–99 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 1998-99 were:

New South Wales

Hon. John Brownie QC
The Hon. Elizabeth Evatt, AC
Mr Graeme Innes, AM
The Hon. Dennis Mahoney QC
The Hon. John Nader QC

Victoria

Mr Anthony Cavanough QC
Mr Richard Tracey QC

Queensland

The Hon. William Carter QC

Tasmania

The Hon. Robert Nettlefold

Western Australia

Mr Andrew Beech
Mr Peter W. Johnston
Mr Peter Martino
Ms Elizabeth Vardon
Sir Ronald Wilson

South Australia

Ms Kathleen McEvoy

Australian Capital Territory

Professor Hilary Charlesworth

Referrals to public hearings

During 1997–98, 169 complaints were referred for hearing and 198 were finalised. During 1998–99, 182 complaints were referred for hearing and 108 complaints that had been referred to hearing were finalised (including Human Rights and Equal Opportunity Commission Act matters).

Of the hearing matters finalised during 1998–99:

- 73 were conciliated prior to or during hearing (97 in 1997–98);
- 15 were substantiated after a hearing and formal decision (31 in 1997–98);
- 21 were dismissed after a hearing and formal decision (39 in 1997–98); and
- 3 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 (31 in 1997–98).

The following summaries are of two matters that were determined at hearing in 1998–99.

Sally Garity v Commonwealth Bank of Australia
Disability Discrimination Act 1992
Commissioner Robert Nettlefold
Date of decision: 25 January 1999

The complainant is an insulin dependent diabetic. This condition has caused serious deterioration to her eyesight as well as causing other complications, such as kidney failure. Ms Garity commenced work as a telephonist with the Commonwealth Bank in December 1989. She complained that, during the course of her employment, until she left the Bank on sick leave in February 1996, she was not adequately trained, she did not have proper access to staff meetings and circulars, she was not given promotional opportunities, her performance reviews were inadequately conducted and she was excluded from work-related activities including social functions. She complained that inadequate accommodation (such as a roster for breaks) was made to assist her with symptoms of her condition. She complained that she was not given assistance to deal with fire and emergency drills and was left at her desk without adequate instruction. In addition, Ms Garity complained of a poor work environment, including inadequate lighting and dangerous layout.

Commissioner Nettlefold found that Ms Garity had been treated less favourably on the ground of her disability in respect of the above allegations. In the Commissioner's view 'the principle of reasonable accommodation should be regarded as a central principle of disability discrimination law. The proper construction of the [Disability Discrimination] Act shows that the principle of reasonable accommodation is contained within it.' In particular, the Commissioner noted that the use of the word 'favourably' in section 5(1) of the Disability Discrimination Act connotes giving aid or help. Thus, a measure of the help given which ignores 'disparate capacities, needs and circumstances' is not sufficient.

Commissioner Nettlefold awarded Ms Garity the sum of \$153 500 for pain and suffering, the effect on her physical condition, loss of opportunity, loss of earning capacity and special damages. The Commissioner noted that Ms Garity had suffered 'really serious injury and loss'.

Cedric Jacobs v David Fardig
Racial Discrimination Act 1975
Commissioner Graeme Innes
Date of decision: 27 April 1999

Mr Jacobs, a person of Aboriginal descent, was a Councillor of the Council of the Shire of Swan, north of Perth, WA. He lodged a complaint alleging that he had been vilified on the ground of his race by a fellow Councillor, Mr Fardig. Mr Jacobs alleged that Mr Fardig had made a remark during a Strategy and Planning Workshop for Councillors and senior management of the Council. The remark was made in relation to a group of Aboriginal people, the Swan Nyungar community, who came within the Council's jurisdiction. When strategy and planning issues arose in relation to the Aboriginal group, Mr Fardig commented 'we shoot them'. The complaint was brought under section 18C of the Racial Discrimination Act which makes it unlawful for a person to do an act, 'otherwise than in private', that is likely to offend a group of people because of their race.

Commissioner Innes found that the comment was offensive and was made because of the race of the members of the Swan Nyungar community. Commissioner Innes also found that the remark made by the Councillor was unlawful and that the complaint was substantiated.

In interpreting the phrase 'otherwise than in private' contained in section 18C of the Racial Discrimination Act, Commissioner Innes proceeded to read the Racial Discrimination Act as a whole in an attempt to interpret the words and phrases contained in the Racial Discrimination Act in a consistent manner. Commissioner Innes referred to section 9 of the Racial Discrimination Act which makes racial discrimination unlawful in the political, economic, social, cultural or any other field of public life. In this context, Commissioner Innes stated that public life included employment situations as well as participation in government on any level. The meeting in this case took place after business hours, attendance was voluntary and members of the public were not in attendance. However, the meeting related to the work of the Council, and Councillors and staff members were present. It was held in Council chambers and the matters being discussed pertained to the future of the Council. Councillors attended in their capacity as members of the Council and staff members attended in their capacity as employees of the Council. Commissioner Innes found that the meeting fell within the broad definition of 'public life' in section 9 of the Racial Discrimination Act.

Commissioner Innes proceeded to find that if the meeting occurred in the sphere of public life, the meeting occurred 'otherwise than in private'. In support of this interpretation, Commissioner Innes referred to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination which requires parties to take steps to eliminate incitement to acts of discrimination in areas including employment and conduct of public affairs.

Commissioner Innes ordered Mr Fardig to pay Mr Jacobs financial compensation of \$1 000.

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

Year	1993–94	1994–95	1995–96	1996–97	1997–98	1998–99
Total	52	120	231	256	169	182

Table 27: Complaints referred for public hearing during 1998–99 (with comparison to 1997–98) by location and Act

Office	Total No of referrals		HREOCA		RDA		SDA		DDA	
	97–98	98–99	97–98	98–99	97–98	98–99	97–98	98–99	97–98	98–99
NSW	85	104	4	5	23	25	26	35	32	39
VIC	37	60	-	-	5	2	12	32	20	26
SA	33	12	-	-	9	1	22	10	2	1
WA	3	1	-	-	2	1	1	-	-	-
NT	2	-	-	-	1	-	1	-	-	-
TAS	9	5	-	-	-	-	5	3	4	2
Total	169	182	4	5	40	29	67	80	58	68

Table 27 reflects that during the 1997–98 year, the Commission’s regional offices in the ACT and the Northern Territory were closed down, and in 1998–99 complaints from these Territories were dealt with and referred for hearing by the Sydney office of the Commission.

Decline decisions reviewed by the President

Under the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act, 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 so requests. The increase in the number of complaints to the Commission has not been translated into an increase in the number of complainants requesting a Presidential review of a Commissioner’s decision. This may well be the result of more complainants being satisfied with the decision of the Commissioner. In 1997–98, 44 percent of eligible complainants sought a Presidential review whereas in 1998–99, 41 percent of eligible complainants did. 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 23 (19 percent) out of the 120 review matters which were finalised in 1998–99. The extent of this work can be seen in **Table 28**.

Table 28: Trends in numbers of Commissioner’s decline decisions which were referred for review by the President

Year	1993–94	1994–95	1995–96	1996–97	1997–98	1998–99
Total	11	125	205	245	225	227

Interim determinations

Complainants may apply to the Commission (or the President if it is expedient to do so), for an interim determination to prevent a party to a complaint from taking action adverse to a complainant or altering the status quo before the complaint is investigated and determined. The rate of applications for interim determination declined slightly in 1996–97 and 1997–98. The period of 1998–99 has seen the most number of applications for interim determinations since the period 1995–96. This may be explained by more complainants being made aware of the existence of this Commission function either through advocacy services or the Commission’s inquiry facilities.

Virtually all of the applications for interim determination 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. **Table 29** reflects the number of applications over the past few years:

Table 29: 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	1998–99
Total	3	61	87	47	37	51

In 1998–99, of the fifty-one requests for interim determination that were received by the Commission, two of the applications were granted.

Appearance as amicus curiae in coronial inquest

During the period 1998–99, the Commission was granted leave to appear as an *amicus curiae* (or friend of the Court) in the coronial inquest into the death in custody of Andrew Ross, a 16-year-old Indigenous youth.

The facts preceding Mr Ross’s death were that he was placed in custody for protective purposes after he was picked up by the police in Alice Springs in March 1999 for being intoxicated. While Mr Ross was in custody, a search revealed that there were outstanding warrants against him and he was placed in the female section of the Watch-house (given that all detainees in the male section of the Watch-house were adults). A video tape of Mr Ross in the Watch-house revealed that shortly after being locked up, he removed his jumper and hanged himself. He remained in this position for twenty-five minutes unattended and unobserved.

The Commission made submissions to the Coroner as to the lack of protocols in place for dealing with intoxicated juveniles in detention as well as procedures and protocols relating to Indigenous persons in custody (especially given that it was culturally insensitive for an initiated Indigenous man to be placed in the female section of the Watch-house). The Commission also submitted that many of the recommendations of the Royal Commission into Deaths in Custody were not followed in the detention of Mr Ross.

In summary, the Coroner’s findings were:

- that options for managing intoxicated juveniles (other than placing them in detention), such as social and youth-oriented service groups, either did not provide services to intoxicated juveniles or were considered by the police not to provide services of a high standard. The Coroner was particularly critical of a facility (largely funded by the Northern Territory Government), the Drug and Alcohol Services Associations Self Centre, that accepts intoxicated persons but not juveniles;
- that the only option the police believed was available to them in relation to Mr Ross was to try to contact his parents, and once this was unsuccessful, to keep him at the Watch-house;
- that the police should have waited for six hours and then executed the warrant as by this time it was likely that Mr Ross would have been more sober and able to understand what was going on. The Coroner was also of the view that the action of executing the warrant on Mr Ross may have contributed to his state of mind;
- Given that the Watch-house was very busy and Mr Ross was somewhat abusive and aggressive, he was left in the cage of the police vehicle in the laneway of the Watch-house for thirty-five minutes. The Coroner commented that the delay in giving Mr Ross some priority was unfortunate. It was humiliating and did not display sufficient regard for his dignity;

- that the police did not consider Mr Ross to be ‘at risk’ according to the usual indicators used by police. The Coroner was of the view that a young Aboriginal man in a heavily intoxicated state, who was facing a return to the Supreme Court, might be considered to be inherently at risk within the custody system;
- that the cell in which Mr Ross was placed had an obvious hanging point being the bars on the door. The Coroner noted that the hanging point was only removed after Mr Ross’s death and that was ten years after the Royal Commission into Aboriginal Deaths in Custody containing recommendations relating to hanging points;
- that no physical checks of Mr Ross’s cell occurred for a period of forty minutes nor did the police view the monitors that showed a constant view of the cell. The Coroner was of the view that this indicated a need for an independent audit of the safety features of the Watchhouse at Alice Springs; and
- that generally, the police general orders and station guidelines were not inadequate to ensure a proper standard of care. Indeed, the systems in place were generally adequate although the risk assessment system could be improved. The Coroner was of the view, however, that as a general proposition the actions of the police officers on the evening of the death could not be criticised.

Other external litigation

In addition to intervening in certain court matters, the Commission is also involved as a party in some judicial review legal proceedings. These legal proceedings occur when the Commission is named as a respondent in matters where an application has been made to the Federal Court seeking judicial review of a Commission or Commissioner’s decision – these reviews can be sought pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth).

In accordance with established legal principle, the Commission – as decision maker – usually submits to the jurisdiction of the Court in these matters, leaving the substantive parties (that is, the complainant and respondent to the complaint that was before the Commission) to present the matter to the Court. In a very small number of matters, submission to the jurisdiction of the Court is not practicable – in which case the Commission has appeared but has, in these matters, attempted to assist the Court rather than act in a way that would appear contentious or adversarial. The numbers of applications under the *Administrative Decisions (Judicial Review) Act* in relation to a Commission determination (or the President or his or her delegate’s review) are shown in **Table 30** for the years 1994–99.

The significant reduction in the number of *Administrative Decisions (Judicial Review) Act* applications in the last financial year may be due to parties being more satisfied with the decisions and reasoning applied by the Commission. They may therefore be less likely to challenge the decision in the Federal Court. It is unclear what, if any, contribution to this increase may lie in the fact that there is a filing fee for such applications and that the Federal Court has the discretion to order an unsuccessful party to pay the costs of the other side. It should be noted, however, that the Commission has only sought for its costs to be paid in one of the applications that was before the Federal Court in the period 1998–99.

Table 30: Trends in numbers of Administrative Decisions (Judicial Review) Act applications where the Commission is named as respondent

Year	1994–95	1995–96	1996–97	1997–98	1998–99
Total	9	9	11	35	19

Chapter 3: Aboriginal and Torres Strait Islander Social Justice

Monitoring and reporting

1998 Social Justice Report

The Acting Aboriginal and Torres Strait Islander Social Justice Commissioner presented the sixth *Social Justice Report* regarding the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples of Australia, pursuant to section 46C of the Human Rights and Equal Opportunity Commission Act. The report focuses on the political, media and public responses to the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families in the twelve months since its release in May 1997.

The bulk of the National Inquiry's recommendations are directed to government. The report monitors the various government responses to these recommendations and evaluates the adequacy of this response against human rights standards. A further response which is monitored in the report is that of the non-Indigenous community which, through letters to the editor and other public fora, registered their views on the Inquiry's findings. Like the political response, the community response was diverse. The prevalent themes running through these responses were the Australian community's contemporary responsibility for the stolen generations and the significance of an apology in the healing process.

Finally, an important part of the report outlines the effect of the Inquiry upon Indigenous Australians. This was informed by an Indigenous perspective and was based on community consultation by staff of the Social Justice Unit.

1998 Native Title Report

The Acting Aboriginal and Torres Strait Islander Social Justice Commissioner presented the fifth *Native Title Report* pursuant to section 209 of the Native Title Act. The focus of the report is the amendments to the Native Title Act which were passed on 8 July 1998. The report measures the amendments against the international standards of equality and non-discrimination contained in the International Covenant on Civil and Political Rights, and the International Covenant on the Elimination of All Forms of Racial Discrimination. Particular attention is paid to the notion of equality that was used to justify the removal of legal rights, such as the right to negotiate, from Indigenous people during the amendment process. The report argues that the appropriate approach to equality is one that recognises and protects cultural difference rather than one that treats all people the same.

The report also examines various agreements struck between Indigenous and non-Indigenous parties in order to settle native title issues. The report commends the addition of the Indigenous Land Use Agreements to the Native Title Act, whilst at the same time noting that extinguishment in the amended Act significantly reduces the need for non-Indigenous parties to negotiate over the use of native title land.

International activities

On 3 March 1999, in response to an invitation from the Committee on the Convention on the Elimination of All Forms of Discrimination, the Commission made a submission on whether the

amendments to the Native Title Act comply with Australia's obligations under the Convention on the Elimination of All Forms of Racial Discrimination.

The submission notes that there is no domestic mechanism to ensure that the principles of equality and non-discrimination, contained in the Racial Discrimination Act, apply to the Native Title Act. The international monitoring of this legislation is, therefore, particularly important. It is argued that the principles of equality and non-discrimination, contained in the Convention, require that the customs and traditions of Indigenous people are afforded equal respect and recognition and that adopting a formal equality position (that is, treating everyone the same) does not meet Australia's obligations under the Convention.

In relation to specific provisions of the Native Title Act, the submission concludes that the validation provisions, the confirmation provisions, the primary production upgrade provisions and the right to negotiate provisions do not comply with Australia's obligations under the Convention. Nor does the Act, read as a whole, meet Australia's obligations under the Convention.

On 18 March 1999 the Committee adopted Decision 2(54) on Australia. The decision expressed concern that the provisions referred to above were discriminatory of Indigenous people and that Australia was not acting in compliance of Articles 2 and 5 of the Convention.

Other project reports

National Community Education Program

The National Curriculum Education Program is a program that was developed for Aboriginal and Torres Strait Islander people by the Commission. It presents strategies and choices to people when they are confronted by the violation of their human rights and their dignity as human beings. It aims to transfer information on anti-discrimination laws to Aboriginal and Torres Strait Islander people so that they will know their legal rights and can thereby facilitate the successful resolution of community and individual conflicts.

The program was developed in response to Recommendation 211 of the Royal Commission into Aboriginal Deaths in Custody Report which states that:

The Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to further pursue their programs designed to inform the Aboriginal community regarding anti-discrimination legislation, particularly by way of Aboriginal staff members attending at communities and organisations to ensure the effective dissemination of information as to the legislation and ways and means of taking advantage of it.

Tracking Your Rights was launched in January 1998. The implementation of the program relies heavily on coordination with the states and territories. There are currently a number of initiatives that are being pursued at the federal and state/territory levels.

Another initiative is the train-the-trainer program delivered by the Commission to a number of Aboriginal educational agencies and equal opportunity commission educators.

National Indigenous Legal Studies

The National Indigenous Legal Studies Curriculum was developed by the Commission in response to Recommendation 211 of the National Report of the Royal Commission into Aboriginal Deaths in Custody. The recommendation states:

That the Human Rights and Equal Opportunity Commission and State Equal Opportunity Commissions should be encouraged to consult with appropriate Aboriginal organisations and Aboriginal Legal Services with a view to developing strategies to encourage and enable Aboriginal people to utilise anti-discrimination mechanisms more effectively, particularly in the area of indirect discrimination and representative actions.

The curriculum offers nationally accredited training which may be delivered at community, vocational and higher education levels.

For an educational agency to conduct a vocational course, it previously needed to apply to the Aboriginal and Torres Strait Islander Curriculum Consortium at the Far North Queensland Institute of TAFE, which, since accreditation of the curriculum in 1996, has assisted the Commission in the administration of the curriculum. Following an internal review, it was decided that this arrangement was no longer appropriate due to difficulties with distance, among other issues, and a similar arrangement is currently being negotiated with Tranby Aboriginal Cooperative College in Sydney.

Chapter 4: Disability Discrimination

Research and policy

Research and policy work during 1998–99 has focused principally on identifying means by which the Commission’s own processes could be made more effective instruments for achieving the objects of the Disability Discrimination Act. The main strategy adopted has been to work to provide for broader public participation in the processes by which the Commission forms opinions and makes decisions. This is discussed in more detail under the heading of promotion of awareness and compliance. Other specific areas of policy focus are discussed below.

Access to premises

The Commission has continued to give a high priority to issues of access to premises in view of their prominence in complaints and frequent requests for information and advice. Like all interested parties, the Commission recognises that the main avenue for progress in improving accessibility of buildings is the process of revision of the Building Code of Australia by the Australian Building Codes Board towards a level suitable for recognition as complying with the Disability Discrimination Act (including through endorsement as a Disability Standard under the Act). The Commission has continued to assist the Board to this end through its membership of the Board’s Building Access Policy Committee, although the Commission has been disappointed that progress in this process has been slow and that significant matters remain unresolved. Pending this, the Commission has been seeking to develop appropriate measures to enable all parties to deal with their rights and responsibilities in this area.

The Commission commenced discussions in April 1999 with local government representatives about possible responses to the Federal Court decision in *Cooper v HREOC and Coffs Harbour Council*. This exposed Councils to significant liability under the Disability Discrimination Act for permitting actions subsequently found to be unlawful discrimination, even where they make reasonable decisions in approving building or development applications. In June 1999, the Commissioner issued for consultation a draft policy on exercise of relevant powers under the Act to decline complaints where an appropriate alternative remedy is available or has been provided through local government procedures.

Closed captioning of TV and video

The Commission commenced a public inquiry process in July 1998 to:

- gather information on the extent and limitations of current provision for access to video material for deaf and hearing-impaired people in Australia through closed captions;
- consider broadcasting legislation in the context of conversion to digital transmission; and
- identify needs and options for further regulatory or other action.

After considering submissions on an initial Notice of Inquiry, the Commission published a substantial Issues Paper in September 1998. Responses to the Issues Paper were received from, or on behalf of, a range of relevant industry sectors and the Australian Broadcasting Authority, as well as consumers’ input. These submissions and other documents in the inquiry are available on the Commission’s internet site.

In response to submissions in the first round of this inquiry, the Issues Paper and response submissions deal with issues beyond television transmission, including video distribution. In relation to television, the Department of Communications, Information Technology and the Arts is currently conducting a review of captioning standards to be introduced under the Broadcasting Services Act. The Commissioner made a submission to that review. He endorsed the view presented by several submissions to the Commission's inquiry that it is undesirable for broadcasters to have different captioning obligations derived from a variety of legislative regimes. He noted that the clearest means for broadcasters to have a single or consistent set of obligations would be for captioning standards under the Broadcasting Services Act to be in full compliance with the Disability Discrimination Act, so that:

- Parliament could appropriately specify that the Disability Discrimination Act no longer applies to these issues; or
- the Commissioner could be satisfied that he should decline complaints under Disability Discrimination Act section 71(2)(e) on the basis that the subject matter had already been adequately dealt with; or
- the Commission could grant an application for temporary exemption under section 55 of the Disability Discrimination Act on the basis of compliance with captioning standards under the Broadcasting Services Act.

The Commissioner noted that he has not yet formed a definite view on what adequate standards would be regarding timetables for increased levels of captioning and issues of quality of captioning, and that it appeared appropriate to await the results of the Department's review in this respect. It is, however, difficult to see that a decision could be made that a complaint had already been adequately dealt with under the Broadcasting Services Act standards if the complaint were concerned with types of programming not addressed in the digital conversion legislation – that is, programming other than news, current affairs or prime time programming.

Further work by the Commission in this area during 1999 will go into identifying options for progress on other captioning issues, such as in relation to videos, and also cinema which the inquiry has not yet covered.

Mental health projects

The Commission conducted a small program of consultations in the mental health sector in mid-1998 to identify areas where the Commission could best make a contribution with modest levels of resources currently available. The first project emerging from these consultations, a discussion paper on 'living wills' or advance directives, was issued for public comment in late 1998. Comments continued to be accepted up to June 1999 to accommodate difficulties experienced by some organisations in meeting earlier deadlines. A range of interesting and important submissions is available with the discussion paper on the Commission's internet site.

Unlawful sterilisation

Following the publication of the commissioned report, *Sterilisation of Girls and Young Women in Australia* in 1997, the Commission has held meetings with the Department of Health and Family Services and the Attorney-General's Department to discuss strategies to address the problem of unlawful sterilisations.

In discussions with staff from the Health Benefits Division of the Department of Health and Family Services, the Commission was able to negotiate changes to the November 1998 Medicare Benefits Schedule book. This included a note attached to the fee schedule for relevant procedures reminding practitioners that, unless authorised by the Family Court, it is unlawful to conduct on a person under eighteen a sterilisation procedure which is not a by-product of surgery appropriately carried out to treat malfunction or disease. The note also reminds practitioners of their criminal and civil liability and the role of the Family Court in providing authorisation.

The changes to the schedule represent a positive response from the Department. The Commission will promote further changes to require any practitioner making a fee claim in respect of sterilisation of a minor to provide either an order of the relevant Court or Tribunal, or a report detailing the need for the procedure to treat malfunction or disease.

In a series of meetings called by the Attorney-General's Department, the Commission has contributed to the development of proposals for a number of strategies. These include providing information and education to doctors and families, reviewing court procedures to ensure easier access and promoting nationally consistent policies, procedures and support systems. Discussions are continuing about the value of longer term legislative changes.

A number of these proposals are being considered by the Attorney-General and Minister for Health. The Commission recognises particularly the contribution made by Susan Brady, one of the authors of the report, to the Commission's work in this area over the past year.

Telecommunications

The Commission has continued to provide advice on the Australian Communications Industry Forum industry code development process. Under section 380 of the *Telecommunications Act 1997*, the Australian Communications Authority is authorised to make standards about telephone features which enhance usability for people with disabilities. The Authority has arranged for the Forum to develop a draft standard as part of its industry codes development project. After a delay for technical reasons the panel, including the Commission, met on 28 June 1999 to review comments on draft standards in this area.

Promotion of awareness, understanding and compliance

Use of internet and public processes

In its disability rights policy activities, the Commission has achieved compliance with the Prime Minister's decision that all Commonwealth government information and services should be available on line. All new disability rights policy publications are produced on line in HTML format, with hard copy and alternative formats being available on request.

Use of the disability rights area of the Commission's internet site continues to increase rapidly. For example, there were 2440 hits on the disability rights index page (in its graphics and text only forms) in May 1999 compared to 648 in August 1998, when monthly statistics first became available.

Use of the internet is providing efficiencies which have allowed the Commission to deal with reduced resources in disability rights policy work, even allowing for initial set up costs. The internet is also providing opportunities for the Commission to experiment in the disability rights

area, with major improvements in its functioning as a national rather than a Sydney organisation conducting human rights work as a public participatory process, rather than as the preserve of policy elites or purely between private parties. So that the public has access to as full a range of views as possible, processes such as consideration of exemption applications have been opened to wider public participation, through publication on line not only of the application and the Commission's notice of inquiry but of submissions from interested parties.

The Commissioner is presently pursuing extension of similar processes to the Commission's principal business – complaint handling. A framework for this approach was set out in a Practice Note on public inquiry into disability discrimination complaints, issued by the Commissioner in March 1999 and available on the Commission's internet site or in other formats on request. This approach will open the investigation of complaints, where appropriate, to broader public participation. Although such an approach has always been legally open, the time now appears ripe with:

- the technical possibilities provided by the internet and other modern communications and increasing internet access within the disability community, business and government organisations;
- a clearly identified need to respond to concerns, such as those identified by the National Alternative Dispute Resolution Advisory Committee, regarding in-appropriate 'privatising' of disputes having public policy significance; and
- slow and uncertain progress in resolution of disability issues through the standards process originally contemplated as the major mechanism for definition of rights and responsibilities under the Disability Discrimination Act.

The economy and efficiency of internet publication has also permitted a more comprehensive collection of summaries of complaint outcomes, conciliated outcomes, decline and decline review decisions. Although the Disability Discrimination Act permits publication of complaint information in the performance of a function under the Act (such as promotion of awareness and compliance), these summaries are edited to avoid unnecessary disclosure of personal information and to facilitate the conciliation process. The Commission is now considering issues regarding publication of decisions on applications for interim determination.

Guidelines

The publication of summaries of Commission decisions provides a more authoritative form of guidance than can be provided through purely advisory guidelines or advisory notes. Several notes are available, however, through the Commission's internet site and on request. The Commission will take these guidelines and notes into account in complaint handling and in decisions on exemption applications. They are:

- the advisory note on public transport;
- the insurance and superannuation guidelines;
- the advisory notes on access to premises; and
- the world wide web access (updated May 1999 to take into account the latest recommendation from the World Wide Web Consortium).

The Commission also maintains 'Frequently Asked Questions' materials on a number of areas covered by the Disability Discrimination Act. These materials draw on responses to individual inquiries as well as the Commission's complaint handling experience, participation in policy

processes and relevant court and tribunal decisions. In particular, extensive 'Frequently Asked Questions' materials are available regarding employment.

Exemptions

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

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

In March 1999 the Commission granted a conditional exemption for five years from the provisions of section 23 and section 24 of the Disability Discrimination Act in respect of tram and light rail services in Melbourne. The effect of the decision will be that if the applicants commence in 2002 to replace their existing fleet with accessible ultra low floor trams they will not be acting unlawfully even though their current fleet is inaccessible to some people with disabilities. The full decision, including conditions imposed, reasons for decision, the application, submissions by interested parties and the applicants' Action Plan (revised by them in response to the exemption process) on which some of the conditions in the decision are based, is available through the Commission's internet site.

The Commission has been advised that applications have been lodged with the Administrative Appeals Tribunal for review of the Commission's decision in this matter. The applicants seek a decision to require immediate retro-fitting of existing trams with mechanical hoists for wheelchair users rather than staged introduction of more generally accessible low floor trams, as agreed by the Victorian Government and required by the conditions on the Commission's decision. Regardless of the final decision of the Administrative Appeals Tribunal, the process has already produced very large policy and financial commitments by the Victorian authorities. The Commission regards this process and the response to it by the Victorian Government as one of the most significant advances in achievement of the objects of the Disability Discrimination Act since its inception.

The Commission is presently considering an exemption application from the Regional Airlines Association of Australia regarding access to small aircraft by persons using wheelchairs and similar mobility aids.

Action Plans under the Disability Discrimination Act

On 30 June 1999 there were 134 plans registered with the Commission, comprising 31 business, non-government and government business enterprises, 29 Commonwealth Government, 12 State Government, 44 local government organisations and 20 education providers. The register of Action Plans and plans provided electronically to the Commission are available through the Commission's internet site. This assists other organisations interested in developing their own plans and individuals interested in assessing the effectiveness and implementation of an organisation's Action Plan.

Legislative reform and assessment

Disability Standards

The Disability Discrimination Act provides for 'Disability Standards' to be made by the Attorney-General in specified areas, 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.

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

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

Access to premises

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

Commonwealth government information and communications

Little progress was made in development of standards in this area during 1998–99. The Commission welcomed publication by Ausinfo of guidelines for electronic publishing and urged Commonwealth departments and agencies to use these guidelines to achieve compliance with the Disability Discrimination Act.

Education

The Commission is not directly involved in the development of draft Disability Standards on education by a taskforce of the Ministerial Council on Employment, Education, Training and Youth Affairs. It is providing advice to participants on request. The Commission understands that the taskforce now hopes to have draft Standards available for consultation in late 1999, rather than late 1998 as previously hoped.

Employment

Discussions with the Office of Regulation Review commenced in early 1999 on a draft Regulation Impact Statement on the draft employment standards. The process of dealing with the Office of Regulation Review's comments on an initial draft, so that a revised draft statement could be circulated to the Employment Standards sub-committee for consideration, has proved more time consuming than was initially hoped. It has not yet been possible to complete this revision given other priorities. Employer representatives have opposed proceeding further with

standards in this area and disability organisations have been divided in their views. The Commission has therefore given priority to providing extensive 'Frequently Asked Questions' guidance material on employment, and to publication of decisions and other complaint outcome material in relation to employment as well as other areas. Priority for further work on employment standards does not appear justified at this point.

Public transport

The Commission welcomed a decision by the Australian Transport Council in April 1999 to endorse again the draft Accessible Public Transport Standards adopted by the Council in June 1996. The Commissioner issued a press release and wrote to the Attorney-General urging that the draft Standards be put to Parliament for endorsement as soon as possible. While some States were continuing to seek Commonwealth funding to assist with implementation of accessible transport, the agreement that the standards should be adopted was not conditional on this.

Assistance animals

The Commission issued a discussion paper in March 1999 on the position under the Disability Discrimination Act of assistance animals other than guide dogs and hearing dogs, in response to suggestions from the retail sector that the interaction of the Act and public health legislation required clarification. Further action in response to submissions received on this paper was under consideration as of June 1999.

Accommodation rights and abuse

As of June 1999 the Commission was seeking to determine how best to contribute to improved protection of human rights regarding institutional living in the light of the discussion paper issued by the National Disability Advisory Council in this area.

Chapter 5: Human Rights

Research and policy

Bush Talks

The research and policy activities of the Human Rights Policy Unit during 1998–99 have focused on the promotion of human rights in rural Australia and among children and young people.

Bush Talks consultations have been effective in identifying the concerns of rural and remote Australians for they are as much human rights concerns as they are social, economic and moral concerns. A key human rights issue raised during consultations in more than thirty locations across the country was the absence or reduction of adequate, reasonably accessible and appropriate health and related services for many of the most vulnerable groups in rural communities: people with disabilities, adolescents, young people with a mental illness or a substance abuse problem, women experiencing domestic violence and women from non-English speaking backgrounds.

‘There is a huge gap ... in the broad depth of community health services which should be available to communities such as this. Particularly in the areas of sexual assault, child abuse, crisis management, and intervention. These services are all very hard to access here. If we need to refer people to these services, it is very difficult to find them. We don’t even have access to a social worker’ (*Bush Talks* meeting, Euroa Victoria, November 1998).

Many Indigenous communities still report that their critical health status and outlook has yet to be met with culturally appropriate and reasonably accessible health services.

‘One of the things that makes people sick is poverty. People are much more likely to be sick if they are poor than if they are well off. There are a lot of poor countries where people are considerably healthier than in this part of Australia. This sort of finding has led people to realise that it isn’t necessarily poverty that is the cause of poor health conditions in remote areas, but is actually inequality. One of the major reasons that somebody is ‘not well’ – in this part of the country that happens to be Aboriginal people – is inequality’ (*Bush Talks* meeting, Alice Springs NT, October 1998).

Rural Australians also informed *Bush Talks* about many innovative local initiatives designed to address gaps in health care provision. For example, in Yeoval NSW the District Hospital was about to be closed due to funding shortages. The community came together to try to work out ways of saving it and formed a cooperative. The State Government agreed to make the funds available and the Cooperative Development League in NSW guaranteed bank loans to get the project going, funded a feasibility study and prepared a business plan. Almost \$100 000 was raised through local charities and the cooperative’s 250 shareholders. The cooperative also lobbied the Federal Government which agreed to provide more than \$300 000 under its Aged and Community Care Program, on the condition that accommodation and care for older people were part of the hospital priorities. The Cooperative now provides a range of health and aged care services at one site: a doctor’s surgery, hospital, physiotherapy, ambulance, X-ray unit, nursing home, hostel and self-care units, as well as community services such as Meals on Wheels and a volunteer driver service.

The Commissioner's *Bush Talks* program is detailed later in this report. These national consultations have prompted the Commission to undertake a range of new project work. Within the human rights portfolio, major projects are the National Inquiry into Rural and Remote (School) Education and Outlink – a rural lesbian, gay and bisexual youth network. These projects combine the two principal focus groups: rural Australians and young people.

National Inquiry into Rural and Remote Education

The UN *Convention on the Rights of the Child* guarantees the right of every child to education. It requires that education be available to all children without discrimination based on race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, disability or other status. Primary education must be compulsory and available free to all children, secondary education must be available and accessible to every child and higher education must be accessible to all on the basis of capacity. Children with disabilities must have access to education which ensures dignity, promotes self reliance and facilitates their active participation in the community. Indigenous and minority children must have access to education which ensures their right to enjoy their culture, profess and practise their religion and use their own language.

The National Inquiry into Rural and Remote Education commenced in December 1998 in response to *Bush Talks* consultations. The terms of reference direct the Commissioner to inquire into the provision of education for children in rural and remote Australia with reference to:

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

During *Bush Talks* consultations, the Commission learned that country students have lower participation rates than urban students and are less likely to pursue tertiary education. Rural students' 'share of enrolments at Australian universities has declined during the 1990s. The representation of this group in higher education relative to its national representation dropped from 0.76 in 1991 to 0.72 in 1997' (Department of Education, Training and Youth Affairs, *Equity in Higher Education*, 1999, page 30). 'The access of people from isolated backgrounds to higher education, at 1.92 percent of commencing students, is very low compared to their population share of 4.5 percent [and] their retention, at 90 percent, is significantly low' (page 7).

Rural communities expressed a wide range of concerns about education. For example, the quality of telecommunications technology and infrastructure in many parts of Australia is inadequate for teaching and learning. Schools in rural and remote areas are less likely to be in a position to provide access and services for children with disabilities. Children who are excluded from school in a town with few schools have extremely limited options to continue their education. Many students face difficulties in obtaining transport to and from school.

'In my first years in Walgett there were 30 Aboriginal students in Year 7 and none in Year 12 ... I have been struck by how extremely difficult it is for Walgett Aboriginal people to try tertiary education. Maybe one or two a year are finishing a degree. At the same time there were no Aboriginal teachers working in Walgett when I arrived. Now there are three' (submission from Brother John Giacon, Walgett, NSW, March 1999).

'Families with children with disabilities do not often stay in a rural or remote community because the support services they need do not exist. There is a lack of access to Guidance Officers, speech pathologists and respite care' (submission from Open Access College Council, Marsden Education Centre, South Australia, March 1999).

Five state/territory Co-Commissioners have been appointed to assist with this inquiry:

- Dr Alby W. Jones, South Australia's Director-General of Education from 1970 until 1977;
- Lady Pearl Logan, Queensland, prominent in the Country Women's Association and instrumental, among many other community activities, in the establishment of James Cook University;
- Barbara Flick, New South Wales, Director of the Commission's Aboriginal and Torres Strait Islander Social Justice Unit until late May 1999 and previously for many years Manager of the Western Aboriginal Legal Service, NSW, among many other relevant appointments;
- Associate Professor Brian Devlin, Northern Territory, teacher in rural and remote schools in the Top End of the Northern Territory for fifteen years and now Dean of Education at the Northern Territory University; and
- Sister Patricia Rhatigan, Western Australia, Dean of the Broome Campus of the University of Notre Dame and teacher in rural and remote schools in the Kimberley for over twenty years.

The Inquiry has conducted or will conduct hearings in each state and territory in capital cities and other centres and public meetings and student focus groups in north-west New South Wales, northern Northern Territory, northern Western Australia, western Queensland and western Tasmania.

A scoping survey of rural and remote students, parents and education workers has been commissioned. It is being conducted by the Youth Research Centre of the University of Melbourne and will tap local experience and opinion in yet further regions. All country schools have been notified of the Inquiry and submissions have been invited. Information about the Inquiry, including records of meetings, transcripts of hearings and extracts from submissions, can be consulted at www.hreoc.gov.au/news_info/rural/.

The Inquiry will conclude in 2000.

Rights in detention

Prisoners and others held in detention are vulnerable to the denial and violation of human rights. The Commission can deal with complaints about human rights violations against prisoners sentenced for offences against federal law. Human rights in detention also fall within the Commission's more general functions. The Commissioner regularly visits prisons and juvenile detention facilities. During the year inspections were undertaken of Albany Regional Prison, Casuarina Prison and Canning Vale Prison (WA) and Alice Springs Correctional Centre and Aranda House (NT). The Commission's President also visited the Greenough Regional Prison near Geraldton (WA).

Immigration detainees, including asylum seekers, are held by the Commonwealth in four detention centres: Villawood in western Sydney, Maribyrnong in Melbourne, Perth (at the airport) and Port Hedland. The Commission's 1998 report *Those who've come across the seas: detention of unauthorised arrivals* was critical of conditions and treatment in the centres and made recommendations for improvement. The Commissioner undertook to re-inspect all four centres during the year. He visited Villawood in September 1998, Perth in October 1998, Maribyrnong in November 1998 and Port Hedland in May 1999.

During these visits Commission staff were available for private consultations with detainees.

'My family – my wife and two children – they are disappeared at the moment. I ring sometimes my sister and father-in-law and ask them about my family. Still they are looking for them. My son is 13 years. My daughter is 6 years. They were living in Tehran. The last time I contacted them was more than one month ago. I don't know whether they're arrested by the security forces or living secretly. No-one knows where they are. Most of the time I get the chair and sit. I'm unable to do something in detention for my family' (asylum seeker, Villawood Immigration Detention Centre, September 1998).

'This sentence for me is for doing no crime, just for being a refugee. I've been here nearly two years' (asylum seeker, Maribyrnong Immigration Detention Centre, October 1998).

The Commission's evaluation of conditions and treatment in immigration detention will be submitted to the Attorney-General and the Minister for Immigration and Multicultural Affairs early in the next reporting year.

Late in the current year, the Minister for Immigration and Multicultural Affairs tabled the Government's response to the findings and recommendations in the Commission's 1998 report, *Those who've come across the seas: detention of unauthorised arrivals*. The Government indicated its support for 35 of the Commission's 94 recommendations and supported in part another 37 recommendations. In many cases measures have already been taken to address the Commission's concerns. The Government maintains its policy of detention of most unauthorised arrivals contrary to the Commission's advice that it violates international law. The Government also declines to notify unauthorised arrivals of their statutory entitlement to request legal assistance contrary to the Commission's advice that this, too, breaches international human rights law.

Education and promotion

Children's rights

Seen and heard: priority for children in the legal process

In November 1997 the Commission and the Australian Law Reform Commission published the report *Seen and heard: priority for children in the legal process*. The report identified serious deficiencies in the delivery of legal services and in access to justice for young people. The Commissions found that in all aspects of the justice system there is a failure to respect the young person's right to participate in decisions affecting him or her.

During the year the two Commissions wrote to each agency or individual to whom specific recommendations of *Seen and heard* were directed, seeking information on implementation. Overall, the responses were disappointing. The Federal Government has promised to respond to the report as a whole but has not yet done so. Key recommendations, such as that proposing the repeal of legislation requiring sentences of detention for certain young offenders, have been rejected outright by the Western Australian and Northern Territory governments.

Nevertheless, many agencies have taken the recommendations seriously and have commenced implementation. For example, the Australian Federal Police, in response to recommendation 217, advised it had reviewed the curriculum for its Diploma of Policing with a view to incorporating training in the interrogation of young people with particular disabilities and vulnerabilities. The Ministerial Council on Consumer Affairs, in response to recommendation 51, has developed an interactive learning package on consumer rights for children.

A summary of the report's findings and recommendations relating to the sentencing of juvenile offenders has been accepted for publication in the law society journals of Victoria, South Australia, Western Australia, the Northern Territory and the ACT. A summary of the findings and recommendations relating to policing of young people has been published in police bulletins in New South Wales, South Australia, Tasmania, Western Australia and the Northern Territory.

Youth participation

The Commission was represented on the planning committee for Australia's first National Children's Summit held at Parliament House, Canberra, from 3rd to 5th December 1998 and at the Summit itself. The Summit considered, among other things, ways in which issues affecting children and young people could be placed more firmly on the national agenda. The Commission sponsored two young people to participate in the Summit as youth delegates.

Human Rights Brief: Numbers 1 and 2

Children's advocates armed with detailed information about the scope and content of children's rights will be better placed to identify and resist violations of those rights and to seek appropriate remedies. Numbers 1 and 2 of the *Human Rights Brief* deal with aspects of children's rights – with information aimed at the community legal services sector in particular. Number 1 details the foundational principle that the best interests of children must be a primary consideration in actions which affect them. It answers the questions 'Which actions are covered by this principle?', 'Whose actions are covered?', 'What are the child's best interests?' and 'Are other considerations permitted?' as well as summarising the legal status of the principle in Australian law.

Number 2 sets out the eleven fundamental principles of sentencing juvenile offenders:

1. the child's right to participate in the decision-making process;
2. the principle that the best interests of the child must be a primary consideration;
3. the need to protect other members of the community from harm;
4. the sentencing objective of rehabilitation;
5. the avoidance of cruel, inhuman or degrading punishment;

6. the requirement that the sentencer be able to choose from a range of options;
7. the principle that the sentence must be proportionate to the circumstances of both the offence and the individual offender;
8. the rule that the sentence must be capable of independent review;
9. the rule that detention must be a sentence of last resort;
10. the rule that detention must be free from arbitrariness; and
11. the rule that detention must be for the shortest appropriate period of time.

Outlink: Rural lesbian, gay and bisexual youth network

Outlink is another project arising from *Bush Talks*. It is also a further development of a local initiative in north-west Tasmania where local community service organisations were concerned by the high level of suicide among young people. They knew that many suicides were of young gay men and young lesbians but that these people were rarely visible and seldom sought support from local community service agencies. The agencies cooperated in an extensive study of issues confronting these young people in the area and published the results in *Working It Out*. They have decided on many initiatives to ensure that they are supported and affirmed in their own communities and that they are no longer forced to leave.

Bush Talks consultations revealed similar levels of isolation, intolerance, despair and concern in many other regions.

Outlink, co-funded by the Australian Youth Foundation, is a nine month project to build a national network of rural lesbian, gay and bisexual young people, their supporters and rural organisations which could offer advocacy and support. The project was launched in Bathurst on 4 May 1999. Outlink patrons are comedians Julie McCrossin and Sue-Ann Post, sportsman Ian Roberts and Uniting Church Minister, Reverend Dorothy McRae-McMahon.

The Commission has engaged prominent gay activist Rodney Croome as coordinator of the Outlink project. During the course of the project he will travel to each state and territory making contact with existing rural gay and lesbian networks, mainstream youth organisations and other relevant groups. Young lesbian, gay and bisexual people and the organisations that work with them will also be contacted through rural and youth media and the internet. By the end of the project, the Network will have been incorporated. A Management Committee made up of a majority of young lesbian, gay and bisexual people from each state and territory will also have met in Sydney to set priorities for the future.

The Outlink project will be an important step in recognising and addressing the difficulties these rural young people face. It will provide, for the first time, a national focus for efforts to tackle their problems and help them improve their self esteem and their opportunities. It will also ultimately benefit rural families and communities. By raising awareness of the needs of rural lesbian, gay and bisexual young people, and by helping them find solutions to the issues they face, the Outlink project will encourage them to remain attached to and more fully participate in their communities.

Other human rights

Age discrimination

Age discrimination is unlawful in all Australian states and territories, with some exemptions. During the 1996 federal election campaign, both major parties undertook to address age discrimination at the federal level. Nothing has as yet been achieved, however. With the aim of promoting public awareness, debate on the issue and options for reform, in April 1999 the Commission published *Age matters? a discussion paper on age discrimination*.

Workplace discrimination on the ground of chronological age principally affects younger and older people. Compulsory retirement and denial of workers compensation and superannuation contributions are systemic barriers to older workers wishing, and sometime needing, to continue to earn an income. In three reports to the Attorney-General the Commissioner has dealt with complaints of discrimination against older workers.

HRC Report No. 1 (1996) dealt with complaints made by four pilots compulsorily retired by Qantas at the age of 60. HRC Report No. 2 (1997) dealt with discriminatory redundancy payments offered by the Public Transport Corporation of Victoria. HRC Report No. 4 (1997) dealt with the complaint of a trade unionist that his union, the Australian Institute of Marine and Power Engineers, required him to retire from full-time membership at 65 with the effect that he could not continue to work in his profession.

In all cases the allegation of age discrimination in employment was found to be made out but the Commissioner could not resolve the matter by conciliation. He was forced to resort to making a report to Parliament since he has no power to refer a complaint to a tribunal for a determination. This is one limitation in federal law on age discrimination. Another is that the law does not cover age discrimination in areas of life other than employment.

‘I have lost the job which I loved; self esteem and motivation; essential income; the opportunity to improve my retirement benefits; the contact with workmates and clients; the mental stimulation and satisfaction of a job well done etc. This impacts on my wife and family now and in the longer term’ (complaint to the Commission).

‘... if I went to a real estate [agent] or something, they’d just take one look at me and say no you’re too young and even if they didn’t think I was too young, they, they probably would think the walls would get wrecked and think all the worst things that can happen’ (Gavin quoted by Ian O’Connor, *Our Homeless Children: Their Experiences*, HREOC 1989).

‘My 89-year-old father fell from his bed in Canberra Hospital last year, and slipped into confusion and coma. We asked for a CAT scan, but it was refused on the grounds that he was “too frail”. Active treatment was withdrawn. We made father a private patient and the taps of treatment were turned back on full bore’ (letter to the *Canberra Times*, 11 November 1998).

The discussion paper details the following three broad options for action on age discrimination, none of which is mutually exclusive:

- a public education campaign to combat stereotyping of both younger and older people;
- the amendment of discriminatory federal employment laws including the *Public Service Act 1922* and the *Defence Act 1903*; and

- the introduction of a comprehensive federal Age Discrimination Act, with relevant exemptions, making age discrimination in employment, education, accommodation and the provision of goods and services unlawful.

Comments and submissions are invited and should reach the Commission by the end of August 1999. The Commission will collate the responses received and report to the Attorney-General early in 2000.

Legislative reform and assessment

As well as public education and public consultations on human rights, the Commissioner continues to advise the Parliament on measures needed to ensure full compliance by Australia with its international human rights undertakings. In many cases this advice is given following extensive public consultations.

Religious freedom

The Commission's report, *Article 18: freedom of religion and belief*, was published on 11 November 1998.

The report is a comprehensive examination of freedom of religion and belief in Australia. It recommends changes in the law in light of Australia's obligations under the *International Covenant on Civil and Political Rights* (article 18) and the *Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief*.

The report is the culmination of an inquiry into freedom of religion and belief which commenced in February 1997 with the production of a discussion paper, *Free to Believe?* On the basis of 255 submissions received in response to the discussion paper, the report documents the personal experiences of Australians who have suffered discrimination or intolerance because of their religion or belief. It surveys a range of practices or manifestations associated with religion and belief and discusses the need for the protection or limitation of those practices as appropriate.

'Aboriginals are not identified in the table of religions in Australia. Part of this population may, of course, be included in the Christian religion. However, the Aboriginals have their own beliefs, which are manifested by their sacred ties to the Earth and which have to be taken into account as part of Australia's religious diversity' (UN Special Rapporteur on Religion and Belief, Abdelfattah Amor, UN Doc. E/CN.4/1998/6/Add. 1, page 9).

'In the eyes of the Jewish religion, an autopsy, except in exceptional circumstances, is an act of desecration and, as such, is inimical to our deepest principles and feeling' (Joint Committee on Post Mortem Examinations, NSW Submission, 1994).

The report further examines the current status of the right to freedom of religion and belief in Australia and highlights the fact that current protection across the country is lacking in uniformity.

Recommendations cover:

- improving the protection of Indigenous heritage;

- the development of national standards to respect burial rituals and religious attitudes to autopsies;
- the development of national standards on the medical treatment of children;
- prohibition of female genital mutilation;
- decriminalisation of pagan practices; and
- the need for an inter-faith dialogue on the distinction between proselytism and coercion.

‘As a practising Catholic [while enlisted in the Australian Army], I frequently requested permission to attend church services on Sundays. However, this was always refused even when volunteers offered to work for the hours I would be absent. As a young soldier, I was unaware of Australian Defence Force (ADF) policy on religious practices. I was never informed of my right to observe my faith in accordance with my beliefs’ (Pastor Ray Coombe, Submission R/49).

The principal recommendation of the report is the enactment of a federal Religious Freedom Act providing a civil remedy for discrimination or intolerance on the basis of religion and belief in Australia. The Attorney-General has advised the Parliament that the Government has decided not to implement this recommendation because there are not wide-ranging problems associated with freedom of religion and belief requiring a legislative response.

Freedom of movement

In 1996 and 1997, the Commission received four complaints regarding the operation of Norfolk Island’s *Immigration Act 1980*. Norfolk Island, some 1 600 kilometres north east of Sydney, is a territory of the Commonwealth. In 1979 the Island was granted a degree of self-government which included the right to regulate immigration. Norfolk Island is the only occupied territory to which the Commonwealth’s own *Migration Act 1958* does not apply.

The complaints alleged that the Island’s Act is inconsistent with the freedom of movement of Australians and that it was being implemented in a discriminatory fashion. The Commission decided to conduct a general inquiry into the Act.

Liberty of movement and freedom to choose one’s residence within the territory of a country are guaranteed by article 12 of the *International Covenant on Civil and Political Rights*. These freedoms can be restricted on certain conditions. The question posed for the Commission was whether the Norfolk Island Immigration Act satisfied these conditions. The Commission concluded that it did not.

Although some of the aims of the Act – notably protection of the Pitcairn minority culture and of the natural environment – are lawful objectives, the Act is a disproportionate and unnecessary intrusion on the rights of other Australians. The Island government’s objectives could be effectively achieved by less intrusive measures such as regulation of land use and zoning. These are the kinds of measures utilised by other, not dissimilar, island territories including Christmas Island and Cocos (Keeling) Island in the Indian Ocean.

The Commission’s report, *Territorial Limits: Norfolk Island’s Immigration Act and human rights*, was tabled in Federal Parliament in May 1999. It recommended the repeal of the Island’s powers over immigration and the extension to the Island of the Commonwealth’s *Migration Act 1958*.

Migration law

During the year, the Commissioner made submissions on two Bills to amend the *Migration Act 1958* (Cwlth). One of them, the *Migration Legislation Amendment (Judicial Review) Amendment Bill 1998* would eliminate almost all options for judicial review of departmental and Refugee Review Tribunal decisions. The second, the *Migration Legislation Amendment Bill (No. 2) 1998*, aims to remove the Commission's (and the Commonwealth Ombudsman's) power to initiate confidential correspondence with unauthorised arrivals held in immigration detention. The Commission would be entitled to correspond only with detainees who have already made a complaint to the Commission in writing. Each Bill breaches Australia's human rights obligations.

Denial of judicial review puts in jeopardy the rights of refugees not to be returned to countries where their lives or safety is at risk by undermining the independence of Australia's refugee determination process. For this process to be effective it cannot depend on administrative decision making alone, as proposed by the Bill.

Asylum seekers must be accorded the right to have their application heard by a competent, independent and impartial tribunal (*International Covenant on Civil and Political Rights* article 14(1)). The proposed final decision maker, the Refugee Review Tribunal, does not reach the human rights standard. It is not guaranteed independence and its processes do not ensure impartiality. It adopts an inquisitorial procedure in which the asylum seeker is not entitled to be represented.

Further asylum seekers should be entitled to a fair and public hearing. Asylum seekers are not represented before the Tribunal and are unlikely to comprehend the legal and procedural issues at stake. Moreover, the Tribunal hearing is not open to the public. Removal of the Commission's right to initiate correspondence with immigration detainees will effectively deny them their entitlement to have their human rights protected. The reality is that few, if any, detainees will be aware of the Commission's existence, its jurisdiction and its processes.

The Commissioner's submission to the Senate Legal and Constitutional Legislation Committee noted that the 'evil' sought to be avoided by the government is notification from the Commission to an asylum seeker that he or she is entitled to request and receive legal advice. Currently, unauthorised boat arrivals are not advised of this right, although the right is set out in legislation. The Department of Immigration and Multicultural Affairs will arrange for the provision of legal advice if it is requested but denies any responsibility to notify detainees of the right to make such a request.

The Commission has found that the failure to notify immigration detainees of their rights is itself a violation of their rights. Moreover, the Bill is drawn much more widely than would be necessary to achieve the end described. It applies to all detainees and not just to those unaware of their rights. It applies to detainees who have made an oral inquiry of the Commission and to those whose written communications cannot properly be described as complaints.

The Commissioner also made a submission to the joint Standing Committee on Migration on the proposal to impose a \$1000 penalty on unsuccessful Tribunal applicants. The asylum seeker's right of access to an effective procedure ought not be made to depend upon his or her capacity to pay. Nor should it be discouraged by being made subject to a penalty in the event that the applicant has misapprehended his or her situation in light of the Refugee Convention definition or has been unable to muster the evidence required to establish his or her case. By contravening these principles, the proposed penalty infringes Australia's obligation of non-refoulement of genuine refugees.

The Commissioner also made a submission to the Senate Legal and Constitutional Reference Committee's inquiry into Australia's refugee and humanitarian programs. The submission acknowledges that Australia's offshore protection program is second to none and that, in many respects, the onshore refugee and humanitarian programs are models of good and even best practice – including the general rights of judicial review and the right to free legal advice and assistance. However, there is still room for improvement. Among the recommendations made in the submission was the need to incorporate Australia's international human rights obligations to people at risk of execution, torture or other cruel, inhuman or degrading treatment or punishment into Australian law with full safeguards, whether or not they satisfy the rather narrow Refugee Convention definition of a 'refugee'.

Superannuation and same-sex relationships

Two complaints about the operation of Commonwealth superannuation laws could not be dealt with by the Commission because the complaint handling power is limited to acts and practices which are discretionary. Where superannuation law itself mandates an outcome the Commission is restricted to recommending reform of the law. In these cases the legislation refused superannuation benefits to surviving same-sex partners of superannuation fund members. The Commissioner examined the legislation and concluded that the relevant provisions of the *Superannuation Act 1976* (Cwlth) and the *Defence Forces Retirement and Death Benefits Act 1973* (Cwlth) were inconsistent with Australia's human rights obligations. The legislation which has superseded those Acts – the *Superannuation Act 1990* (Cwlth) and the *Military Superannuation and Benefits Act 1991* (Cwlth) – is similarly inconsistent.

In *Superannuation Entitlements of Same-Sex Couples* (HRC Report No. 7, 1999) the Commissioner found that, by denying a same-sex partner of a superannuation fund member the right to be a beneficiary in the event of the member's death, the enactments are inconsistent with the human right to equality before the law (*International Covenant on Civil and Political Rights*, article 26) and nullify equality of treatment in employment (*International Labour Organisation Convention Concerning Discrimination in Respect of Employment and Occupation*, No. 111). The Commissioner recommended amendment of the relevant provisions to introduce gender neutral terminology and effectively extend superannuation entitlements to same-sex couples.

International role

The Commission's international work incorporates a range of activities and it:

- 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;
- promotes regional cooperation on human rights in the Asia Pacific region; and
- participates in major international human rights meetings.

In the Asia Pacific region national human rights institutions can play an important role in securing human rights standards and advancing regional cooperation.

Asia Pacific Forum of National Human Rights Institutions

The Commission's 1996–97 Annual Report discussed the establishment of the Asia Pacific Forum of National Human Rights Institutions on 10 July 1996. There are currently six national human rights institutions in the region that are members of the Forum: New Zealand, Australia, the Philippines, India, Indonesia and Sri Lanka. The recently established Fiji Human Rights Commission is anticipated to become the seventh member at the Forum's Fourth Annual Meeting in September 1999. The Secretariat of the Forum is located at the Australian Commission. The Australian Government, through the Minister for Foreign Affairs and Trade, the Hon. Alexander Downer, MP, and the Australian Agency for International Development, has been unstinting in its political and financial support for the Forum. Core project funding is provided by the Australian Government and additional funding for Forum activities is provided by a range of donors on a project by project basis.

During 1998–1999 the Secretariat's operations focused on three main areas of activity:

- the development and delivery of technical assistance and cooperation projects;
- information dissemination; and
- administrative support for the Forum and its activities.

Technical assistance and cooperation projects

The objectives of these projects, which are developed jointly with partner institutions or governments, are to:

- improve the levels of appropriate skills and knowledge among members and staff of national institutions in the region;
- enhance national institution structures and procedures in accordance with the Paris Principles to facilitate a more effective system to protect and promote human rights;¹ 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.

Projects developed within the framework of the Forum generally fall into two categories:

- country-based or bilateral projects which tend to be medium to long term technical assistance activities focused on the development and strengthening of national human rights institutions; and
- regional projects which focus on identified areas of common need or concern in the region.

Information dissemination

The exchange of information was identified by Forum members at their first meeting as one of the Forum Secretariat's fundamental roles. The objectives in this area are to:

¹ *Principles Relating To The Status Of National Institutions*, Commission on Human Rights resolution 1992/54 of 3 March 1992. Annex (Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A): General Assembly resolution 48/134 of 20 December 1993, annex.

- 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; and
- provide information about Forum activities to member institutions, governments, UN agencies, non-government organisations and the general community.

Members of the Forum and Secretariat staff promote the work of national human rights institutions and the Forum by attending and speaking at various international, regional and national seminars and meetings.

The Secretariat has published an information booklet titled *The Asia Pacific Forum of National Human Rights Institutions ... a partnership for human rights in our region* and in 1998 established a Forum website. In 1999 the Secretariat published the first edition of the *Forum Bulletin*. The Bulletin is now a regular newsletter to keep Forum members, governments and non-government organisations informed of important policy, legal, administrative and training developments in the region. The Secretariat also produced a video in 1998 focusing on the role of national institutions and their participation in the Third Annual Meeting of the Forum in Jakarta in September 1998.

Forum administrative support

The Secretariat organises and services the annual meetings and workshops of the Forum; implements decisions of the Forum; undertakes research; develops technical assistance and cooperation projects and other proposals; seeks funding for projects and facilitates the provision of expert assistance to governments in the region concerning the establishment of national institutions.

Regional activities

Third Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions

This meeting held in Jakarta, Indonesia, from 7 to 9 September 1998 was hosted by the Indonesian National Commission on Human Rights. The Meeting indicated the strong interest in the region in the promotion of national human rights institutions. The annual Forum meeting is now the largest and most representative human rights gathering held annually in the Asia Pacific region.

Financial assistance was provided by the Office of the UN High Commissioner for Human Rights and the Government of Australia, through AusAID.

The President of Indonesia, H.E. Mr B.J. Habibie, opened the Meeting. Participants included senior representatives of the six national human rights commissions that comprise the Asia

Pacific Forum and the Special Adviser to the UN High Commissioner for Human Rights, Mr Brian Burdekin, representing the High Commissioner. The keynote address was delivered by Mr Mar'ie Muhammed, former Finance Minister of Indonesia. Observers included representatives of regional governments, national human rights commissions from outside the region, inter-governmental organisations and a large number of non-governmental organisations from the region and beyond.

The theme for the Meeting was *Human Rights and the Economic Crisis in the Asia Pacific*. The Forum expressed its deep concern at the effect of the economic crisis on the realisation of economic, social and cultural rights and cautioned that the crisis should not be used for the further restriction of civil and political rights. The Forum requested that the United Nations High Commissioner for Human Rights work with inter-governmental organisations and the international financial institutions to raise their awareness of the human rights impact of their activities. The Forum also called on governments to give explicit effect to their commitment to the indivisibility of human rights in their individual capacity and through their membership of organisations, such as the Asia Pacific Economic Cooperation and the World Trade Organisation.

A full report of the meeting is on the Forum's website and is available from the Forum Secretariat.

The Meeting had a number of important outcomes, including:

- approval for the establishment of an Advisory Council of Jurists to assist in developing regional human rights jurisprudence;
- establishment of a Forum website; and
- agreement to hold a workshop in 1999 on the theme *National Institutions and Non-Government Organisations: Working in Partnership*.

The Fourth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions will be held in the Philippines in 1999.

Country-based projects

Bangladesh

The government of Bangladesh has expressed its intention to establish a national human rights commission. The national commission will have investigative, educational, reporting and analytical functions. To ensure the success of the commission, the government of Bangladesh requested assistance to develop its institutional capacity and expertise in the theoretical basis of human rights and their practical application.

On 22 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 for practical work placements and an academic course work program in consultation with the University of Sydney.

China

The establishment of a formal and regular bilateral human rights dialogue between Australia and the People's Republic of China was proposed to Premier Li Peng by the Prime Minister, the Hon.

John Howard, MP, during his visit to China in 1997. In the course of this dialogue the two governments agreed to initiate a program of technical assistance specifically aimed at cooperation in the protection, promotion and administration of human rights.

The Chinese Government participated in the Third Annual Meeting of the Forum and at their invitation, the President of the Commission presented a paper at the *International Symposium on Human Rights for the 21st Century* held in Beijing in October 1998.

In December 1998 six representatives of the Chinese Supreme People's Court, the Supreme People's Procuratorate and other national authorities participated in an international conference organised by the Commission to commemorate the 50th Anniversary of the Universal Declaration of Human Rights. Commission officials provided the Chinese delegation with a detailed briefing on the role and functions of the Commission and the Asia Pacific Forum of National Human Rights Institutions.

In March 1999 a Commission officer visited the Hong Kong Equal Opportunities Commission to conduct training in investigation techniques for its staff.

Fiji

The *Fiji Constitution Amendment Act 1997*, which commenced on 27 July 1998, contained a provision establishing a human rights commission.

In September 1998 a representative of the Fiji Government attended the Third Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions held in Jakarta, Indonesia. At that meeting the Fiji representative discussed with officers of the Forum the possibility of providing assistance to the new Commission. The New Zealand Government subsequently provided funding under the auspices of the Forum to assist in the development of domestic legislation to define the role and functions of the Fiji Commission. The *Fiji Human Rights Commission Bill 1999* was later passed on 4 April 1999.

Three commissioners have been appointed under the new Fiji Constitution.

The passage of the legislation and the appointment of commissioners make Fiji the first South Pacific island nation to create a commission for the promotion and protection of human rights. The Forum anticipates that the Fiji Commission will join the Forum as its seventh Member at the Fourth annual meeting.

India

In February 1999 an officer of the Forum attended the Asia Pacific Regional Conference on Education for Human Rights held in Pune, India. The conference was organised by the National Human Rights Commission of India, the World Peace Centre of the Maharashtra Institute of Technology and UNESCO. Nearly 180 delegates from 17 countries in the region, UNESCO, the Office of the High Commissioner for Human Rights and the national human rights institutions of Australia, India and New Zealand participated. The conference called upon national human rights institutions individually and jointly through the Forum to support the efforts of governments and other organisations for the implementation of national programs in line with the aims of the United Nations Decade for Human Rights Education.

Indonesia

In 1998 the Minister for Foreign Affairs and Trade, the Hon. Alexander Downer, MP, approved a two million dollar program of technical assistance and cooperation with the Indonesian Human Rights Commission (Komnas HAM) under the auspices of the Asia Pacific Forum. The program of technical assistance was developed by Forum officers following a needs assessment mission to Indonesia.

In July 1998 the Forum hosted a five person Komnas HAM study tour to the Australian Commission. The first week of the program included an academic component and meetings with the Minister for Foreign Affairs, the Attorney-General, the Chief Justice of the High Court, the Speaker of the House of Representatives, Members of Parliament, government representatives from the Attorney-General's and Foreign Affairs Departments and AusAID and non-government representatives. The second week was based at the Commission with meetings with representatives of policy, legal, conciliation and public affairs sections. The visit provided the delegation with a knowledge of Australia's institutional mechanisms for the protection and promotion of human rights and further developed linkages between Komnas HAM, the Forum and the Australian Commission.

In November 1998 an officer of the Commission visited Komnas HAM to develop a complaints handling manual for Komnas HAM. The manual has been completed and approved by Komnas HAM.

In December 1998 the Human Rights Commissioner and officers of both the Commission and the Forum organised and participated in the annual national human rights conference hosted by Komnas HAM. The conference, titled *State Responsibility – the role of National Institutions and Civil Society*, was held in Jakarta, Indonesia. The national conference was attended by members of Komnas HAM, Indonesian civil servants, members of the armed forces and police, non-government organisations and academics. Topics included the right to self determination and its implication within nation states.

Japan

In July 1998 a twenty person delegation from the International Movement Against All Forms of Discrimination and Racism Japan Office visited the Commission to examine human rights and anti-discrimination programs and legislation. The delegation was made up of non-government organisations, local government and corporate leaders. Justice Michael Kirby of the High Court addressed the delegation.

In August 1998 the Forum hosted a visit by Mr Akio Kawamura, a researcher from Human Rights Forum 21, a Japanese non-government organisation.

Malaysia

The Malaysian government has announced its intention to establish a human rights commission and has indicated that a Bill will be presented to the Malaysian Parliament in the July 1999 sessions. In May 1999, at the request of the Australian Department of Foreign Affairs and Trade and the Malaysian government, the Director of the Forum travelled to Malaysia to discuss the establishment of a Malaysian Human Rights Commission. The Director held meetings with Malaysian government officials, the Malaysian Bar Council and human rights non-governmental organisations.

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.

Philippines

In March 1999 an officer of the Forum visited the Philippines to hold discussions with the Philippines Human Rights Commission concerning arrangements for the Fourth Annual Meeting. In addition, the officer met with representatives of the Australian Embassy to discuss potential technical assistance projects to the Philippines Commission.

Sri Lanka

In June 1999 three officers of the Forum travelled to Sri Lanka to undertake a feasibility study on possible cooperative technical assistance projects. The representatives met with members of the Sri Lankan Commission, government and non-government organisations. This project was funded by AusAID.

Vietnam

In May 1999 the Forum provided two days of lecturing for Vietnamese judges. The project was funded by the United Nations Development Program and organised by the Centre for Asian and Pacific Law at the University of Sydney.

Activities outside the Asia Pacific region

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 technical assistance and cooperation projects. Although the focus and the priority of international activities are in the Asia Pacific region, consideration is given to requests for assistance to commissions outside the region, such as Canada and South Africa.

Canada

In 1998 the Commission entered into a staff exchange relationship with the Canadian Commission. During the reporting period arrangements were made for the first exchange of staff. The respective Commissions will each exchange a senior policy officer in July 1999.

South Africa

In July 1998 the Office of the Privacy Commissioner and the Forum Secretariat provided a briefing to a South African Parliamentary delegation which included two representatives of the South African Human Rights Commission. The delegation examined Australia's approach to freedom of information and privacy issues.

International Coordinating Committee of National Institutions

In December 1998 the Human Rights Commissioner participated in a conference of national institutions hosted by the French National Human Rights Commission in Paris to commemorate

the 50th Anniversary of the Universal Declaration of Human Rights. In addition to the conference the International Coordinating Committee of National Institutions held an inter-sessional meeting to discuss the process of accreditation of national institutions.

In April 1999 the Commissioner and the Director of the Forum attended the annual meeting of the International Coordinating Committee of National Institutions held in connection with the 55th Session of the UN Commission on Human Rights in Geneva, as well as the sub-committee of the Coordinating Committee, comprising Canada, France, Cameroon and Australia. The sub-committee met to review applications for membership to the Coordinating Committee.

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

In February 1999 the Commissioner and an officer of the Forum attended the Seventh United Nations Asia Pacific Workshop on Regional Cooperation for the Promotion and Protection of Human Rights, in New Delhi, India. The workshop was attended by representatives from over thirty-five countries, international experts, UN agencies and non-government organisations. Regional Member States agreed on a framework document for the provision of technical assistance to encourage and promote regional human rights arrangements. The framework document explicitly recognises the role of national institutions and provides funds for the Forum to assist in the establishment and strengthening of national institutions.

55th session of the United Nations Commission on Human Rights

In April 1999 the Commissioner and the Director of the Forum attended the 55th Session of the UN 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 region. Formal statements were presented to the UN Commission on the work of the Commission and the Forum, the role of national institutions in UN meetings and the importance of the Paris Principles. In addition, meetings were held with representatives of the UN, 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 received representatives from many countries interested in learning more about the Commission and the role of national human rights institutions.

Chapter 6: Privacy

Statement from the Privacy Commissioner

The year 1998–99 will be seen as a watershed for privacy in Australia. Not only did it mark the tenth anniversary of the Privacy Act, it was the year where the Federal Government announced that it would enact a light touch federal privacy regime to cover the private sector.

The Government said that the *National Principles for the Fair Handling of Personal Information*, which were developed by this Office, would be used as the basis for the new legislation.

The light touch private sector privacy legislation will give individuals in the community a greater degree of control over their personal information. The new regime seeks to achieve this by enabling individuals to make informed decisions about their personal information. In order to do this, effective enforcement must be balanced against unduly burdensome administration process.

The development of new technology, especially electronic commerce, is giving consumers unparalleled opportunity and range of choice. It is also providing business with excellent opportunities for growth well into the millennium. However, this same technology is very quickly changing the ways that individuals and organisations can collect, store and process personal information about each other. These rapid changes challenge everyone to pay closer attention to privacy issues. After all, most personal privacy is achieved by the way people conduct their daily lives.

It is simply not an option to walk away from the challenges technology poses to privacy. However, I am confident that by working with business, consumers and government we can achieve well-balanced solutions to those challenges.

As part of the Government's move to the new regime, the Attorney-General asked for the views of my Office on modifications that may need to be made to the National Principles to accommodate the privacy of personal health information held by the private sector.

At the time of writing, my Office was in the process of seeking comment on the National Principles, from a wide range of organisations and individuals, in relation to personal health information held by the private sector.

The following significant activities were undertaken by my Office during the last financial year:

- the release of a revised version of the *National Principles for the Fair Handling of Personal Information*;
- the release of *Guidelines for Federal and ACT Government World Wide Websites*;
- the provision of comments, at the request of the Department of Defence, on a proposed Targeted Breathalyser Testing Program in the Australian Defence Force;
- the acceptance of an invitation from the Minister for Health and Aged Care to become a member of the National Health Information Management Advisory Council;

- the continued participation in a consultation group for the Pharmacy Guild's Pharmacy Intranet Demonstration Project;
- the acceptance of an invitation from the Minister for Health and Family Services to join the Expert Advisory Committee on Information Sharing in Mental Health Crisis Situations; and
- the Office's representation on the Australian Communications Industry Forum with observer status and on the Consumer Codes Reference Panel. This had been set up to advise on the development of particular industry codes under the Telecommunications Act.

I have also been represented on working groups developing the following:

- Customer Personal Information Code;
- Calling Number Display Code; and
- Integrated Public Number Database Code.

Over the coming year, my Office will continue to find ways to build partnerships with key people and organisations. I look forward to working with consumers, business and government in achieving robust privacy solutions for individuals.

Under the Privacy Act, I am required to report separately to Parliament on the performance of my statutory functions. I refer readers to that report for a full account of the activities of the Office during the last year.

Chapter 7: Race Discrimination

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.

This year research was conducted across a range of key policy areas. This included a submission to the Minister for Immigration and Multicultural Affairs on the 1999–2000 Migration and Humanitarian Programs, investigating difficulties facing small and emerging migrant communities as well as research on non-English speaking people with disabilities, and evaluating follow up of the 1994 *Water Report*.

The Commissioner also assisted and advised other government bodies on race-related issues; for example, by contributing to the NSW Department of Industrial Relations' report on pay equity for non-English speaking women.

Multiculturalism

In April 1999 the National Multicultural Advisory Council released the report *Australian Multiculturalism for a New Century: Towards Inclusiveness*. The report brought together research and comments from a broad cross-section of the Australian community in response to the Council's 1997 issues paper, *Multicultural Australia: The Way Forward*.

The Commissioner had provided, in March 1998, a detailed submission on the positive role multiculturalism has played in meeting Australia's human rights and non-discrimination obligations. She urged that the principles embodied in multiculturalism should not be abandoned and called for measures to better explain its objectives. She made a series of recommendations, each of which was taken up in the Council's final recommendations. These included the promotion of Australian citizenship, respect for diversity, the elimination of racial discrimination, respect for the unique place Aboriginal and Torres Strait Islanders hold in Australian society and recognition of the benefits of productive diversity.

In January 1999 the Minister for Immigration and Multicultural Affairs, the Hon. Philip Ruddock, called for written submissions on the size and composition of the 1999–2000 Migration and Humanitarian Programs and associated settlement issues. The Commissioner's submission supported the continuation of non-discriminatory migration and refugee programs and the retention of the official policy of multiculturalism.

Disability project: On the Sidelines

The Commissioner is currently finalising an issues paper highlighting some significant issues facing people with disabilities from linguistically and culturally diverse backgrounds. The paper will be published in August 1999.

Little useful information is available about the needs of people with disabilities who fit this varied group. Time and time again, they seem to fall through the gap of various administrative arrangements to assist people with disabilities. In addition, they face disability-related stereotypes and prejudices both from within their own communities and society at large. These barriers serve to further isolate and alienate them.

Palm Island

On 1 June 1999 the Queensland government announced that it would compensate some 3 500 Palm Islander Indigenous former government employees who had been underpaid on the basis of their race. The claimants would be offered \$7000 each. The announcement followed a long-running battle for compensation begun in the 1970s with successive Queensland governments. In 1988 the Commission found that under the Racial Discrimination Act a group of Palm Island elders had been unlawfully discriminated against in their employment because of their Aboriginality. In the wake of the decision, nearly 500 further race complaints were received on the same matter and the Commissioner has continued to liaise with the Queensland Government for policy change.

Small and emerging communities: New Country, New Stories

Work has continued on a project to document the settlement experiences of small and emerging immigrant and refugee communities. During consultations with a number of communities, such as northern African, Iraqi, Afghani, Pacific Islander and smaller Asian groups, the Commission was informed of a number of concerns suggesting breaches of the Racial Discrimination Act, particularly in the area of housing. A paper is to be distributed in August 1999.

Water

Access to a safe and reliable water supply is a basic human right for all Australians. The quality of a community's water supply affects the health and well-being of the whole community. Most Australians these days have access to water of good to excellent quality. However, many small Indigenous communities, particularly those in remote areas, have inadequate water supplies both in quality and quantity.

The previous Commissioner, Ms Irene Moss, produced the *Water Report* in 1994. It was the result of a four-year investigation into the provision of water and sanitation services to remote Aboriginal and Torres Strait Islander communities. The Report contained a number of general as well as specific recommendations.

In early 1999 the current Commissioner initiated a follow up to the 1994 *Water Report*. The Report will cover policy and program development since the *Water Report*; an overview of water status in the ten *Water Report* communities; a comparative assessment of water and sanitation in two communities and a summary of key findings and recommendations for further action. The follow up report should be distributed in September 1999.

Police

There were a number of policy developments in the police area this year. As a result of a pilot program the Commissioner had developed with the NSW Police Service, the National Police Ethnic Advisory Bureau received funding this year under the federal government's *Living in Harmony* scheme to develop national anti-racism in service training packages for police jurisdictions throughout Australia. The Commissioner also provided advice on collecting ethnicity data and monitoring hate crimes as well as advice about appropriate terminology for describing certain physical characteristics of crime suspects.

Education and promotion

‘Australia has a strong tradition of social justice which can provide a common source of inspiration across political divisions. We also have a history of racism. Just as the past is not a source of guilt, but guidance for the future, so our knowledge of past wrongs is no guarantee that justice will ultimately prevail. Nothing is static. And nothing is assured. Whether Australia is a racist nation lies with the people of this country and the answer still lies in the balance’ (Zita Antonios, address to the Foreign Correspondents Association, Australia and South Pacific, Sydney 8 July 1998).

Education and promotion are important functions of the Race Discrimination Commissioner. In addition to her participation in broad Commission education activities, she undertakes specific work relevant to her portfolio.

During the past year the Commissioner fulfilled a busy schedule of public speaking engagements. She participated on an almost weekly basis in forums, conferences, meetings, panels and seminars around Australia, presenting papers across a broad range of areas such as health, education, employment, women’s issues and managing diversity. Key speeches are posted on the Commission’s website and occasionally reported by the media. The *Race for Business* launches this year, in particular, provided exposure to business and industry audiences nationally.

The Commissioner also responded to a heavy stream of requests from all areas of the media. This generally meant several interviews a week with radio, television and/or print media. Media interest this year was predominantly on racism in sport, native title, the apparent rise of far right extreme racist groups, the spread of racial hatred on the internet and the relationship between ethnicity and crime. One television appearance, in particular, on racism in schools resulted in a strong positive response from the public and a large number of requests for Commission literature.

The following provides an overview of the Commissioner’s further work in education and promotion.

Employment: Race for Business

‘... there’s been a great deal of talk in the public domain today about leadership. I believe that talk is too narrowly restricted to the political domain alone. Too often we forget the significant leadership role business can play in the broader community. Business has the power to influence an enormous cross-section of our society simply by insisting that discriminatory behaviour in the workplace is unacceptable and by capitalising on the many benefits our differences bring’ (Zita Antonios, *Race for Business* launch, Sydney 21 August 1998).

The largest number of formal race complaints are lodged in the area of employment. To address this, the Commissioner commenced national consultations with business and industry groups to better identify the needs of business when dealing with race discrimination and harassment in the workplace.

The outcome was the *Race for Business* program which was developed in close cooperation with the Australian Chamber of Commerce and Industry, the Council of Small Business of Australia,

the Australian Industry Group, the Business Council of Australia and the Council for Equal Opportunity in Employment.

Race for Business is an information and training program to assist employers prevent and eliminate racial discrimination and harassment in the workplace. The program emphasises mutual respect in the workplace and recognition of the benefits of diversity to business.

There are four components to the program:

- detailed guidelines and advice for employers on the Racial Discrimination Act and cultural diversity in the workplace;
- a plain English brochure on anti-discrimination law and the value of diversity specifically for small business;
- a training video (the *Race for Business* video was a finalist in the Australian Teachers of Media Awards presented in May 1999); and
- a training resource manual.

On 21 August 1998 in Sydney, *Race for Business* was launched nationally with the Commissioner by the Hon. Philip Ruddock, Minister for Immigration and Multicultural Affairs. Mr Mark Paterson, Chief Executive Officer for the Australian Chamber of Commerce and Industry, and businessman and lawyer, Mr Rod McGeoch, also spoke.

The following launches were hosted in state capital cities:

- Stefan Romaniw, Chairman of the Victorian Multicultural Commission (representing the Premier of Victoria) in conjunction with the Australian Industry Group (AIG), launched the program in Melbourne on 26 October 1998;
- Parliamentary Secretary, the Hon. Fran Bladel, Department of Premier and Cabinet, launched the program in Hobart on 26 February 1999;
- Senator, the Hon. Amanda Vanstone, Minister for Justice and Customs, launched the program in Adelaide on 5 March 1999;
- The Attorney-General, the Hon. Daryl Williams, launched the program in Perth on 19 March 1999; and
- Mr Ross Rolfe, Director-General of the Department of State Development, launched the program in Brisbane on 25 March 1999.

Following each state launch, half day seminars attended by business representatives were held to elaborate on the contents of the program.

In May 1999 the Commissioner formally signed an agreement with the Australian Human Resources Institute to facilitate the training of trainers and managers in *Race for Business*. The Institute is to be active in delivering *Race for Business* courses to its extensive national membership. The Commissioner also worked closely with the Australian Industry Group to maximise *Race for Business* training opportunities for its 16 000 members.

Schools

Again this year, the Commissioner gave a high priority to raising awareness of race discrimination issues in schools. She visited and spoke publicly at a number of secondary schools across Australia. She also worked closely with the Committee of Educational Systems Chief Executive Officers. Chaired by the NSW Department of Education, this committee includes as members all Australian states and territories, New Zealand, Papua New Guinea and representatives from the National Catholic Education Commission and the National Council of Independent Schools Association. The Committee is currently working with the Commissioner to finalise comprehensive curriculum modules to tackle racism in schools nationally and in New Zealand and Papua New Guinea.

Evaluation of Takin' A Stand

In June 1997 the Commissioner launched an educational comic – *Takin' A Stand* – on racial hatred in schools. In November 1998 a formal evaluation of the comic was completed.

An analysis of the feedback reports, mainly from schools and TAFE Colleges, indicated *Takin' a Stand* was well received by the target audience. The comic was highly rated in its communication of information, for the quality of its artwork, for being relevant to young people and appropriate to their literacy level. Students judged the comic to be worthwhile, said the story was realistic and were generally able to identify the strategies dealing with racial abuse and harassment in schools.

Consultations were also carried out nationally with representatives of state education departments, TAFE NSW, peak 'ethnic' community organisations, youth organisations, teachers' unions and parents' and citizens' associations. Teachers reported that the comic was effective in promoting discussion, helped raise awareness of issues, provided a range of strategies and options, outlined how to seek help and made it clear that schools and TAFE colleges were responsible for taking action against racial abuse and harassment. The South Australian Department of Education raised questions about the use of racist language. Overall, however, the comic was rated as successful in meeting its objectives and reaching its target audience.

Youth Challenge

Following the success of a pilot Youth Challenge program on disability during the December 1998 Human Rights Conference, the Commissioner allocated funds to develop race specific curriculum material (including a video) for use in further Youth Challenges in schools nationally. Background work commenced this year and the program will be launched in late 1999.

Face the Facts supplement on crime

Face the Facts, published in 1996, has been one of the most requested publications produced by the Commission in recent years. While resource constraints made it impossible this year to update all the material, the Commissioner prepared a supplement addressing myths and questions about ethnicity, migration and crime – a subject area which was prominent in media coverage this year.

Sport

The Commissioner is a member of the Multicultural Advisory Committee to the Sydney Organising Committee for the Olympic Games. She has provided advice across a range of issues, including the development of training modules and a cross cultural training manual for volunteers assigned to visiting officials and dignitaries during the Sydney 2000 Olympics.

During the past year, the Commissioner was also approached by a number of sporting codes, clubs and associations, seeking assistance to develop anti-vilification Codes of Conduct. This cooperation was timely, given the number of high profile sporting incidents involving racial vilification this year.

Codes of Conduct are an essential tool for sporting bodies in combating racial harassment and vilification, on and off the field. The Commissioner welcomes the initiative of these organisations and applauds their commitment to eradicating racial vilification in their respective areas.

Agenda New Zealand visit

The Commissioner was invited by Mr Rajen Prasad, the New Zealand Race Relations Conciliator, to visit New Zealand during May 1999 to launch *Agenda New Zealand*, a nationwide process of race relations consultations. The project was also co-launched by Mr Bob Purkiss, Deputy Commissioner of the UK Commission for Racial Equality. The visit took in an extensive program of engagements in Auckland, Christchurch and Wellington during which the Commissioner had a number of speaking engagements and media interviews on the Australian perspective.

Collaborative work

The Commissioner has worked collaboratively with a host of organisations providing advice and assistance across a range of race-related and cultural diversity issues. Some collaborative work has been mentioned previously. In addition, in the past year the Commissioner has also:

- assisted in planning the *Diversity 2000 Expo*. This national expo will showcase the benefits of workplace diversity and market diversity resources in Melbourne in late 1999;
- participated in planning a conference on intercultural communication – *Culture, Race and Community: Making it Work in the New Millennium* – with the University of Melbourne’s Centre for Cultural Studies in Health; and
- provided policy advice and editorial comment to the publishers of *A Fair Go*, a book to be published in November 1999 which features the accomplishments of fifty prominent overseas born Australians.

‘But today, in a form of Orwellian new speak, equality is used as a coded term designed to erode respect for difference and to insist on uniformity. In the context of native title rights the notion of equality has been corrupted to strip away rights. The superficially benign notion of “equal treatment” camouflages a perpetuation of our history in which the interests of Indigenous Australians are constantly compromised in deference to the interests of non-Indigenous Australians. The reconciliation sought conforms with a major theme of our history: Aboriginal and Torres Strait Islander people must reconcile their loss to our gain. This process brings out the irony latent in the very name of the “Council for Aboriginal Reconciliation”’ (Zita Antonios, address to Brisbane Writers Festival, Brisbane 3 September 1998).

Legislative reform and assessment

The Commissioner contributed to a number of formal submissions made by the broader Commission. She also made specific submissions.

As part of her submission to the 1999–2000 Migration and Humanitarian Programs, the Commissioner reiterated concerns she had raised in March 1998 to the Senate Legal and Constitutional Legislation Committee inquiry into the ‘Operation of Special Benefit Provisions Relating to Newly Arrived Residents Waiting Period’. The Commissioner again expressed the view that the operation of the two year waiting period in relation to special benefits may breach the Racial Discrimination Act.

The Commissioner also stressed the imperative that principles of transparency, accountability and procedural fairness are applied to all Migration and Humanitarian Program decision-making processes. Independent review systems, such as those under the Migration Review Tribunal, Refugee Review Tribunal and Administrative Appeals Tribunal, as well as judicial review, need to be maintained for migration and refugee review applicants. The Commission provided a submission to the Senate Legal and Constitutional Legislative Committee on 12 January 1999 highlighting Australia’s obligations under international law to retain a right of appeal and judicial review.

Chapter 8: Sex Discrimination

Education and promotion

Harsh Realities: workplace case studies

In response to discussions with unions, the Commissioner produced a set of case studies about a number of recently finalised matters managed under the Sex Discrimination Act. The 28 anonymised cases illustrated the major issues for women, particularly those in lower paid, unskilled or semi-skilled positions or who were otherwise vulnerable in the workforce. The paper was launched by the Attorney-General with a response from Australian Council of Trade Unions President, Jennie George, on 9 March 1999 at the Kurrajong Hotel in Canberra.

Advertising guidelines

A brochure providing guidelines for recruitment advertising was launched on 12 February 1999 at the offices of Morgan and Banks in Sydney. It was widely distributed and a second print run produced. The brochure was distributed in particular to newspapers, employers and employment agencies, including all Employment National offices and all recruitment organisations in the Commonwealth Jobs Network. It also formed the basis of ongoing discussions with managers within newspapers.

Research and policy

Pregnancy and Work Inquiry

It is a human right, not a privilege, for a woman to work while she is pregnant. The challenge that lies before us on the eve of the 21st century is to ensure appropriate, safe and fair management of workplace pregnancy. It is paramount that all parties to the employment relationship are well informed about their rights and responsibilities with regards to workplace discrimination.

To assist in addressing these challenges, on 26 August 1998 the Attorney-General announced a reference to the Human Rights and Equal Opportunity Commission to inquire into and report on issues relating to pregnancy and work. The Commission was required to report to the Attorney-General by 31 May 1999 on findings and research relating to relevant national and international practices and research, the necessity for anti-discrimination law reform and any other matters relating to pregnancy and work. Guidelines to assist employees, employers and other interested parties to understand their rights and responsibilities in relation to pregnancy and potential pregnancy in the workplace were also requested.

An issues paper was launched on 1 December 1998 and received national media coverage. Over one hundred written submissions were received on the issues paper. The Commissioner and her policy unit conducted targeted consultations on the issues paper, in particular with women who have been pregnant in the workforce, unions, individual employers, middle managers, human resources staff, employer organisations, retail trainees, Indigenous women and organisations, women of culturally and linguistically diverse backgrounds, their advocates and others.

Focus groups

Australian Council of Trade Unions (18 September 1998)

Mount Isa High School (2 November 1998)
 CEOE Ltd Employer Forum (14 December 1998)
 CEOE Ltd Employer Forum (15 December 1998)
 Labor Council of NSW (1 February 1999)
 Taronga Park Zoo (2 February 1999)
 Tranby College (8 February 1999)
 Women's Legal Services (9 February 1999)
 Confidential (16 February 1999)
 Immigrant Women's Speakout (22 February 1999)
 Retail Group Training and Employment Ltd (23 February 1999)
 Westpac, Concord Centre (24 February 1999)
 Central Australian Women's Legal Service (25 February 1999)
 Darwin Seminar (26 February 1999)
 Women in Industry and Community Health (3 March 1999)
 TAFE Queensland and Group Training Australia (10 March 1999)

Focus groups conducted by the Equal Opportunity Commission, Western Australia

Women employees, Perth (10 February 1999)
 Women employees, Perth (12 February 1999)
 Indigenous women (17 February 1999)
 Women employees, Perth (19 February 1999)
 Port Hedland (20 February 1999)

List of consultations

Shop, Distributive and Allied Employees' Association (2 September 1998)
 New South Wales Pregnancy Reference Working Party (4 September 1998)
 Victorian Equal Opportunity Commission (17 September 1998)
 Coles Myer Ltd (18 September 1998)
 Ford Motor Company of Australia Limited (18 September 1998)
 Catherine Ainsworth (18 September 1998)
 Department of Workplace Relations and Small Business (7 October 1998)
 Working Women's Centre, New South Wales (22 January 1999)
 ATSIW Women's Committee (11 February 1999)
 South Australian Equal Opportunity Commission (22 February 1999)
 Working Women's Centre, South Australia (22 February 1999)
 Northern Territory Chamber of Commerce and Industry (26 February 1999)
 Northern Territory Anti-Discrimination Board (26 February 1999)
 Top End Women's Legal Service (26 February 1999)
 Justice Branson, Federal Court (5 May 1999)

Personal consultations with the Sex Discrimination Commissioner

Confidential, female executive (17 September 1998)
 Mandy Keilor, Managing Director, Keilor Constructions and The Source (19 March 1999)
 Deanne Bevan, Vice President & Director of Employee Relations, McDonalds Australia Ltd (1 April 1999)
 Karen Walters, Queensland Anti-Discrimination Commissioner (20 May 1999)
 Linda Matthews, South Australian Commissioner for Equal Opportunity (3 June 1999)
 Confidential, Manager, Australian multinational (4 June 1999)

Jenni Werner, Human Resources Manager, EDS Australia (April 1999)
 Confidential, pregnant supermarket casual employee (11 September 1998)
 Confidential, Personal Assistant (April 1999)
 Cheryl Nairn, Personnel Department, EMAIL Ltd (April 1999)

The inquiry generated considerable public interest. Across the board there was a positive response to the inquiry with the vast majority of contributors questioning how, as a society that acknowledges both women's right to work and the economic contribution they make, we can better manage the reality of pregnant workers. A variety of perspectives was aired and a significant amount of evidence concerning direct and indirect discrimination on the basis of pregnancy and potential pregnancy was detailed. Issues of harassment and victimisation due to pregnancy and potential pregnancy were documented by contributors. Employers and employer organisations also took the opportunity to explain some of the difficulties that they believed they faced with the practical day to day management of pregnant workers.

The national Pregnancy and Work Inquiry has provided an opportunity to assess our progress thus far and ensure that prevailing issues of concern are placed on the agenda for timely and thorough attention.

The final report was provided to the Attorney-General on 24 June 1999, following an extension from the Attorney until that date.

Australia's international obligations

The last year saw movement on a number of international agreements relevant to women in Australia. For example, the International Labour Organisation revised the Maternity Protection Convention (ILO 103). Australia is not a signatory to ILO 103, which sets minimum standards for maternity leave, maternity pay and benefits, and protection from dismissal. The Commissioner monitored with interest the debate nationally and the progress on the revision of ILO 103 internationally. In addition, the Commissioner participated in national discussions on international agreements.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women

As the principal document enunciating women's rights, the Convention on the Elimination of All Forms of Discrimination Against Women is an important document for half of the world's population and over half of Australia's population. The importance and significance of the Convention, however, is not at this stage matched by its implementation strength. Human rights are only as effective as their ability to be implemented. The Convention on the Elimination of All Forms of Discrimination Against Women Committee has limited powers to promote the implementation of the Convention. Unable to pronounce a State Party in violation of the Convention, nor order a remedy for violation, the Committee is limited to consideration of regular reports by State Parties, which are often late and substantially inadequate.

The fundamental importance of the rights in the Convention verifies the need for an Optional Protocol that would provide procedures for its enforcement. The Committee last year considered the development of such a protocol. In December 1998, the Commissioner made a submission to the Australian Government on the Optional Protocol to the Convention.

That submission noted that it is crucial the Optional Protocol be at least as effective as the inquiry procedures under other Conventions, particularly Article 20 of the Convention on Torture

and Other Cruel Inhuman or Degrading Treatment or Punishment as well as the First Optional Protocol to the International Covenant on Civil and Political Rights. An Optional Protocol with any less strength and effectiveness reflects a limited international commitment to women.

The submission pointed out that it is of historical importance that the Australian Government was instrumental in the formation and acceptance of the Convention. The Optional Protocol will also be of historical significance. The submission also urged continued work towards the removal of Australia's remaining reservations to the Convention.

Following consultation on the draft text of the Protocol, the text was settled by the Committee. The Protocol now must negotiate the United Nations General Assembly before being considered by each nation. This negotiation process provides a valuable opportunity for the Australian Government to again demonstrate its commitment to the Convention by shaping an instrument that will assist in improving the lives and opportunities of women all over the world.

Throughout the year, the Commissioner took the opportunity to raise these issues for public discussion and to promote awareness of the importance of progress on these fronts.

Report on the application of ILO 100

The Sex Discrimination Unit prepared and submitted to the Department of Workplace Relations and Small Business a report on the application of International Labour Organisation Equal Remuneration Convention (ILO 100), pursuant to Article 22 of the International Labour Organisation Constitution. This report provided information on work done by the Unit to promote and ensure equal remuneration for men and women since the last report in June 1996.

Legislative reform and assessment

Submission to the Victorian WorkCover Authority on lead

On 12 April 1999 the Commissioner made a submission to the Victorian WorkCover Authority on its review of the *Occupational Health and Safety (Lead Control) Regulations 1988*. The submission dealt with the history of the involvement of the Commission in the arrangements for pregnant or potentially pregnant women in the lead industry. It made recommendations for ensuring occupational health and safety provisions are not incompatible with anti-discrimination legislation.

Draft code of practice on advertising

On 17 November 1998, the Commissioner made a submission on the Australian Subscription Television and Radio Association draft advertising code. The submission made several recommendations, including that the code specifically name the Sex Discrimination Act and other legislation administered by the Commission as legislation with which advertisers should conform.

Model criminal code: slavery discussion paper

The Commissioner made a submission to the Model Criminal Code Officers' Committee on the sexual servitude provisions of the Committee's discussion paper on slavery. The submission commended the recommendations of the paper and suggested that, once the recommendations were implemented, they would go a long way towards eliminating the trafficking of women into

Australia and the exploitation of women in the country. The submission noted that, although fortunately affecting few women, there was evidence that these practices are continuing.

Industrial relations matters

The federal *Workplace Relations Act 1996* requires federal awards to be stripped back to a total of twenty 'allowable award matters' (section 89A(2)). The first test case that went to hearing at the Australian Industrial Relations Commission concerned the Hospitality Industry Award. The Commission intervened in this matter and the Commissioner made a submission on the Commission's behalf. The decision was handed down by the Australian Industrial Relations Commission in December 1997.

The Commissioner and her policy unit have been monitoring the progress of the simplification process and becoming involved where it has a contribution.

For example, in December 1998, the Entertainment Industry Employers Association requested that the Commission intervene in the Australian Industrial Relations Commission proceedings to review, under section 109 of the Workplace Relations Act, the decision in the simplification of the *Miscellaneous – Entertainment and Broadcasting – Actors – (Theatrical) Award 1996*. Both the employer organisation and the union in these proceedings were concerned at the application for review by the Federal Government of the earlier decision to allow provisions concerning nudity to remain in the Award. The Government argued that provisions relating to nudity did not fall within any of the twenty allowable matters under the Act.

Although the proceedings did not directly raise any issues of discrimination, there were concerns about the vulnerability of employees or potential employees and their possible exposure to sexual harassment if the clause were removed from the Award. The Commissioner provided a letter to the Entertainment Industry Employers' Association dated 22 December 1998 expressing these views.

During 1997–98, the Commission participated in an inquiry into pay equity matters undertaken by the NSW Industrial Relations Commission by Ministerial Reference. The report of that inquiry was released in December 1998, making a number of significant recommendations. The Commissioner has been following closely the progress of the implementation of those recommendations. The Commissioner commends the progress on pay equity issues to other Australian jurisdictions.

Appendix 1

International instruments observed under legislation administered by the Human Rights and Equal Opportunity Commission

Human Rights and Equal Opportunity Commission Act

The *International Covenant on Civil and Political Rights* deals with many human rights and includes the right without discrimination to:

- freedom from torture or cruel and inhumane punishment
- equality before the law
- humane treatment if deprived of liberty
- freedom of thought, conscience and religion
- peaceful assembly
- a vote and election by equal suffrage
- marriage and family

The *Declaration of the Rights of the Child* provides that every child has the right to:

- a name and nationality
- adequate nutrition, housing and medical services
- education
- special treatment, education and care if the child has a disability
- adequate care, affection and security
- protection from neglect, cruelty and exploitation

The *Declaration on the Rights of Disabled Persons* provides that people with disabilities have the right to:

- respect and dignity
- assistance to enable them to become as self-reliant as possible
- education, training and work
- family and social life
- protection from discriminatory treatment

The *Declaration on the Rights of Mentally Retarded Persons* provides that people with a mental disability have the right to:

- proper medical care and therapy
- protection from exploitation, abuse and degrading treatment
- a decent standard of living
- education, training and work
- due process of law
- review of procedures which may deny them these rights

The *International Labour Organisation Convention 111* deals with discrimination in employment and occupation. Australian adherence to this Convention provides that all people

have the right to equal treatment in employment and occupation without discrimination on the basis of:

- race
- colour
- sex
- religion
- political opinion
- national extradition
- social origin
- age
- medical record
- criminal record
- sexual preference
- trade union activity
- marital status
- nationality
- disability (whether physical, intellectual, psychiatric or mental)
- impairment (including HIV/AIDS status)

The *Convention on the Rights of the Child* confirms that children are entitled to the full range of human rights recognised in international law (subject to limitations relating to their capacity to exercise these rights and to the responsibilities of families). The Convention also recognises a range of rights relating to the special needs of children. It seeks to ensure that the protection of these rights in law and practice is improved.

The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* became part of the definition of human rights for the purposes of the Human Rights and Equal Opportunity Act on 24 February 1994. The Declaration recognises the right to freedom of religion. The only limitations to this right are those prescribed by law and which are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.

Racial Discrimination Act

The *International Convention on the Elimination of All Forms of Racial Discrimination* aims at the elimination of all forms of racial discrimination in order to promote understanding between races and provide freedom from racial segregation. It is entered into force for Australia by the Commonwealth *Racial Discrimination Act 1975* in which it is scheduled.

Sex Discrimination Act

The *Convention on the Elimination of All Forms of Discrimination Against Women* and certain aspects of the *International Labour (ILO) Convention 156* are multilateral agreements adopted under the auspices of the General Assembly of the United Nations in 1979. The Conventions recognise the civil, political, economic, social and cultural rights of women. The Commonwealth *Sex Discrimination Act 1984* implemented the Convention into Australian Law.

Appendix 2

Commission publications released during 1998–99

General

Human Rights and Equal Opportunity Commission Annual Report 1997–98

The Human Rights and Equal Opportunity Commission: An overview of the Commission's role, function and legislation plus publications and contact details

The Complaint Guide: An introduction for people considering making a complaint, or responding to a complaint before the Human Rights and Equal Opportunity Commission (revised edition)

Aboriginal and Torres Strait Islander Social Justice

Social Justice Report 1998

Native Title Report 1998

Disability Rights

Advisory Note on Access to Premises (revised edition)

Advisory Note on World Wide Web accessibility (version 3)

Developing an Effective Action Plan

Disability Rights Update

Living Wills discussion paper

Human Rights

Age matters? A discussion paper on age discrimination

Article 18: Freedom of religion and belief

Bush Talks

Forum Bulletin No. 1

Human Rights Brief No. 1: The Best Interests of the Child

Human Rights Brief No. 2: Sentencing Juvenile Offenders

Superannuation Entitlements of Same-Sex Couples

Territorial Limits: Norfolk Island's Immigration Act and human rights

Privacy

National Principles for the Fair Handling of Personal Information (revised edition)

Guidelines for Federal and ACT Governments World Wide Websites

Racial Discrimination

Diversity is your business

Race for Business (guidelines)

Race for Business (training resource manual)

Race for Business (training video)

Sex Discrimination

Harsh Realities

Guidelines for writing and publishing recruitment advertisements

Pregnancy and Work issues paper

Appendix 3

Selection of speeches given by the President and Commissioners

Professor Alice Tay, President

August 1998: Launch of the Human Rights and Equal Opportunity Commission's Website, Perth

August 1998: 'Human Rights and Business Education', Council for Equal Opportunity in Employment Limited, Sydney

September 1998: 'Ageism, Rights and Responsibilities', Council on the Ageing Conference, Gosford

October 1998: 'Towards the 21st Century, Challenges and Opportunities', International Symposium on World Human Rights, China

October 1998: 'Law, Justice, Human Rights and Philosophy: The Four Pillars of Civil Community', St Thomas More Society, Sydney

October 1998: 'Human Rights and Wrongs', Mitchell Oration, Adelaide

October 1998: Address to the Community Aid Abroad Hunger Banquet, Sydney

November 1998: 'Facing the Human Rights Challenges of the 21st Century', Victorian Equal Opportunity Commission, Melbourne

November 1998: 'Education and Human Rights', Brisbane Grammar School, Brisbane

November 1998: 'Contributions to Australia by Women from Diverse Cultures', Federation of Ethnic Community Councils Annual Conference, Brisbane

December 1998: 'One World, One Culture, One Education?', International Student Advisers Network of Australia, Canberra

December 1998: 'Human Rights and Development', World Vision, Melbourne

March 1999: 'Human Rights and Wrongs', University of Bologna, Italy

March 1999: 'Bread and Roses: Women, Culture and Identity in the 21st Century', Singapore

March 1999: "'Asian Values" and the Rule of Law', University of Windsor, Canada

March 1999: 'Perspectives on Addressing Multiculturalism', Australian Forum for Cultural Diversity, Canberra

March 1999: 'Beginning the Dialogue', Women's Dialogue on Multiculturalism, Canberra

April 1999: "'Asian Values" and Human Rights', Centre for Inter-cultural Studies and Multicultural Education, University of Adelaide

April 1999: 'Culture, Rights and Cultural Relativism', Multicultural Education Coordination Committee, Adelaide

May 1999: 'The Value of Personal Philosophies of Education', University of Technology Graduation, Sydney

May 1999: 'Globalisation, Regionalisation and Human Rights', Australian Institute of International Affairs, Sydney

May 1999: 'Strengthening the Commission? Proposed changes to the Human Rights and Equal Opportunity Commission', University of NSW Law Society, Sydney

May 1999: 'The Decline of Self Discipline in Society', Australian Institute of Company Directors, Adelaide

May 1999: 'Dying Town Syndrome: Human Rights in Regional, Rural and Remote Australia', Queensland National Party Conference, Charters Towers

June 1999: 'The Internationalisation of Australian Law', University of Sydney

June 1999: Address to the International PEN World Association of Writers, Sydney

Dr Bill Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner (from April 1999)

26 May 1999: National Sorry Day address, Newcastle

28 May 1999: National Sorry Day address, Hurstville

25 June 1999: 'Equal is Not the Same', Lecture to Equal Opportunity Conference, Perth

Chris Sidoti, Human Rights Commissioner and Acting Disability Discrimination Commissioner

July 1998: 'Reconciliation: An issue for all Australians' and 'Human Rights Issues for Rural Families', Bathurst

July 1998: Two presentations to Year 11 Legal Studies and Business Studies students at Casimir College, Marrickville

July 1998: Address to the monthly lunch meeting of the Committee for the Economic Development of Australia

August 1998: Address to Breakfast Seminar at the Curtin University Graduate Management Program

August 1998: Address to the Western Australia Disability Services Commission, Seminar for social work staff and trainees

August 1998: 'Bush Talks: Human Rights in Regional, Rural and Remote Australia', Perth

- August 1998: 'Human Rights and Christian Leadership', Sydney
- August 1998: Address to the Josephite Human Rights Colloquium, Sydney
- August 1998: 'Maintaining the Rage: Human Rights and Social Justice in Australia', Sydney
- August 1998: Address to the 'Reconciliation: Working Together' Conference, Mackay
- August 1998: Address to the Liberal Speakers' Forum dinner
- September 1998: Address to students at the Australian National University, Canberra
- September 1998: 'Human Rights in Australia: Advantages or Disadvantages of Protection of Rights through the Constitution', Bathurst
- September 1998: 'The 50th Anniversary of the Universal Declaration of Human Rights', Dominican Asia Pacific Justice and Peace Assembly
- September 1998: Address to the South Australian Country Women's Association Annual Conference
- September 1998: 'The Disability Discrimination Act and Employment of People with a Disability', South Australian Employment Placement Association breakfast meeting, Adelaide
- September 1998: 'Getting There', Eighth International Conference on Mobility and Transport for Elderly and Disabled People, Perth
- October 1998: Keynote address at the Second National Conference on Children, Young People and Domestic Violence, Brisbane
- October 1998: 'Innovative Partners', Australian Psychiatric Disability Coalition National Forum, Canberra
- October 1998: 'Charting New Waters: Rural Communities – The Fight Back', Sydney
- October 1998: 'Humanitarian Players: Competition or Complementarity?' The Powerhouse Museum, Sydney
- October 1998: 'Change and Growth : Rights and Responsibilities', Newcastle
- October 1998: 'Crime Prevention through Social Support', NSW Parliament House, Sydney
- November 1998: 'The Disability Discrimination Act and the Continuing Battle for Equal Rights for People with a Disability', ACROD Convention, Cairns
- November 1998: Address to the Annual General Meeting of the Physical Disability Council of NSW, Chatswood
- November 1998: Address to the Sydney University School of Medicine, 50th Anniversary function, Sydney
- November 1998: Keynote address on children's rights at the Annual General Meeting of Berry Street Services, Melbourne

November 1998: Address to the National Corporate Citizenship Conference, Deakin University, Melbourne

February 1998: 'Issues and Strategies around Couple-based Discrimination', Sydney

February 1998: 'Human Treatment in Detention: For those who must be there', Public Health Association Conference

March 1999: 'Rural Health: Human Rights for Rural People', Seventh National Conference, Association for Australian Rural Nurses Incorporated

March 1999: Address to Seventh Rural Mental Health Conference, Albury

March 1999: 'The Challenge of Human Rights', Greek Festival of Sydney

April 1999: 'Effective Functioning of Human Rights Mechanisms: National Institutions for the Promotion and Protection of Human Rights', 55th Session of the United Nations Commission on Human Rights

May 1999: Graduation address at Deakin University, Geelong

Moira Scollay, Privacy Commissioner (July 1998–January 1999)

29 July 1998: 'Comnet' meeting to discuss current privacy issues, Public Service and Merit Protection Commission, Canberra

30 July 1998: 'Privacy Principles for the Insurance Industry', Australian Association of Insurance Accountants, Melbourne

6 August 1998: Launch of *Privacy Principles for the Insurance Industry*, Insurance Council of Australia, Canberra

27 August 1998: 'Current privacy issues and developments affecting the financial sector', IIR Conference Direct Delivery of Financial Services, Sydney

4 September 1998: Address to the Annual Conference of Society of Consumer Affairs Professionals in Business, Brisbane

16–18 September 1998: Address to the International Conference of Privacy and Data Protection Commissioners, Spain

7–9 October 1998: Address to the OECD Ministerial Conference on Electronic Commerce, Ottawa

13 October 1998: Address to the Annual General Meeting, Health Issues Forum, Melbourne

29 October 1998: Report to a meeting of privacy and consumer advocates, Melbourne

29 October 1998: Address to the Asia Pacific Smart Card Forum, Melbourne

9 November 1998: Launch of the Australian Direct Marketing Association's *Code of Conduct*, Sydney

10 November 1998: 'Consumer protection issues associated with mechanisms for global commerce', Australian Competition and Consumer Commission Conference

11 November 1998: 'How the new regime impacts on the public and private sectors', IIR Conference on practical implementation of emerging privacy laws and codes

13 November 1998: Address to the ANAO Performance Auditors Professional Development Seminar: 'Privacy and accountability in a changing public service'

19 November 1998: Presentation to a seminar organised by Insurance Enquiries and Complaints Ltd, the body established to investigate complaints under the new General Insurance Information Privacy Principles

26 November 1998: Address to the National Conference of the Institute of Public Administration, 'Meeting the Challenge of Protecting Privacy in a Changing Public Sector', Hobart

Malcolm Crompton, Privacy Commissioner (from April 1999)

31 May 1998: Address to the IIR conference 'Minimising risks and costs of privacy compliance', Melbourne

Zita Antonios, Race Discrimination Commissioner and Acting Aboriginal and Torres Strait Islander Social Justice Commissioner (July 1998–April 1999)

8 July 1998: 'Is Australia a Racist Nation?', Australia and South Pacific, Foreign Correspondents' Association, Sydney

16 July 1998: 'Women and Diversity', Chair of a keynote session at the University of Technology, Winds of Change International Conference, Sydney

22 July 1998: 'Ethnicity and Health', launch of the South-Eastern Sydney Area Health Service, *Ethnic Affairs Strategic Plan*, Sydney

22 July 1998: 'Ethnicity and Health', launch of the Nepean Health Unit of Wentworth Area Health Services, *A Guide to Preventing Racial Harassment and Discrimination*, Sydney

4 August 1998: 'A Fair Go For All', NSW Department of Education and Training 1998 State Student Representative Council Conference, Sydney

6 August 1998: 'Human Rights, Racism and Schools', Matthew Flinders Girls Secondary College, Geelong

21 August 1998: Launch of the *Race for Business* package at the Powerhouse Museum, Sydney

31 August 1998: 'Aboriginal, Immigrant and Refugee Women', University of Western Australia, Centre for Research for Women, Perth

- 1 September 1998: 'Social Work Practice in a Diverse Community', keynote address to the Western Australian Branch, Celebrating Excellence in Social Work Practice, 17th Australian Association of Social Workers, Perth
- 3 September 1998: 'Filling the Mirror', panellist at the Brisbane Writers Festival, The Road to Reconciliation, Brisbane
- 15 September 1998: 'Indigenous, Immigrant and Refugee Women: A Place on the Main Stage', Chisholm Lecture, La Trobe University, Melbourne
- 20–21 October 1998: 'The Role and Working Life of the Race Discrimination Commissioner', IBM Women's Networking Conference, Darling Harbour and Pennant Hills
- 26 October 1998: 'The Pursuit of Human Rights', United Nations Development Fund for Women, Brisbane
- 27 October 1998: Launch of the *Race for Business* package in Melbourne
- 31 October 1998: 'Human Rights, Racism and the Law', NSW Young Lawyers Annual Assembly, Bowral
- 4 November 1998: 'The Economic Contribution of Multiculturalism', Equal Opportunity Practitioners Association Queensland Inc, Brisbane
- 5 November 1998: 'Ethnicity and Mental Health', Fourth Transcultural Mental Health Centre Conference, Cultural Diversity and Mental Health in Challenging Times
- 7 November 1998: 'Respecting Culture – Protecting Rights – Seeing is Believing', the Australian Baha'i Community, Human Rights, Faith and Culture Conference to Commemorate the 50th Anniversary of the United Declaration on Human Rights, Canberra
- 23 November 1998: 'Racial Discrimination and Refugee Women', Australian National Cooperative of Refugee Women's Annual General Meeting, Sydney
- 26 November 1998: 'Addressing Racism: Into the Twentieth-First Century', State Health Forum, Sydney
- 30 November 1998: 'Where to Now?', Western Australians for Racial Equality Annual General Meeting, Perth
- 2 December 1998: 'Human Rights 1948–1999, How Far Have We Come?', Launch of Human Rights Week 1998 and presentation of Awards, Tasmania
- 3 December 1998: Address to the Australian Chamber of Commerce and Industry, Labour Relations Working Party on the *Race for Business Program*, Melbourne
- 20 January 1999: 'Multiculturalism in the Millennium', 1999 Association of Teachers of English to Speakers of Other Languages (NSW) National Conference and 11th Summer School, Sydney
- 29 January 1999: 'Multiculturalism and Racism in Australia 1999', St James Ethics Centre 1999 Leadership Forum, Canberra

- 16 February 1999: 'The Role and Work of the Race Discrimination Commissioner', Australian Teachers of English to Speakers of Other Languages, Annual General Meeting, Sydney
- 24 February 1999: 'Diversity 1999', Dunhill Madden Butler Solicitors Women's Network Luncheon, Canberra
- 26 February 1999: 'The United Nations Declaration of Human Rights and Racism in Schools', Taroona High School students, Hobart
- 11 March 1999: 'Women's Leadership in the Next Millennium', University of Sydney, Centre for Continuing Education, Women's Leadership Forum on Leading Women, Sydney
- 19 March 1999: Launch of the *Race for Business* package with the Federal Attorney-General, Perth
- 24 March 1999: 'Leadership and Mentoring in a Diversity Society', 1999 Department of Finance and Administration, National Women's Network Conference, Leading into 2000 and Beyond, Canberra
- 25 March 1999: Launch of the *Race for Business* package with Mr Ross Rolfe, Director-General, Department of State Development, Brisbane
- 19 April 1999: 'The Role and Work of the Race Discrimination Commissioner', Women's College at the University of Sydney, Sydney
- 21 April 1999: 'Racism and Prejudice: How Attitudes are Formed and Changed', Faculty of Medicine at the University of Sydney, Sydney
- 29 April 1999: 'Sex, Race and Rock 'n Roll', Australian Defence Force Academy, Canberra
- 3 May 1999: 'Dealing With Racism: The Australian Experience', launch of *Agenda New Zealand*, Auckland
- 5 May 1999: 'Dealing With Racism: The Australian Experience', launch of *Agenda New Zealand*, Christchurch
- 10 May 1999: 'Workplace Diversity', Women's Housing Outreach and Support Service Seminar, Melbourne
- 18 May 1999: 'Australian Racism 1999', University of Sydney, College of Humanities and Social Sciences, Sydney
- 26 May 1999: 'Diversity in the Workplace', 1999 National Australian Human Resources Institute Convention on *Race for Business*, Adelaide
- 28 May 1999: 'Preventing Discrimination in Australian Schools', NSW Department of Education and Training Conference, Sydney
- 18 June 1999: 'Youth and Diversity', Here and Now Seminar, A Report Card on the Health of Young People in NSW, NSW Centre for the Advancement of Adolescent Health, Sydney
- 25 June 1999: 'What Makes Me Different? The Challenges of Gender, Race and Career', Westpac Women's Forum, Sydney

Susan Halliday, Sex Discrimination Commissioner

- 15 July 1998: 'Winds of Change: University Women', University of Technology, Sydney
- 20 July 1998: Ruyton Girls' School Seminar, Melbourne
- 23 July 1998: Shelford Girls' School Seminar, Melbourne
- 29 July 1998: Macquarie Graduate School of Management, 10th Annual Women, Management and Industrial Relations Conference, Sydney
- 9 August 1998: Melbourne Women's Network
- 13 August 1998: Caulfield Grammar School Year 12 Seminar
- 19 August 1998: 'Influencing Government', 1998 Australian Women's Round Table, Parliament House, Canberra
- 26 August 1998: 'It Doesn't Fit Under The Carpet: Don't Try To Sweep It There', Council for Equal Opportunity in Employment address
- 28 August 1998: 'From Playground to Workplace: Issues of Discrimination, Human Rights and Tolerance that Confront your Children', Caulfield Grammar School Fathers' Dinner, Melbourne
- 1 September 1998: Ruyton Girls' School Seminar, Melbourne
- 2 September 1998: Women's Networking Group Dinner, Melbourne
- 2 September 1998: 'Women and the Law', Book Launch, Melbourne
- 8 September 1998: Dunhill Madden Butler Solicitors, Discrimination Law Practice Launch, Melbourne
- 11 September 1998: Lake Illawarra High School address, NSW
- 15 September 1998: Women in Management address, Melbourne
- 16 September 1998: CPA President and Guests Boardroom address, Melbourne
- 16 September 1998: Attorney-General's Department Women's Network, Canberra
- 21 September 1998: ABC Women's Network, Sydney
- 28 September 1998: National Principals' Conference, Hobart
- 29 September 1998: 'Discrimination against women in the workplace as a consequence of pregnancy', Women's Electoral Lobby, Hobart
- 3 October 1998: 'The Playground Revealed: The need to educate our children about human rights and responsibilities', Australian Women Educators Conference, Brisbane

- 15 October 1998: Young Lawyers Industrial and Employment Law Committee, Sydney
- 16 October 1998: 'Shorten the Odds: achieving a discrimination and harassment free workplace', Tabcorp, Melbourne
- 21 October 1998: Shelford Girls School Valedictory Dinner, Melbourne
- 22 October 1998: 'Did you know employment, provision of goods and services, land and accommodation are covered under the SDA?' Property Council Future Directions Group, Melbourne
- 23 October 1998: 'Indirect Discrimination: an issue confronting women in the workforce', Melbourne University Postgraduate Association
- 24 October 1998: P&O Australia management seminar, Melbourne Business School
- 24 October 1998: 'The Changing Face of the IT Industry and Barriers that Continue to Face Women', IBM Women's Network, Melbourne
- 29 October 1998: 'Human Rights in Regional, Rural and Remote Australia', Thiess Contractors Senior address to Executive Team, Brisbane
- 2–4 November 1998: Mt Isa Outreach Program and Mt Isa High School seminar, Queensland
- 5 November 1998: 'Nearly there? Issues for Women in Employment', Women in Public Sector Management Inaugural Annual Conference, Canberra
- 6 November 1998: ACCI Employment and Labour Relations Committee address, Melbourne
- 17 November 1998: 'Partnering, Productivity and Parenthood', Brisbane City Council Equity Conference, Brisbane
- 18 November 1998: ACTU Women's Committee address, Melbourne
- 19 November 1998: Andersen Legal Breakfast Seminar, Melbourne
- 25 November 1998: Andersen Legal Breakfast Seminar, Sydney
- 25 November 1998: NSW EEO Practitioners Association address, Sydney
- 27 November 1998: Australian Industry Group seminar, Melbourne
- 10 December 1998: Lendlease address, Melbourne
- 11 December 1998: Hornsby Girls High School Speech Day address, Sydney
- 3 February 1999: Moorabin Rotary address
- 3 February 1999: North Frankston Rotary address
- 12 February 1999: Launch of Advertising Guidelines, Morgan & Banks, Sydney
- 16 February 1999: Balmoral Rotary Club, Sydney

- 19 February 1999: Australia Post launch of pregnancy guidelines, Melbourne
- 22 February 1999: Optional Protocol to CEDAW Forum, Adelaide
- 23 February 1999: Office of Public Employment (Vic) launch of 'Managing Diversity' case studies
- 24 February 1999: 'Ethics, Conduct and Merit: dealing with Business', Building the Foundation: APS Values at Work, Public Service and Merit Protection Commission Conference, Brisbane
- 25 February 1999: VECCI Links Between AA and SDA address, Melbourne
- 8 March 1999: International Women's Day CEOE Ltd Breakfast, Sydney
- 8 March 1999: International Women's Day Public Service & Merit Protection Commission (NSW) Lunchtime Seminar, Sydney
- 8 March 1999: Launch of Dunhill Madden Butler Discrimination Law Practice, Canberra
- 9 March 1999: Launch of *Harsh Realities*, case studies, Canberra
- 10 March 1999: Tradeswomen's Network, Southbank TAFE, Brisbane
- 10 March 1999: 'Creating a Workplace Environment for Effective Participation by Women in Management', Women in Public Sector Management Conference, Brisbane
- 11 March 1999: International Women's Day CEOE Ltd Breakfast, Melbourne
- 11 March 1999: 'Women and Work: Towards 2000', International Women's Day lunch, Public Service and Merit Protection Commission, Melbourne
- 16 March 1999: 'Sex Discrimination in the Workplace: It Mirrors the Playground', Haileybury College Mothers' Association Lunch
- 17 March 1999: *The Age* seminar for advertising staff, Melbourne
- 18 March 1999: ASIO Women's Network, Canberra address
- 19 March 1999: address to ACCI national council, Adelaide
- 20 March 1999: Australian Federation of University Women Annual Conference address
- 22 March 1999: *Pregnancy Discrimination in the Workplace: A Growing Concern* IIR, Productive Diversity Conference address, Sydney
- 25 March 1999: Department of Premier and Cabinet address, Tasmania
- 26 March 1999: 'Discrimination Law and the IR Agenda: Model Anti-Discrimination Clauses in Awards and Agreements ... Are they Worth the Paper they're Written on?' Australian Mines & Metals Association Annual Conference, Hobart
- 15 April 1999: WA EO Commission breakfast address

- 16 April 1999: Public Sector Development Workshop, WA
- 17 April 1999: 'Women's Rights = Women's Sovereign Rights', WEL Annual Conference, Fremantle
- 21 April 1999: Hewlett Packard Diversity Conference address
- 23 April 1999: Real Estate Institute of Australia National Property Management Convention, Adelaide
- 30 April 1999: 'Women and Taboo', Australian Film Institute Cultural Film Festival address
- 1 May 1999: The Alliance of Girls' Schools (Australasia) Annual Conference address, Melbourne
- 5 May 1999: Korowa Anglican Girls School Seminar, Melbourne
- 5 May 1999: National Centre for Women Awards for Women in Non-Traditional Areas, Melbourne
- 6 May 1999: Annual Conference of Spokeswomen, Sydney
- 7 May 1999: 'Small Business', Smart Business Conference Hypothetical, Melbourne
- 21 May 1999: Australian Retailers Association National Employee Relations Conference, Queensland
- 2 June 1999: Trades and Labour Council Women's Conference, Canberra
- 3 June 1999: Recruitment and Selection Seminar, Adelaide
- 9 June 1999: Law Office Management Group address, Sydney
- 15 June 1999: Balwyn Rotary Club address, Melbourne
- 19 June 1999: Middlesex University 'Women and Political Action: Debating Ways Forward for Feminists' Conference, London, UK
- 22 June 1999: Womens World 99, 7th International Women's Congress – Pregnancy and Work, Tromso, Norway
- 30 June 1999: Manchester University Conference 'People and Performance', Manchester, UK

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
general enquiries and publications: 1300 369 711
complaints infoline: 1300 656 419
privacy hotline: 1300 363 992
tty: 1800 620 241
facsimile: (02) 9284 9611

website: www.hreoc.gov.au
e-mail: paffairs@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

3rd floor
380 Lonsdale Street
Melbourne VIC 3000

phone: (03) 9281 7111
toll free: 1800 134 142
tty: (03) 9281 7110
facsimile: (03) 9281 7171

website: www.eoc.vic.gov.au
e-mail: eoc@vicnet.net.au

South Australia

Level 2, Mercantile Mutual Building
45 Pirie St
Adelaide SA 5000

GPO Box 464
Adelaide SA 5001

phone: (08) 8207 1977
toll free: 1800 188 163
tty: (08) 8207 1911
facsimile: (08) 8207 2090

website: www.eoc.sa.gov.au
e-mail: eocsa@www.eoc.sa.gov.au

Western Australia

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
tty: (08) 9264 1936
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 1998–99, the Commission received the following 26 requests for access to documents under the Freedom of Information Act:

- 23 access requests to documents relating to complaints; and
- 3 related to administrative matters.

A total of 29 applications were processed, including the resolution of applications from 1997–98.

Categories of documents

Documents held by the Commission relate to:

- administration matters, including personnel, recruitment, accounts, purchasing, registers, registry, library records and indices;
- conciliation matters, including the investigation, clarification and resolution of complaints;
- legal matters, including legal documents, opinions, advice and representations;
- research matters, including research papers in relation to complaints, existing or proposed legislative practices, public education, national inquiries and other relevant issues;
- policy matters, including minutes of Commission meetings, administrative and operational guidelines;
- operational matters, including files on formal inquiries; and
- reference materials, including press clippings, survey and research materials, documents relating to conferences, seminars and those contained in the library.

Freedom of Information procedures

Initial inquiries about access to Commission documents should be directed to the Freedom of Information Officer by either telephoning (02) 9284 9600 or by writing to:

Freedom of Information Officer
Human Rights and Equal Opportunity Commission
GPO Box 5218
Sydney NSW 1042

Procedures for dealing with Freedom of Information requests are detailed in section 15 of the Freedom of Information Act. A valid request must:

- be in writing;
- be accompanied by a payment of \$30 application fee;
- include the name and address of the person requesting the information;
- specify the documents to be accessed; and
- be processed within 30 days of receipt.

Some documents are exempt from public perusal under the Freedom of Information Act. Where documents are not accessible by the applicant, valid reasons will be provided. The Commission's decisions about accessibility of documents may be reviewed by the Administrative Appeals Tribunal.

The general public can obtain Commission publications and information from offices listed in Appendix 4.

Consultancy services

The Commission during 1998-99 used a range of consultancy services where there was, for example, a need for rapid access to latest technology and experience in its application; limitations on executive time; lack of in-house resources; the need for independent study; or a need for a change agent or facilitator. There were 27 consultants under engagement during the financial year and the total payments of \$669 645 were made to the consultants. A full listing of the names and amounts paid to these consultants is available on the Commission's website at www.hreoc.gov.au.

Appendix 6

Public Affairs

Human rights education

One of the core functions of the Commission is the promotion of human rights through education. Many examples of these are outlined in the reports of individual Commissioners elsewhere in this publication.

In addition to these activities, in the past twelve months the Commission has initiated a creative human rights education program for school students. The completely upgraded and redesigned website, including a special SchoolPage section, was launched by the Attorney-General, the Hon. Daryl Williams, in Perth in October 1998.

Special curriculum-linked, creative education programs for secondary school students focusing on the 50th Anniversary of the United Nations Declaration of Human Rights, disability discrimination and other human rights issues were published in *Studies Magazine*. A secondary schools youth challenge program was introduced in December 1998. This program brings together students on a national or regional basis with community representatives to work on human rights, leadership and decision-making issues.

The Commission is grateful for the support of the Australian Parliamentary Education Office, the Minister for Education, Mr John Aquilina, and the NSW Department of Education for its support of the youth challenge program.

Media activity

Commission media releases were distributed on a regular basis to national and regional media throughout the year.

Library and Information Service

The Library and Information Service provides a high quality, timely and effective research and information service to support the work of the Commissioners and Commission staff. The Service utilises a diverse range of information resources, including electronic databases, resources from its own collection and the national interlibrary lending network, to fulfil the information needs of its clients. These resources encompass a variety of formats, including online, particularly the Internet, CD-Rom and disc, as well as paper or hardcopy.

During the past year, the Library continued to develop its collection of resources. However, in a climate of increasing financial constraints, the emphasis of the Collection Development Policy was shifted to concentrate more on the acquisition of core resources in the areas of discrimination, human rights and social justice, including relevant legal materials, as opposed to attempting a comprehensive coverage of these subjects. This change in collection development policy, which was initiated towards the end of the 1997–98 financial year, has evolved over the last year through ongoing consultation with both our clients and stakeholders in order to satisfy more effectively their changing information needs.

The Library continues to develop and enhance its own Intranet, identifying and evaluating new sites and reviewing existing ones, in recognition of the dynamic character of the Internet and its

expanding role in providing information services. The feedback from clients indicates that the Intranet is a frequently utilised information resource, which continues to fulfil their information expectations to a high level.

With the increased reliance upon client utilisation of electronic information resources, the training role of the Library Service has expanded accordingly. In 1998–99, we strongly promoted user education in this area and undertook approximately three times the number of training sessions in searching and retrieval techniques as for the previous year.

Use of the Library and Information Service by members of the public also increased in 1998–99, with both Australian and international visitors accessing the collection for research purposes in the area of human rights. Similarly, the National Inquiry Collection continued to be fairly intensively utilised for such diverse purposes as thesis preparation, information for the preparation of a book about the ‘Stolen Children’ and a radio program concerned with the same subject to be broadcast in the USA.

Training and staff development

The Commission is committed to providing opportunities for all staff to participate in relevant training and development activities. The *Commission’s Certified Agreement 1998–1999* recognises the need to provide adequate training support to accompany changes, innovations or improvements to work arrangements. Apart from identified individual training, which is managed directly by work units, all staff were provided with relevant computer training with the change to a Windows NT operating environment. The other major training activity for the year was in relation to the development of a performance management scheme, an initiative undertaken in the Certified Agreement. Staff were provided with training to assist them to develop individual performance agreements in order to participate effectively in the scheme.

The Commission continues to support access to studies assistance, where it is relevant to the work of the Commission and an individual’s work responsibilities and where it assists with ongoing career development. Staff who have been unable to complete schooling or commence tertiary studies due to personal circumstances are encouraged to apply for assistance.

Occupational health and safety

COMCARE, the Commission’s insurer, reviewed the Commission’s occupational health and safety management systems, including policies and practices. The Commission’s Occupational Health and Safety Committee met to discuss and implement recommendations made by COMCARE. The *Commission’s Occupational Health and Safety Plan* is to be reviewed and training for staff and supervisors will be undertaken to ensure a structured and coordinated approach to health and safety issues.

The Commission continues to provide free and confidential counselling for staff and their families through its Employee Assistance Program. A Rehabilitation Adviser provides ongoing assistance and support to new and existing staff on the Commission’s occupational health and safety and ergonomic issues.

Equal employment opportunity

As part of the reform agenda for the public service the Commission began work on the development of its *Workplace Diversity Plan*. A Workplace Diversity Committee was established for this purpose and developed and distributed a broad-based organisational audit. The audit provided the opportunity for staff to participate in the process and will assist the Committee in the development of the *Workplace Diversity Plan*. The plan will build on and enhance the Commission's equal employment opportunity program.

Initiatives introduced in the Commission's *Certified Agreement 1998–1999* demonstrate the Commission's continued support of family friendly practices in the workplace.

Workplace relations

The Commission's Certified Agreement was certified by the Industrial Relations Commission in August 1998 and is in operation until 31 December 1999. The Agreement is comprehensive and was certified under section 170LK of the *Workplace Relations Act 1996*. Productivity savings funded a 4 per cent salary increase to staff, which was delivered in two instalments. A one-off bonus was also payable to staff on certification. There are a number of initiatives in the Agreement that support and promote family friendly practices in the workplace. The Commission also adopted the agreed public service classification structure and code of conduct.

Staffing overview

An overview of the Commission's staffing profile as at 30 June 1999 is summarised in the following table:

<i>Classification</i>	Male	Female	Full time	Part time	Temporary	Sydney	Tas
Statutory office holder	3	3	5	1		6	
SES Band 2		1	1			1	
SES Band 1	2		2			2	
EL2	7	12	17	1	1	19	
EL1	6	9	13		2	14	1
APS 6	14	16	25	2	3	30	
APS5	4	6	7		3	10	
APS4	3	4	5	1	1	6	1
APS3	1	17	15	1	2	16	2
APS2		6	5	1		6	
APS1	1	1		1	1	2	
Total	41	75	95	8	13	112	4