

Human Rights and
Equal Opportunity Commission



Annual Report
2001-2002

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The 2001-02 Annual Report is available on the Commission's website at www.humanrights.gov.au/annrep01_02/

**Human Rights and
Equal Opportunity Commission**



14 October 2002

Attorney-General
Parliament House
CANBERRA ACT 2600

I have the pleasure in presenting the Annual Report of the Human Rights and Equal Opportunity Commission for the period ending 30 June 2002, pursuant to section 45 of the *Human Rights and Equal Opportunity Commission Act 1986*. The report has been prepared in accordance with the requirements of subsections 25(6) and (7) of the *Public Service Act 1922*.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alice Tay', with a long, thin vertical line extending downwards from the end of the signature.

Professor Alice Tay AM
President
Human Rights and Equal Opportunity Commission

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Significant achievements

- Human Rights Medal and Awards 2001. See page 22.
- Expansion of human rights education in schools online program. See page 25.
- Online human rights education portal for teachers. See page 27.
- First of a series of modules on 'current issues' in human rights. See page 27.
- Complaints promotion advertising campaign for people from non-English speaking backgrounds and Indigenous Australians. See page 30.
- Major website updates (including web usage statistics). See page 31.
- Community consultations for policy development. See page 35.
- Outcome of conciliated complaints (case studies). See page 39.
- Court interventions including:
 - The 'privative clause' case. See page 86.
 - The 'Kevin and Jennifer' case. See page 86.
 - The 'Tampã' case (Federal Court, Full Federal Court and High Court). See page 88.
 - The 'Catholic Bishops' or 'IVF' case in the High Court. See page 90.
- Aboriginal and Torres Strait Islander Commissioner's Native Title and Social Justice reports for 2001. See page 98.
- Access to electronic commerce by the banking industry. See page 113.
- National Inquiry into Children in Immigration Detention. See page 122.
- Consultations on racism in the lead up to the World Conference against Racism. See page 135.
- Options paper on paid maternity leave, *Valuing Parenthood*, and community debate. See page 146.
- China Human Rights technical cooperation program and other international work. See page 153.
- Asia Pacific Forum workshop on racism and human rights education for national human rights institutions. See page 158.



Professor Alice Tay, AM, FASSA

President, Human Rights and Equal Opportunity Commission

Pictured with Sidney Nolan's 'Convict', 1967, from the Artbank Collection. Photographed by Martin van der Wal.

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Statement from the President



Professor Alice Tay, AM, FASSA
President, Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission occupies a unique place in Australian society. It sits independent of Government, yet it is not what is traditionally known as a non-government organisation (NGO) or an advocate.

In fact it is a statutory authority responsible for ensuring the observance of human rights in Australia. The Commission seeks to promote an understanding and acceptance of human rights in Australia; undertakes research to promote human rights; investigates and attempts to conciliate complaints about breaches of human rights or of equal opportunity laws; intervenes or acts as *amicus curiae* in important legal cases that may affect the human rights of people in Australia; examines laws related to human rights; and provides advice to government on laws and actions that are required to comply with international human rights obligations.

While the core functions of the Commission remain unchanged, I would argue that the Commission over the past year has devoted most of its energy to legal work, its education role and, for Commissioners, to engaging in public debate via the media and other avenues on key human rights issues in Australia. I wish to praise in particular the work of Commissioners on major policy initiatives including paid maternity leave, children in detention and social justice and native title issues.

Education about human rights and discrimination – including the development of school-based education programs – has been central to the Commission's activities.

Another of the Commission's core functions is the conduct of national inquiries on important human rights issues and the National Inquiry into Children in Immigration Detention is still in progress at the time of writing.

The loss of the public hearing function in April 2001 (when amendments to the Human Rights and Equal Opportunity Commission Act took effect) produced a change of focus for the Commission from determining complaints to conciliation of complaints. Complaints unable to be conciliated by the Commission are now terminated and can be taken to the Federal Court of Australia or Federal Magistrates Service.

The success of the Commission's transition to this new role is detailed in the Complaint Handling chapter of this Report. Parties to complaints remain willing to embrace conciliation and 30 percent of the matters finalised last year were successfully conciliated. Eighty-eight per cent of complaints were finalised within 12 months of lodgement.

There was some public debate and consternation about the change of jurisdiction for the hearing of human rights complaints when the legislative changes were mooted and when they came into effect. An analysis of the impact of the changes over the past 18 months is expected to be available by the end of 2002.

The Commission believes that all children in Australia deserve to have accurate information about the nature of human rights and social responsibilities for them and about discrimination laws.

Over the past year, the education function of the Commission has received unprecedented attention and the Commission, with relatively limited resources, has managed to develop a comprehensive education program for schools.

The Commission's *Youth Challenge* program – which in the past has involved day long workshops, mainly on discrimination issues – has been expanded and is now more heavily reliant on the Internet. The program was short listed for *The Australian's 2002 Awards for Excellence in Educational Publishing*.

The Commission's Public Affairs Unit has consulted widely with teachers and students and conducted surveys on its electronic mailing lists to obtain feedback. Promotion has been via advertisements in teachers' journals, posters and postcards and direct contact with all secondary schools. Website statistics indicate large numbers of people are accessing the *Youth Challenge* online materials.

I launched the first online Human Rights Education (*Youth Challenge*) program in December 2001. Since then, the Commission has restructured its website to provide to teachers a range of material for teaching human rights and responsibilities. The Public Affairs Unit is also developing discrete teaching modules on current issues. The first was on the Stolen Generation and linked to the 2001 movie *Rabbit-Proof Fence*, based on Doris Pilkington's book. A further module on paid maternity leave and other issues about work and family was being developed towards the end of the financial year and others are planned.

In relation to legal action, the Commission can act as *amicus curiae* or 'friend of the court' and can intervene in relevant cases. The Commission has had a function of acting as an Intervener in certain court proceedings since the Human Rights and Equal Opportunity Commission Act commenced in 1986, but the *amicus curiae* role given to each individual Commissioner only came into effect in April 2000.

The Commission's role in legal proceedings, as an intervener or an *amicus curiae*, cannot be underestimated. Decisions to seek leave to appear before the court – usually the Federal Court of Australia or High Court – to take part in the proceedings are not taken lightly. They are subject to due deliberation by Commission members and sometimes decisions are made under extreme time pressure.

The Commission has also been careful to choose proceedings involving issues of public importance which may affect to a significant extent persons other than the parties before the Court. With the Court's permission, the Commission can intervene

in proceedings involving any human rights issues; i.e. human rights as defined in six named International conventions; in proceedings involving discrimination in employment or occupation; and in race, sex, marital status, pregnancy or disability discrimination matters.

During the past year, the Commission has intervened in a number of cases with substantial human rights implications, including the controversial and highly politically-charged case involving the Merchant Vessel Tampa carrying 433 asylum seekers to the Australian Territory of Christmas Island.

The Commission's decision to intervene in the *Tampa* case was conducted in an atmosphere that was political and emotionally volatile and in which firsthand knowledge of the asylum seekers' plight and circumstances was unobtainable. It is important in circumstances such as the *Tampa* case that the Commission continues to support legal avenues to ensure that people's human rights are protected. It is important, too, for there to be recognition that the Commission does not act as a barometer of public opinion; that human rights are universal and immutable and not a commodity.

The Commission's arguments in the *Tampa* case, which can be found on the website and are referred to in more detail in the legal chapters of this report, were heard in the Federal Court of Australia (before Justice North), in the Full Federal Court and the High Court.

Last year the High Court granted leave for the Commission to intervene in what became known as the *Catholic Bishops* or *IVF* case about the provision of reproductive assistance technology to single mothers. The Commission welcomed the outcome of that litigation which enabled single women to receive IVF in Victoria. The Federal Government has foreshadowed amendments to the Act. However, the Commission will oppose such amendments and argue against any attempts to undermine the Sex Discrimination Act.

Other cases in which the Commission has intervened include:

- i Family law proceedings including the validation of the marriage of a female to a male transsexual person (the *Kevin and Jennifer* case).
- ii Immigration cases including access by people in detention to legal representation, the legal guardianship arrangements for unaccompanied minors and the detention of criminal deportees who had served their sentences. The Commission also intervened in a case involving the legal validity of a provision of the Migration Act that purports to restrict certain matters from review by Federal and High Courts (the *privative clause* case, which relates to the extent to which administrative decision makers are obliged to take account of human rights instruments in making their decisions).
- i Native title cases including the *Yorta Yorta* case.

To date, only the Sex Discrimination Commissioner has acted as *amicus curiae* in *Ferneley v Boxing Authority of NSW and State of NSW*. In that case, the court accepted that the proceedings had significant implications for the administration of the Sex Discrimination Act and it was in the public interest for the Commissioner to act as

amicus curiae. It is hoped that exercising this role will assist with the development of a body of anti-discrimination jurisprudence and assist parties to focus on the issues and ultimately resolve the dispute.

The Commission continues to play an active role in the promotion of human rights internationally especially in providing technical assistance and expertise to new and emerging national human rights institutions.

One of the Commission's major projects is the China-Australia Human Rights Technical Cooperation program which falls under the Australia-China Human Rights Dialogue, a government to government program initiated in 1997. The program focuses on three broad areas – legal reform and the administration of justice, women and children's rights and ethnic and minority rights. In 2001–02 activities included the training of prison officers, a workshop to design a training course for judges, a domestic violence workshop and a project to assist women's groups in two provinces to combat trafficking in women and children.

I was also invited to join the inaugural session of the Australia-Vietnam Dialogue on International Organisations and Legal Issues, conducted in May 2002, which I hope will develop into a full, constructive dialogue similar to the program involving China.

The Commission's formal assistance program with Komnas Ham, the Indonesian Human Rights Commission, concluded this year but the support of the Indonesian and Australian Governments suggest that there will be further cooperation between the two countries.

The Asia Pacific Forum of National Human Rights Institutions, of which the Commission is a founding member, admitted Mongolia to its membership at the sixth annual meeting in Colombo, Sri Lanka. The incorporation of the Forum as an independent entity (it currently has a secretariat based in the Commission's office in Sydney) happened in March 2002.

The Commission currently has three Commissioners acting in five statutory roles – Dr William Jonas (Aboriginal and Torres Strait Islander Social Justice Commissioner and acting Race Discrimination Commissioner); Dr Sev Ozdowski (Human Rights Commissioner and acting Disability Discrimination Commissioner) and Ms Pru Goward (Sex Discrimination Commissioner). Legislation intended to change the structure of the Commission to create three deputy presidents is still before the Federal Parliament.

Activities of the Commissioners over the past year are highlighted in their own statements throughout the Annual Report. Suffice to say, they have been actively engaged in public debate about human rights issues through the media, through publications, presentations and speeches, in addition to their policy work.

Major policy initiatives and activities during 2001-02 included a national push for paid maternity leave, a year long process to raise awareness of racism (including participation in the World Conference against Racism in Durban in September 2001 and a host of related domestic activities) as well as a National Inquiry into Children in Immigration Detention.

In the area of disability discrimination, the Commission hosted a summit of peak disability groups in December 2001 and has been a key player in developing standards for accessible public transport and has continued liaison with industry

groups, government and disability rights organisations to improve accessibility across other areas.

Following the launch of her options paper on paid maternity leave *Valuing Parenthood* Ms Goward embarked on an extensive public education campaign and a series of meetings with key organisations including employer and employee groups and social policy demographers.

Over the past year, Dr Jonas has questioned the direction of the reconciliation debate, making the issue of progress towards reconciliation the central issue of his 2001 *Social Justice and Native Title Reports*. In his reports, Dr Jonas expressed serious concerns about the nation's progress in recognising and respecting Indigenous rights and called for a Senate inquiry to examine the documents produced by the Council for Aboriginal Reconciliation and the recommendations of the Social Justice Report 2000.

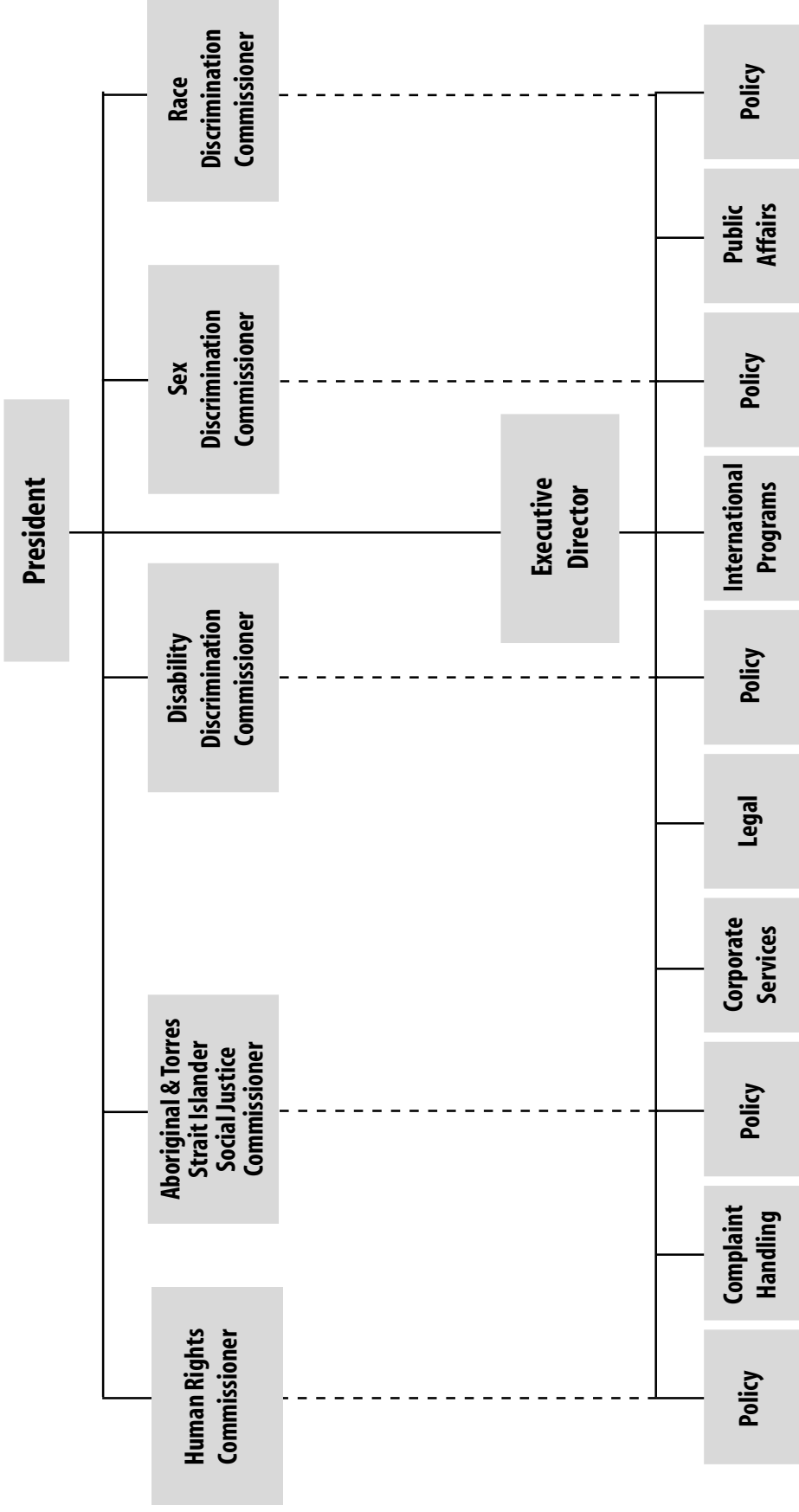
Some major challenges facing the Commission in the year ahead arise from the repercussions of the September 11 terrorist attacks in the United States and the worldwide movement of populations, many of them asylum seekers, which have been felt in Australia.

External threats – whether real or imagined – have the potential to compromise the rights of people within a nation under the claim of protecting national sovereignty. In 2001-02, the federal Government passed laws aimed at limiting access to the Australian mainland and the refugee processing system and introduced more rigorous procedures for detecting terrorist and other security threats. The Commission has commented on the human rights and international law implications of changes to the Migration Act and proposed amendments to the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002* and related bills pointing out the potential for breaches of human rights.

The Commission will continue to monitor implementation of such laws and their impacts on the human rights and freedoms of the people of Australia.

It is precisely at such times – when a nation expresses fears of vulnerability – that the rights of the truly vulnerable are in danger of being brushed aside. It is also a time when the general population may agree to a lowering of the bar of rights and freedoms in exchange for other benefits. At such times, the role of an independent national human rights institution, operating without fear or favour, is crucial. The impulse for justice and the response to compassion are notably absent in moments of self-concern.

Human Rights & Equal Opportunity Commission Organisational Chart



Chapter 1

The Commission

Vision

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

Mission

To provide leadership on human rights through:

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

To ensure that Australians:

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

As an effective organisation, we are committed to:

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

Structure

The Commission is a national independent statutory body established under the *Human Rights and Equal Opportunity Commission Act 1986*. It has a President and five Commissioners. The five positions are currently held by three persons. Please refer to the organisational chart on **page 12** for further information.

President – Professor Alice Tay AM

Professor Alice Tay's five year term as President of the Human Rights and Equal Opportunity Commission commenced on 1 April 1998. She is the author and editor, and co-author and co-editor (with the late Eugene Kamenka and Guenther Doeker-Mach), of 24 books and over 120 articles. Her work has been focused on socialist legal systems and legal culture

(including the former Soviet Union, the People's Republic of China and Vietnam); comparative law; legal theory and philosophy; jurisprudence; and human rights. She is fluent in Russian and Chinese and specialises in jurisprudence, legal and social philosophy, comparative East European and Asian/Pacific legal systems, macro-sociology of law and human rights, and comparative constitutionalism. She was a part-time Commissioner with the Australian Law Reform Commission, a member of the Australian Science and Technology Council, President of the International Association for Philosophy of Law and Social Philosophy and President of the National Office of Overseas Skills Recognition. 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.

Aboriginal and Torres Strait Islander Social Justice Commissioner and acting Race Discrimination Commissioner – Dr William Jonas AM

Dr William Jonas is a Worimi man from the Karuah River region of NSW.

Until his appointment as Commissioner, on 6 April 1999 for five years, Dr Jonas was Director of the National Museum of Australia. From 1991–96 he was Principal of the Australian Institute of Aboriginal and Torres Strait Islander Studies in Canberra. Before becoming Director of Aboriginal Education at Newcastle University in 1990, he was a lecturer in geography at the University of Newcastle and before that at the University of Papua New Guinea.

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

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

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

Human Rights Commissioner and acting Disability Discrimination Commissioner – Dr Sev Ozdowski OAM

Dr Sev Ozdowski took up his appointment as Human Rights Commissioner in December 2000 for a five year term. Previously, Dr Ozdowski was Chief Executive of South Australia's Office of Multicultural and International Affairs. Dr Ozdowski has a long term commitment to human rights and his relationship with the Human Rights Commission dates back to the original Commission of the early 1980s. He is the author of many papers on sociology of law, human rights, immigration and multiculturalism. Born in Poland in 1949, Dr Ozdowski migrated to Australia in 1975. He has held senior positions in the Federal portfolios of the Prime Minister and Cabinet, Attorney-General's and Foreign Affairs and Trade. He has also worked

as Secretary of the Human Rights Commission Inquiry into the *Migration Act 1958* and for the Joint Parliamentary Committee on Foreign Affairs, Defence and Trade.

Dr Ozdowski has a Master of Laws and Master of Arts in Sociology from Poznan University, Poland, and a PhD in Sociology of Law from the University of New England, Armidale, New South Wales. He was awarded a Harkness Fellowship in 1984 for post-doctoral work on race relations, international human rights and immigration law and public administration – studies that took him from Harvard University (Cambridge, MA) to Georgetown University (Washington DC) and the University of California (Berkeley, California).

Dr Ozdowski has been acting Disability Discrimination Commissioner since December 2000.

Sex Discrimination Commissioner – Ms Pru Goward

Journalist, broadcaster and commentator Pru Goward was appointed Federal Sex Discrimination Commissioner for a five year term from 30 July 2001.

Ms Goward has worked closely on issues of women's rights for several years, heading the Federal women's policy advisory unit, the Office of the Status of Women, from 1997 to 1999. She was appointed First Assistant Secretary of the Office, which reports directly to the Office of Prime Minister and Cabinet, after working as a national affairs journalist and political commentator for 19 years.

At the Office of the Status of Women, Ms Goward presided over the introduction of the first national program for the prevention of domestic violence – the largest program run by OSW with a budget of \$50 million. She also oversaw the introduction of reform to superannuation laws for divorced couples.

Ms Goward completed an Economics degree with Honours from the University of Adelaide while teaching high school in Adelaide during the 1970s. She later tutored at the University while conducting Masters research. Over the past 10 years she has also run her own media management company, was a freelance newspaper and magazine columnist and a part-time lecturer in Broadcast Journalism at the University of Canberra.

Just prior to taking up the role of Sex Discrimination Commissioner, she was National Director of the Australian Property Institute. Ms Goward is also on the boards of the John Curtin School of Medical Research and the Neuroscience Institute for Schizophrenia and Allied Disorders. She is Official Patron of the ANU Australian Rules Football Club.

Legislation

The Commission is responsible for administering the following Acts:

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

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

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

Human Rights and Equal Opportunity Commission Act

The *Human Rights and Equal Opportunity Commission Act 1986* established the Commission and outlines the Commission powers and functions. Human rights are strictly defined, and only relate to the international instruments scheduled to, or declared under, the Act. They are the:

- ï *International Covenant on Civil and Political Rights*
- ï *Convention on the Rights of the Child*
- ï *Declaration on the Rights of the Child*
- ï *Declaration on the Rights of Disabled Persons*
- ï *Declaration on the Rights of Mentally Retarded Persons*
- ï *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*
- ï *Convention Concerning Discrimination in Respect of Employment and Occupation*

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 aims are to:

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

- ï promote equality between men and women
- ï eliminate discrimination on the basis of sex, marital status or pregnancy, and family responsibilities

- ï 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:

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

Functions and powers

The Commission's responsibilities fall within four main areas:

- ï Public awareness and education.
- ï Unlawful discrimination and human rights complaints.
- ï Human rights compliance.
- ï Policy and legislative development.

In order to fulfil its obligations, the Commission:

- ï Fosters public discussion, and undertakes and coordinates research and educational programs to promote human rights and eliminate discrimination in relation to all Acts.
- ï Investigates complaints of alleged unlawful discrimination pursuant to the Racial Discrimination Act, the Sex Discrimination Act and the Disability Discrimination Act, and attempts to resolve these matters through conciliation where appropriate. The President may terminate a complaint of alleged unlawful race, sex or disability discrimination if, for example there is no reasonable prospect of settling the complaint by conciliation or the complaint is lacking in substance. If a complainant, whose complaint has been terminated, wants the complaint heard and determined by the Courts they must lodge an application to the Federal Court of Australia or the Federal Magistrates Service within 28 days of a Notice of Termination issued by the President.
- ï Inquires into acts or practices that may be contrary to a human right or that may be discriminatory pursuant to the Human Rights and Equal Opportunity Act. If the complaint is unable to be resolved through conciliation and is not discontinued for other reasons the President may report on the case and make particular recommendations. The Report is tabled in Parliament.

- i May advise on legislation relating to human rights and monitor its implementation; may review existing and proposed legislation for any inconsistency with human rights or for any discriminatory provision which impairs equality of opportunity or treatment in employment or occupation; may examine any new international instruments relevant to human rights and advise the Federal Government on their consistency with other international treaties or existing Australian law; and may propose laws or suggest actions the Government may take on matters relating to human rights and discrimination.

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

1. Refer individual complaints to the President for investigation and conciliation.
2. Report to the Government on any matters arising in the course of its functions.
3. Establish advisory committees.
4. Formulate guidelines to assist in the compliance by organisations and individuals of the requirements of human rights and anti-discrimination legislation and conventions.
5. Intervene in court proceedings involving human rights matters.
6. Grant exemptions under certain conditions (Sex and Disability Discrimination Acts).
7. Conduct inquiries into issues of major importance, either on its own initiative, or at the request of the Attorney-General.
8. Examine enactments.

Specific functions of Commissioners

In addition to the broad functions outlined above, the Aboriginal and Torres Strait Islander Social Justice Commissioner and the Sex Discrimination Commissioner 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 1986*, 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 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.

Sex Discrimination Commissioner

The *Workplace Relations Act 1996* gives the Sex Discrimination Commissioner the power to initiate and refer equal pay cases 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 1986*.

The most significant are:

- i 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
- ii 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
- iii 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.

Outcomes structure

The Commission has one outcome:

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

There is one output for the Commission's outcome:

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

Resources for outcomes

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

	Budget 2001–02 \$'000	Actual Expenses 2001–02 \$'000	Budget 2002–03 \$'000
Total Administered Expenses	ñ	ñ	ñ
Prices of Department Outputs			
Output Group 1 ñ Australians have access to independent human rights complaint handling and public inquiry processes and benefit from human rights education, promotion and monitoring and compliance activities.	12 503	14 672	12 955
Subtotal Output Group 1	12 503	14 672	12 955
Revenue from Government (Appropriation) for Departmental Outputs	10 730	10 730	11 137
Revenue from other sources	1 773	3 942	1 818
Total Price of Outputs	12 503	14 672	12 955
Total for Outcome (Total Price of Outputs and Administered Expenses)	12 503	14 672	12 955
		2001ñ02	2002ñ03
Staff years (number)		95	95

Human rights education and promotion

Human rights education and the promotion of human rights are core responsibilities of the Commission.

The legislative responsibilities are:

1. To promote an understanding and acceptance of, and compliance with, the relevant Act:
 - i Human Rights and Equal Opportunity Commission Act section 11(1)(g)
 - i Racial Discrimination Act section 20(1)(b)
 - i Sex Discrimination Act section 48(1)(d)
 - i Disability Discrimination Act 67(1)(g).
2. To undertake research and education programs for the purpose of promoting the objects of the relevant Act:
 - i Human Rights and Equal Opportunity Commission Act section 11(1)(h)
 - i Racial Discrimination Act section 20(1)(c)
 - i Sex Discrimination Act section 48(1)(e)
 - i Disability Discrimination Act section 67(1)(h).

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

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

Human rights education plays a central role in contributing to the maintenance and improvement of a tolerant, just, equitable and democratic society.

All work undertaken by the Commission has a human rights educative base from individual complaint handling to the conduct of a National Inquiry.

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

These are:

- i Human Rights Medal and Awards
- i Online human rights education for teachers and students
- i Website materials for individuals, schools, employers and community groups
- i Distribution of hard copy publications about the Commission
- i Media engagement, interviews, opinion pieces and press releases
- i Community contacts.

Specific educational and promotional programs conducted by individual Commissioners are detailed later in this Report.

2001 Human Rights Medal and Awards

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

The 2001 Medal and Awards presentation ceremony was held on 9 December 2001 at Star Court Darling Harbour in Sydney. Special guest was Professor Gillian Triggs, who delivered a paper entitled *Contemporary Human Rights Law and Practice* to 200 guests.

The Commission is very grateful for the services of the judging panels who give their time and expertise on an honorary basis. The judges for the 2001 Medal and Awards were Rt Hon Ian Sinclair AC, Justice Elizabeth Evatt AC, Ms Jackie Huggins AM, Mr Nicholas Cowdery QC, Justice Catherine Branson, Ms Ruth McColl SC, Mr Mark Davis, Dr David McKnight, Ms Vivian Schenker, Dr Peter O'Brien, Mr Nick Xynias AO BEM, Ms Faye Druitt, Mr Jose Borghino and Dr Andrew Riemer.

Information on the 2001 winners can be found below. For details on the individuals and organisations who were highly commended please visit the Commission's website at www.humanrights.gov.au/hr_awards/awards2001.html.

Human Rights Medal

Winner: The late Dr Arnold "Puggy" Hunter (1951–2001)



The late Dr Arnold "Puggy" Hunter was named as the recipient of the Human Rights Medal 2001. His wife, Blondie Hunter and their children accepted the award.

Dr Hunter's fearless advocacy and outstanding leadership in the important area of Indigenous health earned him the respect of a wide range of people. While he fought uncompromisingly for the cause of Aboriginal health, Dr Hunter was regarded respectfully, even affectionately, by his counterparts in politics and government. Upon his untimely and recent death, tributes to Dr Hunter poured in from around Australia – the Australian Medical Association, the Aboriginal and Torres Strait Islander Commission, federal politicians, and medical boards expressed their loss and sadness. The Award acknowledges Dr Hunter's unwavering commitment over many years to improving Aboriginal health in the face of hostility, disruption to his family, financial hardship and his own health.

As the inaugural Chairperson of the National Aboriginal Community Controlled Health Organisation since 1991 until his death, Dr Hunter had worked far beyond the level of his professional responsibility. He was a member of several key Aboriginal health policy and advisory groups. He negotiated framework agreements on Aboriginal health to improve the coordination of health service delivery by all spheres of government. He also negotiated Medicare agreements with the Federal Health Minister to give the Aboriginal Community Health Services the legal ability to bulk bill Medicare and arrangements under the Pharmaceutical Benefits Scheme to supply medicines through Aboriginal health services in remote areas.

Community Award

Winner: Women With Disabilities Australia

Established in 1994, Women With Disabilities Australia has achieved an enormous amount in a short period of time, working tirelessly on behalf of one of the most marginalised and disadvantaged groups in Australia. The group is the peak organisation for women with all types of disabilities, linking similar local and regional organisations across Australia. Its central aim is to improve the status of women with disabilities through education, support, information, and systemic and individual advocacy.

Although it has a domestic focus, the organisation has provided inspiration for women with disabilities all over the world and is often consulted by groups internationally, from the USA to the Ukraine. The organisation has achieved not only a high profile for itself, but advanced the interests of a previously marginalised group nationally. In early 2000, the organisation was invited by the United Nations to apply for the *UN Millennium Peace Prize for Women*. Women With Disabilities, Australia and its Executive Director Ms Carolyn Frohmader have received several other awards in recognition of their work.

Law Award

Winner: HIV/AIDS Legal Centre

The Law Award, sponsored by the Law Council of Australia, went to the HIV/AIDS Legal Centre. Operating with a small staff of just one full-time solicitor and two part-time support staff, the HIV/AIDS Legal Centre provides people living with HIV/AIDS with legal advice, and conducts law reform and community education projects in their interests. Over the past year they provided legal advice and representation to 666 clients. Areas of legal advocacy undertaken by the Centre include discrimination and vilification complaints, unfair dismissal, superannuation and insurance claims, complaints relating to medical and health services, and guardianships. The legal advice they provide is free – appropriate given the economic hardship which is faced by many living with HIV/AIDS. They also provide a broad range of legal services, from face-to-face advice through to legal representation in casework matters, and a hospital outreach service.

General Media Award

Winner: ABC Radio National – The Health Report.

The Health of Asylum Seekers in Detention. Reporter: Ms Toni Hassan



Toni Hassan accepting the Human Rights Media Award 2001 for “The Health of Asylum Seekers in Detention” from Aboriginal and Torres Strait Islander Social Justice Commissioner Dr William Jonas.

This special report highlighted the health concerns, both physical and mental, of asylum seekers in detention centres. The report included interviews with a number of leading mental health and medical professionals, who gave disturbing testimony about the health of detainees. One of the practitioners interviewed is himself a detainee. The judges commended this entry for its deliberate reluctance to engage in debate about the legitimacy of refugee claims, focusing instead on the issue of conditions in detention centres. While there has been a breadth of media reportage and commentary on the issue of asylum seekers, much of this focus has been on whether such persons ought to be allowed entry into Australia. The experiences of those asylum seekers in the detention centres have remained peripheral to these discussions. The judges were also impressed by the extensive field work undertaken by Ms Hassan.

Winner: Four Corners, ABC Television. *Inside Story.*

Producer: Mr Peter McEvoy, Reporter: Ms Debbie Whitmont

The judges said while they acknowledged the controversial nature of the program they were impressed with the human side of detention presented by the program. They said these were the voices that the Australian public had not heard before. Seeing asylum seekers as human beings, possibly for the first time, prompted many viewers to contact the Four Corners online forum about the show. About 5 000 people contacted the forum. Critics of the report, much of which was filmed inside the Villawood Detention Centre, said it contained factual errors and did not present a balanced view of conditions in detention centres. The producers denied the claims, saying they were based on a wilful misreading of the program. The judges said the program succeeded in expanding the debate over asylum seekers beyond the mere question of whether the claims of asylum seekers are legitimate. The result was a first person account of asylum seekers’ experiences in detention in Australia.

Arts Non-Fiction Award

Winner: *Borderline*, Mr Peter Mares

Peter Mares' *Borderline* is a thoroughly researched yet tightly written book about Australia's treatment of asylum seekers. Mr Mares, the presenter of Asia Pacific on Radio Australia and Radio National, urges a more compassionate approach to asylum seekers while acknowledging the very real difficulties, in a political and practical sense, of implementing refugee policy.

The book is the culmination of extensive research into the legal and policy framework for asylum seekers and refugees entering Australia and a collection of individual, sometimes heart wrenching, stories. The judges said the book was by far the most outstanding entry and an honest, thoughtful and powerful work. They said Peter Mares was able to identify and discuss the human rights issues surrounding asylum seekers without being politically partisan or doctrinaire.

Online human rights education for teachers and students

In 2001-02, the Commission developed a structured human rights education program for teachers of upper primary and secondary students. The program responds to growing demands for education resources of this kind, and the relative absence of such published material.

The material is available online from the Commission's main site. Materials are also available for download so that teachers need only have internet access once. The program consists of:

- Online education modules (such as *Youth Challenge*).
- Current Issues series.
- Human rights education promotion, including making links with curricula.
- External human rights education resource collection.
- Electronic mailing list.

The success of the Commission's education program was underscored when *Youth Challenge* was short listed for the *The Australian's* 2002 Awards for Excellence in Educational Publishing.

The program is based on a critical pedagogy which focuses on the learning needs of all students, rather than the subject matter. This approach goes beyond merely teaching about international instruments and domestic laws, as valuable as these are to human rights education.

This teaching approach is:

- **Contextual:** human rights are discussed in social contexts relevant to the learners.
- **Discursive:** learning is based on discussion, exchanging ideas and values, understanding human communication.

- ï **Skills-oriented:** human rights education develops skills, and is linked with literacy, numeracy and decision making skills (again, learner focused rather than subject area focused).
- ï **Cross-curricular:** human rights, as human experience, are relevant to all aspects of learning, including numeracy and visual literacy.
- ï **Inclusive:** allows all students, regardless of their learning styles/abilities, to participate.

This approach builds on trends in school and tertiary education that are developing across disciplines.



Youth Challenge – Teaching human rights and responsibilities

www.humanrights.gov.au/youthchallenge/

Launched in late 2001, this was the first component of the Commission's education program. The module is an introduction to issues of human rights and discrimination in everyday life.

With *Youth Challenge*, students focus on real life issues such as sex, race and disability discrimination, sexual harassment, and rights in the workplace. It encourages students to explore the relevance of human rights to their own experiences and communities.

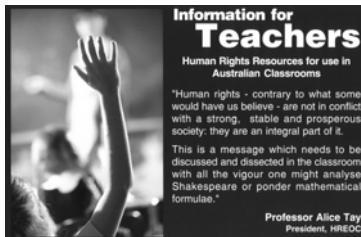
The online program is broken into three distinct units:

1. Human Rights in the Classroom.
2. Case Study 1: Doug and Disability Discrimination.
3. Case Study 2: Young People in the Workplace.

Using video material, stories and exercises, the materials draw on a range of skills including research, literacy, discussion, decision making and role playing. There is even a Human Rights Treasure Hunt.

Youth Challenge offers secondary school teachers a resource that is flexible and comprehensive. The materials can be used across many curricular areas including History, English, Civics/Citizenship, Legal Studies, and Studies of Society and Environment. The site provides teaching strategies, guides and worksheets that are easy to access.

The module was officially launched by Professor Alice Tay on 7 December 2001. Three guest speakers from the education sector, together with Senator Marise Payne, gave presentations on the importance of human rights education in schools. The launch was attended by over 80 people, mainly representatives from schools, education unions, peak youth agencies, technical colleges, peak education bodies and education department staff.



Information for Teachers

www.humanrights.gov.au/info_for_teachers/

Following the success of *Youth Challenge*, the Commission developed an online portal specifically for teachers, accessible from the main Commission site.

Teachers can now access a range of teaching materials on human rights from this *Information for Teachers* portal. The section is regularly updated to provide teachers with the most recent quality materials.

The portal is the online framework for this education program. It contains:

- ï **Education Modules:** *Youth Challenge* and other education modules.
- ï **Current Issues Series:** issue focused sets of activities added each month.
- ï **Human Rights Resources:** links to external human rights resources for teachers.
- ï **HR Education Mailing List:** an electronic mailing list with monthly updates.

The *Information for Teachers* portal received special mention in the August 2002 issue of *Internet.au* magazine.

Current Issues Series

www.humanrights.gov.au/info_for_teachers/current_issues.html

The Commission receives requests from teachers and students each day for material on current human rights issues. Responding to this need, the Commission developed a current issues series, with a new issue every two months.

The first of these was developed in May 2002 ñ *The Stolen Generations*. With the release of *Rabbit-Proof Fence*, a major feature film, the Commission prepared teaching activities linking the film and book (by Doris Pilkington) to *Bringing them home* and the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. The activities direct teacher and student interest in the film/book to the Inquiry report.

A second was developed in July 2002 focusing on the paid maternity leave campaign. The activities demonstrate to students how paid maternity leave raises issues of sex discrimination and equal opportunity that are directly relevant to their lives. For example, it includes a case study on Marla ñ a 16 year old considering her future career and personal directions.

The *Current Issues Series* is intended both to respond to the needs of teachers as well as to complement policy priorities of the Commission.



***Bringing them home* – Stories from the Stolen Generations**

The Commission is currently developing an online education module on *Bringing them home*, the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.

The module adopts the theme of oral history and story telling as its approach to teaching about the Inquiry. The stories of individuals and communities, together with the histories of assimilation and state-sanctioned removal are the key elements.

Taking into consideration different learning skills, the module provides two sets of materials. One for junior students and one for senior students, as well as resource materials for tertiary level students.

The module will explore:

- ï personal stories from the Inquiry
- ï a history of laws and practices in each State and Territory
- ï a brief history of colonisation in Australia and overseas
- ï the effects and experiences of removals
- ï recommendations from the Inquiry
- ï the issue's connection with other Indigenous social justice issues, such as self determination, reconciliation and criminal justice.

It will also contain a number of online interactive elements.

The module is due for completion in October 2002.

Human rights and the curriculum

A strategy has been developed by the Commission to link the curriculum framework of the various state education departments with human rights education and *Youth Challenge* materials. South Australia was the first state where such links were made. The Human Rights Education Officer with the Commission presented these materials at a teachers' conference in March 2002 in South Australia where it received very positive feedback. The Commission is currently developing similar links with curricula in other states and territories. The advantages of this strategy are that teachers are encouraged to teach about human rights and responsibilities by being provided with interesting and relevant curriculum-based materials.

Every addition to the Commission's education program includes a comprehensive set of teaching notes responding to current teaching needs and pedagogies. The activities are structured to a set of learning outcomes and point to relevant curriculum areas. The Commission's Education Officer has been invited to a number of State Teachers Conferences to present the strategy and talk about the education materials.

Promoting online education

In addition to developing this material, the Commission has actively promoted the online education program, targeting teachers across Australia. A promotional strategy was developed and executed. Below are the main promotional activities:

Posters and postcards

The Commission developed a poster and postcard series for *Youth Challenge* and sent them to over 3 000 schools nationally. Both are available as downloads from the website. The Commission also developed postcards for the *Information for Teachers* portal and each set of activities in the *Current Issues Series*. These are distributed across teacher organisations, curriculum development bodies, education networks and education journals.

Electronic mailing list

The Commission adopted a direct marketing approach by using a mailing list with 3 000 self-subscribed educators. The monthly updates include:

- a link to the most recent set of activities under the *Current Issues Series*
- reviews and links to human rights education resources
- reviews of particular sections of the Commission's website that are useful for educators
- a list of upcoming human rights education events.

Advertising and editorial

The Commission placed advertisements in the main education serials/journals for each State and Territory. Advertisements were included in *Newsmonth* (Independent Education Union, NSW/ACT), *Education* (NSW Teachers' Federation), *Western Teacher* (State School Teachers' Union of WA), *The Independent Voice* (Journal of the Queensland Independent Education Union) and *AEU News* (Australian Education Union, Victoria). The next period of advertising is planned after the launch of the *Bringing them home* module.

Professor Alice Tay's speech at the launch of *Youth Challenge* has appeared in most of the abovementioned journals.

Links with teacher networks

The Commission has established links with a number of educators' networks. We are also contacted by these networks for resource support, cross hyperlinking and to give presentations at conferences.

The Commission also works to include links to our program on other websites. In particular, the national online education resource, *EdNA Online*, regularly features information on our education program.

Ongoing evaluation

Since launching *Youth Challenge*, the Commission has set up a number of evaluation processes, allowing feedback for teachers and opportunities for teachers to make recommendations.

The first of these was a survey distributed with video purchases seeking feedback on how *Youth Challenge* is used in classes ñ the year levels, subject areas, sections being used and for what period of time (one class, one week etc). Feedback via the evaluation form is being used to develop education materials better tailored to the needs of teachers.

The feedback form is also available online. Surveys received to date are extremely positive. *Youth Challenge* has been used to teach subjects such as Junior Civics, Social Justice, Legal Studies and Religious Studies.

A human rights education email address was set up to deal with correspondence from teachers. The Commission is regularly contacted by teachers through this address, both in relation to Commission material but also to speak at events, recommend other education material on topics not covered by the Commission, and general support on human rights education. Approximately 50 queries are received each month.

Since the launch of the *Information for Teachers* portal in May 2002, the section has received over 30 000 page views (15 May 2002ñ30 June 2002).

Since the launch of *Youth Challenge* in December 2001, the section has received over 25 000 page views.

Complaint services promotion

The Commission actively promotes its complaint handling and complaint information services and other functions to targeted communities. A pilot program was undertaken in 2002 to advise in particular people of Vietnamese and Arabic speaking backgrounds and Indigenous Australians of these services.

The Commission ran advertisements with a number of community radio stations promoting the 1300 Complaint Infoline. The advertisements ran for a four week period in Sydney. Advertisements were also placed in three Indigenous newspapers monthly or bi-monthly over a six month period. Further, advertisements were placed in the New South Wales and Victorian monthly Law Journal for six months promoting the Commission's online complaint form and 1300 Complaint Infoline.

Some material about race discrimination complaints was prepared and distributed widely to Indigenous media, to accompany the advertising campaign in the Indigenous newspapers and to be used in its own right by other Indigenous media organisations to illustrate the sort of complaints received by the Commission.

Translation of brochures

While information on the website of the Commission is mainly in English, we have translated some material into other languages.

The two main translations were of the *Complaint Guide* and the Commission's general information brochure. They were translated into:

- ï Arabic
- ï Bosnian
- ï Chinese
- ï Croatian
- ï Farsi
- ï French
- ï Greek
- ï Indonesian
- ï Polish
- ï Serbian
- ï Somali
- ï Spanish
- ï Turkish
- ï Vietnamese.

The translations are available from the Commission's website at www.humanrights.gov.au/other_languages/ in HTML and PDF formats.

Commission website – www.humanrights.gov.au

The Commission's website is a major educative tool and is used widely by government, legal, community and employer organisations, the media, schools and individuals to obtain information about human rights and responsibilities and anti-discrimination law and practice.

The Commission's website is maintained to ensure that the most up to date information is posted daily, and all reports, submissions, media releases and other Commission publications are available online.

Major additions and improvements

Major additions and improvements to the site in 2001–02 include:

- ï Online Complaint Form established on the site to enable complainants to lodge their complaint with the Commission electronically.
- ï Development of a new Legal Information section, which contains a range of legal resources and links relevant to the work of Legal Services.
- ï Improvements to the Commission's metadata records to ensure easier access to Commission materials from government portals and other search engines.

- ï Implementation of the new *Information for Teachers* website, which provides human rights resources and links for use in Australian classrooms.
- ï Development of a number of mini-sites within the Commission's main website to provide information on a range of events and issues including: Moving Forward: Achieving Reparations for the Stolen Generations conference, World Conference Against Racism, Human Rights Awards 2001, Beyond Tolerance Conference, United Nations Special Session on Children, National Human Rights Dialogue, Paid Maternity Leave and the National Inquiry into Children in Immigration Detention.

Electronic mailing lists and feedback facility

The Commission's email based electronic mailing list service provides for regular communications to all constituency groups including community and government. Instructions on joining the Commission's electronic mailing list service are available at www.humanrights.gov.au/mailling_lists/.

There are currently more than 11 900 subscribers across 10 different lists including:

- ï Children and Youth Issues ñ 2 496 subscribers.
- ï Disability Rights Update ñ 1 026 subscribers.
- ï Human Rights Education ñ 2 597 subscribers.
- ï Human Rights Issues ñ 835 subscribers.
- ï Indigenous Issues ñ 695 subscribers.
- ï Racial Discrimination Issues ñ 767 subscribers.
- ï Sex Discrimination Issues ñ 1 215 subscribers.

Website feedback

The Commission's feedback facility allows users to request help with research and provide constructive feedback on the Commission's online resources and site accessibility. Thousands of messages have been received from legal, government, community and employer organisations, the media, schools and individuals during the year and are responded to by Commission staff within five working days.

Statistics

The Commission uses a web statistics system which tracks the number of visitors the site has and how visitors are using the site. This allows the Commission to identify materials that are particularly successful or popular and where we have room for improvement.

Usage of the site has increased over the year with approximately 3 205 693 page views on the server during 2001ñ02, an increase of 937 693 page views compared to 2 268 000 page views in 2000ñ01.

A summary of statistical information is provided below. Please note that page views by Commission staff are not included in these figures.

Section	Homepage page views	Total section page views *
The Commission's homepage www.humanrights.gov.au	220 876	n/a
Aboriginal & Torres Strait Islander Social Justice www.humanrights.gov.au/social_justice/	45 799	300 093
Complaints Information www.humanrights.gov.au/complaints_information/	28 004	83 867
Disability Rights www.humanrights.gov.au/disability_rights/	58 470	447 182
Human Rights www.humanrights.gov.au/human_rights/	48 307	315 385
Legal Information # www.humanrights.gov.au/legal/	20 061	42 376
Racial Discrimination www.humanrights.gov.au/racial_discrimination/	51 035	185 567
Sex Discrimination www.humanrights.gov.au/sex_discrimination/	56 451	198 651
Information for Teachers ## www.humanrights.gov.au/info_for_teachers/	14 915	23 747
Information for Students www.humanrights.gov.au/info_for_students/	36 478	52 708
Youth Challenge ñ Teaching Human Rights and Responsibilities ### www.humanrights.gov.au/youthchallenge	11 730	56 791
National Inquiry into Children in Immigration Detention www.humanrights.gov.au/human_rights/children_detention/	11 376	39 341

* Page views for all pages within this section.

The Legal Information section was launched in March 2002.

The Information for Teachers website was launched in May 2002.

The Youth Challenge website was launched in December 2001.

The National Inquiry into Children in Immigration Detention website was launched in November 2001.

Distribution of hard copy publications

In addition to all Commission publications being made available on the Commission's website, during the reporting year, some 95 374 publications were dispatched in hard copy format.

The most popular publications were *Face the Facts: Some Questions and Answers about Immigration, Refugees and Indigenous Affairs*, the Commission's *Complaint Guide*, and the postcards *Youth Challenge* and *Information for Teachers*.

A list of publications released during 2001ñ02 can be found at Appendix 2 of this Report.

Media engagement

Engagement with the media is a crucial aspect of the Commission's public education function. The Commission has engaged in public debate via the print and electronic media, uses iñewi media such as the internet to provide substantial information to the public and to make human rights education material available to schools. The Commission also uses community announcements and niche or specialist media to provide general information on the Commission's complaints system, its legal interventions and other aspects of the Commission's work.

In the past year, Commissioners have contributed to public debate on human rights and discrimination issues including refugees and asylum seekers, racial vilification, Indigenous social justice, native title, sex discrimination and harassment, paid maternity leave and other equity issues, disability discrimination and advances in accessibility for people with a disability and on changes to legislation that may affect people's human rights.

The Commission also promotes the Human Rights Medal and Awards which include a category to recognise an outstanding contribution to human rights through the print media, radio or television.

Media activity has focussed primarily on the National Inquiry into Children in Immigration Detention, the options paper for Paid Maternity Leave and the promotion of the Aboriginal and Torres Strait Islander Social Justice and Native Title reports 2001. The Commission also issued statements about changes to immigration laws and to laws governing security and promoted its intervention in the *iTampa* case, the *iVVi* case and the *iKevin and Jennifer* case (see the Legal section at Chapter 3 of this Report for further information).

The National Inquiry has attracted substantial media interest and evidence given in public hearings in Adelaide, Perth and Melbourne has featured in news reports in press, radio and television. Media representatives have been kept informed about the progress of the Inquiry.

In the past year, the Commission has issued about 90 media releases and Commissioners have written a number of opinion pieces and articles.

The Commission also has also engaged directly with representatives of the media about their responsibility to report fairly and accurately, especially on race issues.

Following the United States terrorist attacks on September 11 2001 the Aboriginal and Torres Strait Islander Social Justice Commissioner Dr William Jonas called for Australians not to retaliate against Muslims in the community. In response to public criticism ñ about talkback radio in particular ñ Dr Jonas sent a memo to editors and executive producers to draw their attention to the racial hatred provisions of the Racial Discrimination Act.

A media forum was convened as part of *Beyond Tolerance: a national conference on racism*, held at the Sydney Opera House on 12 and 13 March 2002 which addressed the issues confronted by journalists reporting and commenting on race relations in Australia.

Community contacts

Commissioners and staff met with peak bodies and community groups on a range of issues during the year. Some of the significant consultations are noted below.

Aboriginal and Torres Strait Islander Social Justice

The Social Justice Commissioner held at least 150 consultations during 2001-02, including consultations on the following issues:

- ï *Moving Forward*. The national conference on stolen generations issues in August 2001 was attended by approximately 250 people.
- ï *Briefings on Social Justice and Native Title Reports*. Briefings on the contents of the 2000 and 2001 reports were held with Government, community organisations and through public launches in July ñ August 2001 and May ñ June 2002.
- ï *Juvenile diversion*. Consultations were held in Perth, Darwin, Alice Springs, Tennant Creek, Groote Eylandt and Katherine as part of the project on juvenile diversionary schemes in the Northern Territory and Western Australia between July and November 2001.
- ï *Corporate responsibility and native title*. Consultations included the conduct of a two day forum with traditional owners, representatives of land councils and mining companies in Alice Springs in May 2002.
- ï *Consultations on the operation of the Native Title Act*. Consultations were held with the National Native Title Tribunal, Federal Court, Native Title Representative Bodies and the Aboriginal and Torres Strait Islander Commission on the operation of the legislation, as well as with native title holders and claimants.

Disability Rights

More than 60 consultations were held by the Disability Discrimination Commissioner and staff, including hosting a two day forum for national peak disability representative organisations in December 2001. Other consultations included:

- i *Banking.* Regular ecommerce forum and specific consultations on banking industry accessibility standards.
- ii *Building access.* Several meetings each of national Building Access Policy Committee and Building Access Technical Committee working towards upgrading of access provisions of the Building Code of Australia and adoption of standards in this area under the Disability Discrimination Act, as well as participation in national information sessions on this process.
- i *Education.* National consultative meeting on access to tertiary education materials, in addition to participation in working group considering national standards on education under the Disability Discrimination Act.
- ii *Telecommunications.* Participation in Australian Telecommunications Industry Forum disability working party.

Human Rights

The Human Rights Commissioner conducted a number of public consultations. These may be broadly characterised into three groups:

- i *United Nations Special Session on Children.* Seven pre and post consultations with children and young people were carried out around Australia in locations as geographically diverse as Brisbane and Broome. The purpose behind the consultations was to allow expression of the thoughts of young Australians and on return to advise on outcomes from the Special Session.
- ii *National Inquiry into Children in Immigration Detention.* Two public hearings have been held in Melbourne and Perth. Further hearings are expected to be held in Adelaide, Sydney and Brisbane. In addition at least 30 focus groups have been coordinated.
- ii *National Human Rights Dialogue.* Meetings were held in at least 20 locations addressing groups as diverse as the New South Wales Justices' Association to the Association of Major Charitable Organisations.

Race Discrimination

Over 31 consultations were conducted by the Race Discrimination Commissioner and staff in 2001-02. They included:

- ii Eight consultations conducted with civil society around the country in relation to the themes of the World Conference Against Racism.
- ii Thirteen consultations with Indigenous and non-Indigenous groups regarding race relations in the Kalgoorlie-Boulder community.

- ï Other consultations/meetings were held on the *Beyond Tolerance* conference on racism; anti-Arabic and anti-Muslim vilification and attacks (post September 11); and national anti-racism strategies.

Sex Discrimination

Over 100 consultations were conducted by the Sex Discrimination Commissioner and staff in 2001-02. Sixty one of these consultations concerned the issue of paid maternity leave and included formal consultation forums in relation to the paid maternity leave options paper. Consultations included:

- ï *Paid maternity leave ñ regional.* Community based regional consultations were held in Katherine (Northern Territory) and Wagga Wagga (New South Wales) with a broad representation of individuals, health professionals, union delegates and employers within the local community.
- ï *Paid maternity leave ñ employer and union groups.* Consultations were held in each of the capital cities with a wide range of employer representative and union groups. Meetings were also held with the Australian Council of Trade Unions President and eight public consultations and 18 meetings were held with individual employer groups.
- ï *Paid maternity leave ñ womensí and community groups.* Consultations were held in each capital city with the assistance of the Womensí Electoral Lobby, Business and Professional Women and the YWCA in various states and territories.
- ï *Sexual harassment.* Two meetings were held with the Australian Defence Force in relation to the Forcesí sexual harassment policy and management of sexual harassment issues.
- ï *Pregnancy guidelines.* Consultations were held with the Australian Sports Commission on their national pregnancy guidelines, released in May 2002.

International visitors to the Commission

During 2001ñ02, the Public Affairs section coordinated a number of requests from international human rights groups or individuals to visit the Commission.

Delegations who visited the Commission included:

- ï Public Participation Committee of the Thai Senate
- ï several Australian Ambassadors in the Asia Pacific region
- ï delegation from Kangwon provincial government in the Republic of Korea
- ï Officers from the Office of Equality Investigations in the Republic of Ireland
- ï Two Vietnamese Government delegations

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- ï United Kingdom National Office
- ï Korean Human Rights Ambassador
- ï Two Indonesian human rights delegations
- ï Delegations from the Chinese Ministry of Justice and the Chinese Ministry of Foreign Affairs
- ï Study tour by members of the Korean Human Right Commission.

The President, Commissions and senior staff from the Commission made presentations to the delegations about the Commission, its legislation, structure and work. All delegation members were provided with a set of materials about the Commission and its role at both a domestic and international level.

Chapter 2

Complaint Handling Section

Introduction

The Complaint Handling Section had a productive year investigating and conciliating complaints of alleged discrimination and human rights breaches; providing information to the public about federal anti-discrimination and human rights law through its Complaint Information Service and community education and liaison program; and providing complaint investigation and resolution skills training to state equal opportunity, anti-discrimination authorities, other Australian Public Service agencies and private companies.

In summary:

- ï 1271 complaints were received.
- ï 1298 complaints were finalised.
- ï 30 percent of finalised complaints were conciliated.
- ï 88 percent of complaints were finalised within 12 months of lodgement.
- ï 8 052 telephone, email, TTY and in person enquiries were received through the Complaint Information Service.
- ï 759 written enquiries were responded to.
- ï Approximately 155 organisations throughout all states and territories attended information sessions on the complaint handling process.
- ï Seven specialist investigation and/or conciliation skill training courses were conducted for Complaint Handling Section staff, staff from State and Territory Equal Opportunity Commissions, government and non-government agencies.
- ï Ten skills training courses in statutory investigation were conducted for the Australian Public Service through the Australian Public Service Commission.

The Commission is responsible for the investigation and conciliation of complaints under the *Human Rights and Equal Opportunity Commission Act 1986*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*.

This legislation provides for complaints of discrimination or breaches of human rights to be made to the Commission. Complaints are referred to the President, who is responsible for inquiring into the complaint. After

inquiry, the President must decide whether to terminate the complaint or attempt to settle the complaint through conciliation.

Complainants who allege unlawful race, sex or disability discrimination and whose complaint is terminated by the President because it cannot be resolved by conciliation or for another statutory reason, may apply to have their complaint heard by the Federal Court of Australia or the Federal Magistrates Service. Complaints lodged under the *Human Rights and Equal Opportunity Commission Act 1986* concerning discrimination in employment or a breach of human rights by the Commonwealth, which cannot be conciliated may, after Notice, be made the subject of a report to the Attorney-General for presentation to Parliament.

A diagram of the complaint handling process is provided at Appendix 4 of this Report.

In the 2001-02 reporting year, complaints were received from all states and territories. Complaints were lodged by complainants from capital cities, large regional centres and rural and remote Australia. Most complaints were made directly to the Commission through its office in Sydney and the Commission's online complaint form. A number of complaints were also referred from state anti-discrimination and equal opportunity agencies.

Along with its formal statutory complaint handling function, the Complaint Handling Section receives a large number of enquiries from people seeking advice and assistance in relation to possible breaches of federal anti-discrimination legislation. These enquiries may be made by telephone, in person, in writing or by email. Many enquirers are utilising the electronic enquiry facility made available by the Commission. Enquirers are provided with information about the legislation and the complaint handling process. When appropriate, enquirers are encouraged to resolve matters directly and informally with the people involved in their dispute. When it appears that a formal complaint should be made, enquirers are sent a *Complaint Guide* and complaint form or directed to the online complaint facility and website.

When the Commission cannot assist, every effort is made to refer the caller to another appropriate avenue of redress. The Commonwealth and State Industrial Relations Commissions and Ombudsmen's offices are common referral points. When complaints of discrimination are not covered by federal law, callers are referred to the relevant state authorities.

Key performance indicators and goals

- i **Timeliness.** The Complaint Handling Section's stated performance measure is for 75 per cent of complaints to be finalised within 12 months of date of receipt. In 2001-02 88 per cent of matters were finalised within 12 months and the average time from receipt to finalisation of a complaint was seven months. A detailed breakdown of timeliness statistics by jurisdiction is provided in Table 13.

- i **Conciliation rate.** The Complaint Handling Section's stated performance measure is for 30 percent of finalised complaints to be conciliated. In 2001-02 this goal was achieved with a 30 percent conciliation rate.
- ii **Customer Satisfaction Survey.** The Complaint Handling Section's stated performance measure is for 80 percent of parties to be satisfied with the complaint handling process. Data for 2001-02 indicates that 83 percent of parties were satisfied with the service they received. Of this 83 percent, 47 percent rated the service they received as 'very good' or 'excellent'. Further details of survey results for this reporting year are provided below.

Customer satisfaction survey

The Complaint Handling Section's customer satisfaction survey has been in operation since December 1997. The survey is used to obtain feedback from complainants and respondents (or their advocates) involved in the complaint handling process. Survey results for 2001-02 indicate that:

- i Seventy seven (77) percent of complainants and 92 percent of respondents felt that staff explained things in a way that was easy for them to understand.
- ii Eighty three (83) percent of complainants and 99 percent of respondents felt that forms and correspondence from the Commission were easy to understand.
- iii Sixty one (61) percent of complainants and 72 percent of respondents felt that the Commission dealt with the complaint in a timely manner.
- iv Eighty eight (88) percent of complainants and 94 percent of respondents described complaint handling staff as unbiased.

Survey results for 2001-02 are generally similar to survey results for the past two years.

Service charter

The Complaint Handling Section's service charter provides a clear and accountable commitment to service. It also provides an avenue through which users can understand the nature and standard of service they can expect and contribute to service improvement. All complainants are provided with a copy of the charter and respondents receive a copy when they are notified of a complaint against them.

During 2001-02 the Commission did not receive any complaints about its services through the charter's formal complaint mechanism. It is noted that where parties have concerns about the complaint handling process, they are generally able to resolve their concerns through discussions with the officer handling the complaint.

Access to services

The Commission's mission statement seeks to promote and facilitate community access to its services and functions. In meeting this challenge the Complaint Handling Section provides the following services:

- ï **The Complaints Infoline – 1300 656 419.** The Infoline, operating at a local call charge, is open Monday to Friday between 9.00 am and 5.00 pm. This service offers enquirers the opportunity to call and discuss allegations of discrimination with a Complaint Information Officer. Seven thousand, five hundred and forty six (7 546) enquirers throughout Australia utilised the Complaints Infoline during 2001-02. Enquirers can also email complaintsinfo@humanrights.gov.au. Three hundred and seventy nine (379) email enquiries were received this year. Further information about the operation of the Complaints Information Service is provided later in this section.
- ï **Complaints Information webpage – www.humanrights.gov.au/complaints_information/.**

This webpage provides the general public and potential users of the service with information about the Commission's complaint handling role and the complaint process. It includes information on how to lodge a complaint, a complaint form, frequently asked questions about complaints and a conciliation register. The conciliation register contains de-identified information about the outcomes of conciliated complaints.
- ï **Online Complaint Form.** This service, which allows complaints to be lodged electronically, has been well utilised over the past year.
- ï **Concise Complaint Guide.** This can be accessed and downloaded in 14 community languages.
- ï **Conciliation circuits.** When required, Investigation Conciliation Officers travel throughout Australia to conduct face to face conciliation conferences. Along with the conferences conducted in the greater Sydney area, officers conducted around 60 conferences in Victoria, 35 in South Australia, 24 in Queensland, 24 in regional New South Wales, 14 in Western Australia, seven in the Australian Capital Territory and six in the Northern Territory.
- ï **Access working group.** The Complaint Handling Section established its access working group in 1999. The aim of the group is to improve the accessibility of the complaint handling service. Tasks undertaken by the working group in the past year included development of an information brochure for Indigenous clients and the design and presentation of an information session for people with an intellectual disability.

- i **Community education and state liaison.** The Complaint Handling Section provides information sessions concerning the Commission's complaint information and investigation and conciliation services to community and stakeholder organisations throughout Australia. Presentations to staff and representatives from approximately 155 organisations and groups were made in 2001-02. Presentations took the form of informal and formal staff meetings and group presentations. The organisations visited included community legal centres, ethnic community centres, disability and Aboriginal legal services. The regions covered included Brewarrina and Broken Hill (New South Wales); Charleville and Roma (Queensland); Albany and Carnarvon (Western Australia); Port Lincoln and Port Augusta (South Australia); Darwin (Northern Territory); Mildura and Melbourne (Victoria); and Launceston and Hobart (Tasmania).

Arrangements with state agencies

Victoria

The Commission has a formal referral arrangement with the Equal Opportunity Commission, Victoria whereby Victorians who elect to lodge a complaint under federal legislation may lodge a complaint through the Referral Centre. Once the complainant has elected federal jurisdiction the complaint is referred to Sydney for handling. Sixty six (66) complaints were referred from the Equal Opportunity Commission, Victoria in 2001-02. Victorians can also lodge their complaint directly with the Commission through the Sydney office by post or online. A total of 237 complaints were received from Victoria this year.

Queensland, South Australia, Northern Territory

The Commission has arrangements with the Queensland, South Australian and Northern Territory Equal Opportunity Commissions whereby these agencies display Commission publications and allow Complaint Handling Section staff to use their facilities for conciliation conferences, community education or training. Informal referral arrangements are also in place whereby these agencies will forward complaints under federal law to the Commission. Alternatively, complainants can choose to lodge complaints under federal jurisdiction directly with the Commission in Sydney, by post or online.

Tasmania, Western Australia, Australian Capital Territory

Residents of these states and territory have a choice of electing to lodge complaints under state anti-discrimination law or lodging complaints under federal law directly with the Commission in Sydney, by post or online.

Election of jurisdiction

As many complainants may choose between federal and state laws to lodge their complaint, the Commission has produced an information sheet about this process. It is available on the Commission's website at: www.humanrights.gov.au/complaints_information/guides/jurisdiction.html

Training and policy

The Commission has two specialised training programs which provide knowledge and skills in statutory investigation and conciliation. All complaint handling staff are required to undertake these courses. In 2001-02 two statutory investigation and two statutory conciliation courses were run for Commission staff and staff from anti-discrimination agencies in New South Wales, Queensland, South Australia, Northern Territory and the Australian Capital Territory. Variations of these courses were also run for staff of another Commonwealth agency and managers of a large national company. Feedback on these courses has been very positive with 76 percent of participants rating the course as 'excellent' and 24 percent rating the course as 'very good'¹.

The Commission has also worked in partnership with the Australian Public Service Commission to provide a two day investigation training course for Australian Public Service staff around Australia. The course, which is a variation of the Commission's standard statutory investigation training program, provides theory and skills that can be applied to the investigation of internal complaints and breaches of the Australian Public Service Code of Conduct. This course has been extremely popular and in the past year senior complaint handling staff have delivered two courses in Sydney, two in Melbourne, one in Adelaide, one in Brisbane and in-house courses were run for Centrelink, the Department of Veterans Affairs and the Health Insurance Commission. Feedback from these courses has also been very positive with 93 percent of participants indicating that their learning needs were met to a 'high degree' or 'largely met' and 98 percent rating course presentation as 'excellent' or 'very good'².

During 2001-02 three complaint handling officers continued study towards obtaining Certificate IV accreditation in Assessment and Workplace Training. Four senior officers have already obtained this certification. Staff of the Complaint Handling Section also attended various seminars and training courses relating to human rights and anti-discrimination law throughout the year including the Annual National Community Legal Conference in Fremantle, the Second Diversity Conference in Geelong and the National Conference on Racism in Sydney.

In 2001-02 the Complaint Handling Section also undertook a research project which, in part, examined the impact of the *Human Rights Legislative Amendment Act 1999* on the Commission's complaint handling work. The research project considered

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- 1 Calculated on the basis of completed course evaluations where comparable evaluation formats were used in five of the seven courses.
 - 2 Calculated on the basis of completed course evaluations where comparable evaluation formats were used in seven of the 10 courses.

the impact of legislative change on the number of complaints received, the level of legal representation of parties, complaint outcomes and complaint settlement amounts. The research project also sought to gather information in relation to the Commission's conciliation process and reasons for withdrawal of complaints. In particular, the project considered parties' satisfaction with conciliated outcomes, reasons for settlement and what, if any, concerns parties had about a court determination process. Details of the findings of this project will be available by the end of the year on the Commission's website.

Other work

In the early part of the reporting year, the Complaint Handling Section provided a practicum placement for a trainee mediator undertaking the Relationship Australia Course in Mediation.

In December 2001, a senior officer from the Complaint Handling Section travelled to Indonesia to continue work on a capacity building project with the Indonesian National Commission of Human Rights (Komnas Ham). This project is assisting Komnas Ham to develop and implement a computerised complaints management system. The Commission had previously worked with an IT consultant to complete a business process analysis of the complaint process and information requirements. This visit furthered the project by providing technical assistance to staff in reviewing and finalising specifications and planning the implementation of the system.

In December 2001 an officer from the Complaint Handling Section assisted the Fiji Human Rights Commission, through the Asia Pacific Forum, to conduct two workshops on human rights education.

In April 2002, two senior officers from the Complaint Handling Section travelled to Beijing to assist in negotiations with Chinese agencies regarding activity development as part of the China-Australia Human Rights Technical Cooperation Program. This program is funded by the Australian Agency for International Development (AusAID) and is implemented by the Commission. Further information on the Commission's work on this program is provided at Chapter 9 of this Report.

Staff from the Complaint Handling Section also participated in providing information about the Commission's complaint handling work to delegations from human rights institutions, parliamentary and government institutions and non-government organisations from Vietnam, Thailand, China, Korea, Ireland and Indonesia and to Justice P.N. Bhagwati, Personal Envoy and Asia Pacific Regional Advisor of the United Nations High Commissioner for Human Rights.

Conciliation case studies

Racial Discrimination Act

Under the *Racial Discrimination Act 1975* it is unlawful to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of any human right or

fundamental freedom in the political, economic, social, cultural or any other field of public life. The Act also prohibits offensive behaviour based on racial hatred.

During 2001-02, the Commission received 186 complaints under the Racial Discrimination Act. The majority of these complaints related to employment and the provision of goods and services. The Complaint Handling Section finalised 258 complaints under this Act and 15 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Racial Discrimination Act are provided in the statistics part of this Chapter.

Complaint of race and disability discrimination in access to premises

The complainant, who is Aboriginal and has cerebral palsy, alleged that she was treated less favourably on the basis of her race and her disability when trying to enter a hospital to see her sick child. The complainant alleged that the security guard at the hospital initially swore at her and refused her entry because he thought she had been drinking. The complainant claimed that she tried to explain that she was there to visit her baby and the driver of the bus she had travelled in also spoke to the guard and advised him that the complainant had a disability which affects her speech and gait. The complainant claimed that the guard persisted in questioning her as to whether she had been drinking and why she was returning to the hospital late in the evening. The complainant advised that she was eventually allowed to enter the hospital and that she lodged a complaint with a hospital official the day after the incident.

The hospital advised that they had a contractual agreement with the respondent security firm which stipulated that security guards were required to question unidentified persons found on the premises after 8pm. The security firm advised that the guard involved in the matter had left their employment, but from their records it appeared that the guard thought that the complainant had been drinking and questioned the complainant about this when she sought to enter the hospital. The records indicated that the guard agreed that he spoke with the bus driver but denied that he swore at the complainant. The guard claimed that he offered to escort the complainant to the ward but his offer was declined.

The matter was resolved by conciliation. The security firm agreed to pay the complainant \$3 000 which included \$2 000 in general damages and \$1 000 legal costs. The firm also agreed to provide the complainant with a written apology and to introduce a comprehensive anti-discrimination policy. The hospital agreed to pay the complainant \$3 000 which comprised \$2 000 for general damages and \$1 000 legal costs.

Alleged discrimination on the ground of race in the provision of goods and services

The complainant advised that his wife is of Russian background and does not read, write or speak English. The complainant alleged that he was vilified because of his wife's racial background when he contacted the respondent state government department to enquire, on his wife's behalf, about obtaining a particular qualification. The complainant alleged that a female officer answered his call and when he advised the officer that his wife was Russian, the officer said 'Oh! A mail order bride eh!'

The complainant also alleged that the department discriminated against his wife in that study guides for the qualification are not published in Russian.

The department advised that due to budgetary constraints study guides are not published in various languages and the department was of the view that non-provision of the material in Russian did not constitute discrimination on the ground of race. The department concurred that during a telephone conversation, a part-time Client Relations Consultant had made the alleged statement to the complainant in response to the complainant advising the consultant that he had a Russian bride.

The complaint was resolved by conciliation with the department agreeing to pay the complainant \$1 000 compensation for hurt and humiliation and the Client Relations Consultant agreeing to provide a written apology to the complainant.

Complaint of race discrimination in provision of banking services

The complainant is of Iranian background, does not read, write or speak English and was recently released from detention after being granted refugee status. The complainant claimed that he went with a friend to the local bank to open a savings account. The complainant alleged that he was discriminated against on the basis of his race in that the bank refused to open an account under his name because he does not speak, read or write English and would not allow his friend, who speaks English, to assist him. The complainant stated that the next day, he went to another branch of the same bank and was able to open an account without any problems.

The bank advised that it initially did not open an account for the complainant because it was not satisfied that the complainant was able to understand the terms and conditions pertaining to his responsibilities as an account holder. The bank stated that the complainant was able to open an account at a different branch as an employee at that branch spoke the same language as the complainant. The bank denied race discrimination but agreed that the complainant's inability to communicate in English was a factor in the initial refusal to allow him to open an account.

The matter was resolved by conciliation with the respondent providing a verbal apology to the complainant and agreeing to issue a national bulletin to advise all staff to use the Telephone Interpreter Service to assist customers who have difficulties communicating in English.

Alleged race discrimination by hotel

An Aboriginal elder lodged a complaint on behalf of himself and another Aboriginal person, alleging discrimination on the ground of race by the respondent hotel. The complainant claimed that he and the other complainant had performed at a dance function, showered and then sought to enter the hotel to purchase some cigarettes. The complainant claimed that they were refused service and asked to leave the premises because staff of the hotel said they smelt.

The hotel denied race discrimination and claimed that the complainants were refused entry because of their strong body odour and because they did not meet the hotel's hygiene standards. The hotel stated that the complainants were informed that they were welcome to return after they had showered.

The complaint was resolved at conciliation with the respondent agreeing to pay each complainant \$6 000 in general damages and also provide each complainant with a letter of apology.

Alleged race discrimination by bus driver

The complainant, who is an Aboriginal, alleged she was discriminated against by the driver of a public bus. The complainant claimed that when checking the validity of passenger's tickets, the bus driver made racist remarks to Aboriginal passengers by referring to them as 'the coloured man in the hat', 'you blacks' and 'black fellas'. The complainant alleged that when she and other passengers objected to this language the driver said 'if I had my way, I'd line you all up outside'. The complainant advised that she made a complaint directly to the bus service when she returned home.

The respondent company advised that it had conducted an investigation of the complainant's allegations and while the bus driver admitted using the term 'coloured' he denied using the terms 'blacks' or 'black fellas'. The company also advised that the driver admitted saying words to the effect 'if I had my way everyone would be lined up outside' but claimed this was said in the context of enabling a ticket check because he knew that one passenger did not have the correct ticket. The company also advised that the driver had been dismissed.

The complaint was resolved at conciliation with the company agreeing to develop and implement anti-discrimination policies for inclusion in the driver induction process. The company also agreed to engage a relevant agency to provide an initial series of anti-discrimination forums for all drivers, with follow-up forums to be held annually.

Alleged racial vilification in local council meeting

The complainant, who is a councillor of a local council, claims that at a council meeting the respondent became insulting and argumentative towards him and racially vilified him by making remarks such as 'Jews don't understand', 'Jews are the same', 'Jews don't know better' and 'Öking Jews'. The complainant claimed that he asked council staff to remove the respondent from the council chamber and that upon being approached by the staff members, the respondent repeatedly referred to the complaint as a 'Öing Jew'.

The respondent agreed that he may have made offensive comments against the complainant but he denied making any anti-semitic remarks. The respondent claimed that in his view the complainant has not adequately performed his councillor role as he is only interested in representing Jewish members of the community.

Following several rounds of conciliation discussions by telephone, the parties agreed to resolve the complaint on the basis that the respondent acknowledged that the comments he made hurt and embarrassed the complainant and unreservedly withdrew the comments. Each party also undertook not to disparage or make untrue or defamatory comments about each other to any third party.

Complaint of racial discrimination in employment

The complainant was employed by a large federal government organisation for five years. The complainant claimed that during his employment, he was treated less favourably because he is from Israel, is of the Jewish faith and had work related health problems. The complainant alleged that since 1996, he was subjected to repeated anti-semitic comments, intimidation, isolation, threats of demotion and shift restrictions due to work related health problems. The complainant alleged that the comments he was subjected to included being greeted by a staff member who said 'Sieg Heil' and performed a 'Nazi' salute, being asked 'Why don't you go back to Israel?' and told 'I'll send you back to Israel'. The complainant claimed that his supervisors, harassment officers, a staff doctor and a union representative all subjected him to less favourable treatment while working at a particular work centre and that management failed to act upon his complaints.

Although the respondent denied the allegations the matter was resolved by conciliation with the respondent organisation agreeing to pay the complainant \$9 000 in general damages.

Sex Discrimination Act

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

During 2001-02, the Commission received 399 complaints under the Sex Discrimination Act. The large majority of complaints related to employment and around one third of the complaints alleged pregnancy discrimination. The Commission finalised 376 complaints under this Act and 43 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Sex Discrimination Act are provided in the statistics part of this Chapter.

Alleged pregnancy discrimination

The complainant stated that she was not aware that she was pregnant when she applied for work as a receptionist/clerk with a real estate agency. She claimed that soon after she commenced work she advised her supervisor that she was pregnant and that her supervisor suggested that she have an abortion. The complainant alleged that when she advised her supervisor that she had decided to proceed with her pregnancy her employment was terminated.

The respondent company denied that it had discriminated against the complainant on the basis of her pregnancy. The company claimed that the complainant's

employment was terminated because she would have required a period of maternity leave long before any normal holiday entitlements would have accrued and at a time when other staff would have also been on leave. The respondent advised that an additional reason was that the complainant intended to move to a remote location and commute to the city office which was seen to be an untenable situation.

The complaint was resolved at conciliation with the respondent company agreeing to pay the complainant \$4 000 in general damages and to reinstate her to her former employment.

Complaint of sex and pregnancy discrimination in casual employment

The complainant alleged that she was discriminated against on the basis of her sex and pregnancy when seeking to be engaged by a federal government department for one day of casual work. The complainant claimed that when she outlined to the department her needs in relation to breastfeeding or expressing milk, she was told that she was only allowed half an hour break during the day and that she could not bring her baby to the workplace. The complainant also claimed that she was told it would be inappropriate to express her milk while working with the department. The complainant stated that she was pressured into withdrawing from the work.

The respondent department denied that the complainant was discriminated against on the basis of her pregnancy. The department claimed that it did attempt to accommodate the complainant's needs and it was the complainant's decision not to work for the department. The department also denied that any statements were made that would constitute discrimination.

The matter was resolved by conciliation with the department agreeing to change its policies to accommodate women breastfeeding in the workplace, provide associated training for staff, provide the complainant with a statement of regret and pay the complainant \$1 200 in general damages.

Alleged refusal to accommodate pregnancy in employment

The complainant was employed as a full-time administrative assistant with the respondent importing and wholesale company. The complainant claimed that in February 2001 she informed her employer that she was pregnant and in March 2001 provided her employer with a medical certificate recommending that she work light duties. The complainant alleged that the company did not provide her with light duties and required her to continue with duties which included lifting and carrying. The complainant claimed that when she was six months pregnant, she raised the possibility of reducing her employment to four hours per week but the company claimed that it was too small for such an arrangement. The complainant stated that in June 2001 she wrote to her employer confirming the discussions about part-time work and advising that she intended to take 12 months maternity leave from 1 September 2001. The complainant stated that her employer viewed this letter as notice of resignation from her full-time employment. The complainant alleged that the respondent's actions constituted constructive dismissal on the basis of her pregnancy.

The company stated that the complainant's regular duties did not normally require anything other than light duties and other staff were able to help her when required. The respondent claimed that prior to taking maternity leave the complainant handed in a letter advising that she would be commencing part-time employment. The company stated that it told the complainant that it did not have a permanent part-time position available and that she would be expected to return to the full-time position after her maternity leave. The respondent denied that it refused to allow the complainant to work part-time during her pregnancy but agreed that it did refuse to employ her on a part-time basis after her return from maternity leave. The respondent denied the complainant was constructively dismissed.

The complaint was resolved by conciliation with the respondent company agreeing to pay the complainant \$9 000 in general damages.

Alleged sex and pregnancy discrimination in employment

The complainant was an employee of a financial institution. The complainant claimed that when she was due to return to work from her second period of maternity leave she put in a request for part-time work. The complainant claimed that the respondent refused her request on the basis that the company did not have a part-time work policy. The complainant alleged that the respondent would have been able to accommodate her request for part-time work as her duties had been narrowed since her return from her first period of maternity leave and part-time work positions had been offered in the past. The complainant stated that she resigned from her position due to the unavailability of part-time work.

The respondent denied pregnancy and sex discrimination. The respondent stated that they do not have a part-time work policy and as the complainant's position was a specialist position, it could not be restructured into part-time work. The respondent stated that the complainant's full-time job was available to her on her return and denied that her duties had narrowed after she returned from her first period of maternity leave. The respondent claimed that there had been temporary job share arrangements in the past which had now concluded.

The matter was resolved at conciliation with the respondent agreeing to formulate and distribute a part-time work policy and to pay the complainant \$12 000 in general damages.

Complaint of sex and pregnancy discrimination

The complainant claimed that she had been employed by a food manufacturing company for nearly 10 years before taking 12 months maternity leave. The complainant said that she had written to the company two months before the completion of her maternity leave advising of a return to work date. She claimed that one month later she was informed that her position was no longer required and was given a job description for an alternative position. She stated that as this position was not comparable to her former position in terms of duties, responsibilities, salary and status, she did not accept this position.

Chapter 2: Complaint Handling Section

The respondent company denied that the complainant was discriminated against on the basis of her sex or pregnancy. The company claimed that during the complainant's maternity leave a decision was made that the complainant's position was no longer required in its existing form and the General Manager had met with the complainant prior to her return to discuss this. The company claimed that the complainant was advised that the General Manager proposed to develop an alternative role for her to return to which was equivalent in status and salary to her prior position and also advised of an alternative position she could apply for. The company claimed that it did not consider offering the complainant a redundancy package because comparable alternative employment was available.

The complaint was resolved on the basis that the complainant was paid her long service leave entitlements, two weeks annual leave, damages for pain and suffering (\$8 070) and provided with a certificate of service and verbal reference.

Complaint of sexual harassment by contract worker

The complainant alleged that she was sexually harassed in the course of her employment with a communications company by a contractor who was engaged by the company. The complainant alleged that at a function after work and at a nightclub following the function, the contractor grabbed her, made suggestions about having a sexual relationship with her and made other comments of a sexual nature. The complainant alleged that the company was vicariously liable for the actions of the contractor because it did not take all reasonable steps to prevent the harassment from occurring.

The contractor agreed that he had behaved in an inappropriate manner at the social function, however, he said that he had been very drunk and could not recall most of his actions. In his response, the contractor apologised for his behaviour. The company also agreed that the acts would have taken place in the manner described by the complainant, but stated that it did not think it was vicariously liable as the acts took place outside of work. The company indicated however that it wished to resolve the complaint as the complainant was a good employee and was badly affected by the events.

The matter was resolved by conciliation with both respondents apologising to the complainant during the conciliation conference and agreeing to pay the complainant a total sum of \$15 000 general damages. The company also agreed to implement a sexual harassment and discrimination policy and to provide associated training for staff. The individual respondent also agreed to attend anti-discrimination and sexual harassment training.

Allegations of sexual harassment in employment

The complainant stated that she was seconded to work at a specific site by the respondent company. This site involved working with five other employees in a closed room which had security access via only one door. The complainant alleged that while working at this site she was subjected to sexual harassment involving remarks of a sexual nature and the display of pornographic materials. Her specific allegations included that a male co-worker approached her from behind put his

arms around her and said to the other workers in the room it just have to touch her and that another male co-worker displayed a moving picture of a woman wearing a short dress that did not cover her genitalia on his personal computer. The complainant also alleged that male workers watched pornographic materials on a computer screen and within her hearing, made comments about the person in the picture.

The respondent company advised that an internal investigation indicated that several of the complainant's allegations had been substantiated and that the individual respondents had been disciplined and an apology had been offered to the complainant.

At conciliation the matter was resolved on the basis of a \$10 000 ex-gratia payment to the complainant and reinstatement of sick leave that the complainant had taken as a result of the incidents.

Alleged sexual harassment by manager in employment

The complainant was employed as a clerk with the respondent mining company for nine months and during this time, was located at an isolated work site. The complainant alleged that during her employment she was sexually harassed by her manager. Specifically, the complainant claimed that the manager asked her to try on her uniform when he issued it to her, invited her to watch TV on his bed, made persistent attempts to start a personal relationship with her, and often made comments to her of a sexual nature. The complainant also alleged that the manager hit her on the bottom twice and told her that he would leave his wife for her. The complainant also claimed that when she separated from her husband and started a relationship with a work colleague, the manager persecuted her by doubling her workload and over-criticising her work. The complainant advised that she resigned from her employment.

The respondent company utilised a consultant to undertake an independent investigation of the matter. The company advised that while the investigation found that some of the incidents alleged by the complainant had happened, it appeared that the complainant had taken them out of context. The individual respondent did not provide a response to the allegations.

The complaint was resolved by conciliation with the respondent company agreeing to pay the complainant \$23 000 in general damages and provide her with a written reference.

Disability Discrimination Act

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

During 2001-02, the Commission received 452 complaints under the Disability Discrimination Act. More than half of the complaints related to alleged discrimination in employment. The Commission finalised 443 complaints under this Act and 37 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Disability Discrimination Act are provided in the statistics part of this Chapter.

Alleged disability discrimination in employment

The complainant has multiple sclerosis. This condition affects the complainant's gait, dexterity and energy levels. The complainant worked for the respondent company as a salesperson for over 10 years. The complainant did not initially inform the respondent of his disability, but did so in 1998 when the physical effects of his disability became more apparent. The complainant alleged that once he informed the company of his disability, the company indicated that he should resign or his employment would be terminated. The complainant alleged that his work became overly supervised and monitored, that increased criticism of his work performance was not based on fact, that the company failed to accommodate his disability and required him to undergo repeated driving, clinical and medical tests to assess his performance. The complainant claimed that while his ability to drive was restricted, he was still achieving his sales quota and had adapted his marketing process to accommodate his disability without affecting his ability to do his duties.

The respondent argued that after 1998, the complainant's disability deteriorated to the extent where it adversely affected his work performance and his ability to perform inherent duties such as driving. The respondent also argued that the complainant's disability raised genuine health and safety concerns in the work environment.

The matter was resolved by conciliation with the complainant agreeing to resign from his employment and the respondent agreeing to pay the complainant a \$52 000 compensation package comprising general damages, future economic loss and a share package.

Alleged disability discrimination in appointment to employment

The complainant is employed in the Commonwealth public service. In early 2001, the complainant developed acute synovitis of both arms and consequently underwent a successful rehabilitation program. In late 2001, the complainant was informed that her application for a position with the respondent department was successful, but appointment to the position was contingent on a successful medical assessment.

The medical assessment declared that the complainant was not medically capable of performing the required duties on a full-time basis (seven hours per day). At the time of the medical assessment, the complainant was in the final stages of her rehabilitation program and working six hours per day. The respondent declined to appoint the complainant to the position on the basis of the medical assessment. Two weeks after the medical assessment, the complainant returned to full-time hours.

The complaint was successfully resolved at conciliation with the respondent agreeing to provide the complainant with an apology, to seal the medical assessment report and pay the complainant compensation of \$6 160.

Complaint of discrimination in employment

The complainant was employed as a senior supervisor with the small respondent company. She stated that when she commenced employment she had no indication that she had a disability but after a month she began to experience pins and needles and numbness in her hands and feet and was admitted to hospital for tests which led to a diagnosis of multiple sclerosis. She advised the respondent after the diagnosis that medical advice indicated that she had a very mild form of multiple sclerosis and that she required three weeks to recover. The complainant stated that prior to her hospitalisation she had performed all required duties and she was confident that she could return to full-time work and perform her duties. Prior to returning to work the complainant received a letter which advised that her employment was to be terminated because of her disability.

In response to the President's inquiries, the company claimed that the complainant's work performance had been a concern during the period she was employed. The company stated that the decision to terminate her employment was based on its belief that her condition is a notably unpredictable condition and there were serious doubts that she would be able to perform the inherent requirements of the job over time.

At the conciliation conference the complainant provided medical evidence to demonstrate that she had been completely well since her employment was terminated. The complaint was resolved with the respondent company agreeing to pay the complainant \$6 500 compensation which comprised general damages and lost wages.

Wheelchair access to sports venue

The complainant and three other people who have physical disabilities and use wheelchairs for mobility purposes, alleged that the respondent company had discriminated against them in the terms and conditions on which it provides access to its sports venues. The complainant and his friends stated that they had attended events at tennis and aquatic venues owned by the respondent company and on each occasion their view of the events was obscured and their enjoyment of the event affected. They claimed that the top railing of the fence is positioned directly in the sight line of those using the wheelchair assigned spaces.

The matter was resolved with the respondent company agreeing to raise the railing heights at both venues within three months and refund each complainant the price of their tickets.

Access to local shopping centre

A representative complaint was lodged on behalf of two groups of people who are blind or use wheelchairs for mobility. The complainants allege that the respondent

treated them less favourably on the basis of their disabilities in the provision of access to premises and services at the local shopping centre. The complainants identified inadequacies with the entrance, the entrance ramp, the lane leading to the entrance ramp, the car park, the lift, signage, stairs and toilets.

The respondent investigated the issues and a settlement was negotiated by correspondence whereby the respondent agreed to improve entrances and signage, install a new lift, modify the existing lift, improve the car park and lighting, improve access to stairs, install Tactile Ground Surface Indicators and relocate and improve toilets. The complainants and respondent agreed to maintain contact until the required work was completed.

Alleged discrimination in provision of goods, services and facilities – captioning

The complainant, who has a hearing impairment, alleged she stayed in three different hotels and none of these hotels provided captioning facilities on television or video facilities.

The complaint was resolved through conciliation with the hotel chain agreeing to immediately install three teletext televisions in each hotel and to implement a policy whereby when television and video equipment need to be replaced due to age or breakdown, they will be replaced with captioning enabled equipment. The hotel also agreed to undertake advertising to ensure potential guests and current guests are aware of the service.

Complaint of disability discrimination by educational institution

The complainant has a vision impairment and attends the respondent tertiary educational institution. The complainant required course materials to be in an accessible electronic format and while the respondent institution did have materials available in electronic format, they were not able to be accessed by the complainant's screen reader. Consequently, the complainant did not have access to the course materials at the beginning of the course.

The respondent acknowledged that it had not considered the issue of accessibility as fully as it could have. The complainant also acknowledged the technical constraints involved in making diverse sources of course material fully accessible.

The matter was resolved at conciliation with the respondent institution agreeing to make a number of improvements to its services for students with disabilities. This included the development of a Disability Action Plan to be finalised and lodged with the Commission by March 2002, the implementation of a Web Disability Action Plan, the purchase and testing of improved text conversion software and expanding the role of its Disability Liaison Officer. The educational institution also personally apologised to the complainant.

Human Rights and Equal Opportunity Commission Act

Complaints under the *Human Rights and Equal Opportunity Commission Act 1986* are not subject to the same process as complaints under the Racial, Sex and Disability Discrimination Acts.

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

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

Under the Act, the President can also inquire into and endeavour to conciliate complaints of discrimination in employment on specific grounds. These grounds include age, religion, sexual preference, trade union activity and criminal record.

If a complaint of alleged discrimination or alleged breach of a human right is neither conciliated nor declined, the President can, after providing Notice and considering final submissions, find that the subject matter of the complaint constitutes discrimination in employment or is a breach of a human right. The President must report her findings to the Attorney-General for tabling in Parliament. The Commission's Legal Section assists the President in the Notice part of the process. Further details of this process are provided in the Legal Services section at Chapter 3 of this Report.

During 2001-02, the Commission received 234 complaints under the Human Rights and Equal Opportunity Commission Act. The majority of these complaints related to alleged breaches of the *International Covenant on Civil and Political Rights* in immigration detention and discrimination in employment based on either age or criminal record. The Commission finalised 221 complaints under this Act and 11 percent of these finalised complaints were conciliated and five percent referred for reporting. Detailed statistics regarding complaints under the Human Rights and Equal Opportunity Commission Act are provided in the statistics part of this Chapter.

Alleged discrimination in employment on the ground of criminal record

The complainant was offered a job with a state government department as a tow truck driver. The complainant stated that he had worked as a tow truck driver for a number of years on a part-time basis and that he gave up his full-time position as a bus driver to take up this job offer. The complainant alleged that two days before commencing work, the job offer was revoked as a result of a criminal record check which found that in October 2000 the complainant had been convicted of behaving in an offensive manner in a public place. The complainant advised that he made numerous representations to the respondent explaining that the circumstances of the offence were extenuating. He provided medical documentation stating he was suffering from stress and anxiety at the time due to a recent death in the family and supplied information attesting to his excellent record of dealing with the public as a bus driver and tow truck driver. The complainant also argued that despite having

this conviction, he is still able to renew his tow truck operator license on an annual basis and that his current employer was aware of the past offence.

The respondent department advised that it was of the view that the recency and nature of the offence was relevant to the specific requirements and duties of the position. In particular, the department claimed that the duties require close liaison and interaction with the public, police, ambulance officers, fire and other emergency personnel, stranded motorists and other commuters. The respondent considered that it would have been negligent to employ the complainant in the circumstances.

A conciliation conference was held and the matter was resolved with the respondent agreeing to notify the complainant of vacancies in same or similar positions over the next 18 months so that he may reapply. The respondent also agreed to give the complainant's application consideration once two years had passed since the date of the conviction.

Complaint of discrimination on the ground of criminal record

The complainant claimed that he had applied for a job with the respondent state government authority as a deckhand. He was later advised that his application was unsuccessful because he had a criminal record for possession of marijuana in May 1998.

Prior to the President formally writing to the respondent, the matter was resolved with the respondent reversing its decision and advising the complainant that he would be considered for the next available position.

Allegations of age discrimination in employment

The complainant was employed as a teacher in a private school. She stated that the school principal told her that she had reached her use by date and harassed her for the next 15 months because he regarded her as too old for the job. The complainant was 50 years of age at the time. The complainant also alleged that because of her age she was not promoted or given access to training. The complainant resigned because of this alleged treatment.

After the complaint was lodged with the Commission, the complainant advised that with the assistance of her union, she had resolved the complaint directly with the school on confidential terms.

Complaint of age discrimination in application for employment

The complainant, who was 18 years of age, stated that he applied for a position delivering and collecting surveys for a Commonwealth government department. The complainant alleged that despite his relevant experience for the position, his application was unsuccessful, and he claimed that the interviewer told him that people his age lacked the necessary maturity to complete the job.

The department denied age discrimination and stated that the complainant was not offered the position because at interview he lacked poise and confidence and was shy and diffident. The department stated that the complainant was not as strong a candidate as the other applicants. The interviewer did not recall making

the alleged discriminatory comment and noted that he had received training in appropriate selection procedures, including workplace diversity and equal employment opportunity.

The complaint was resolved at conciliation with the department agreeing to provide the complainant with a statement of regret and pay the complainant \$1 250 general damages.

Allegations of age and sex discrimination in promotional opportunity

The complainant alleges that she was discriminated against on the basis of her age and sex in her employment as an investigator with a Commonwealth government agency. She stated that there were only two female investigators within her area. She alleged that her manager said that she reminded him of his previous secretary because she was also old. She stated that she applied for a promotion and her manager attended the interview and asked a question about her age and whether she could do the job. She stated that male applicants for the position who were in their fifties were not asked this question. She claimed that her application for promotion was not successful because of her age. She further alleged that the agency did not address her internal complaint about these issues in a timely or satisfactory matter and that she was victimised for making the internal complaint.

The respondent agency advised that it had conducted an internal investigation into the complainant's allegations. The investigation found that the first allegation about the comment was substantiated but the other allegations concerning the selection process and victimisation were either unsubstantiated or incapable of being determined.

A conciliation conference was held and the matter was resolved with the agency agreeing to pay the complainant \$6 500 and provide harassment and anti-discrimination training for all staff in the area.

Complaint of discrimination in employment on the ground of sexual preference

The complainant alleged that during his employment as a nurse with the respondent company he was harassed and discriminated against on the basis of his sexual preference. In particular, he claimed that a colleague wrote him a letter expressing her disapproval of his homosexuality, that the following written comment was added to a meeting agenda *ican we have more male nurses under 25 who look like Brad Pitt and are not gay*, and that chocolates given to him by a patient were covered with KY jelly. The complainant stated that the company did not appropriately address his concerns and didn't follow company procedure in dealing with his complaint. The complainant resigned from his position.

The respondent company claimed that its internal investigation determined that in relation to the letter there had been no intent to harass the complainant and this matter had been resolved between the parties. The company claimed that with regard to the written comment about the employment of male staff, the complainant had actually laughed about this when it was brought to his attention. The company also claimed that in relation to the issue of the chocolates, the company was unable to determine what had actually happened due to varying versions of events. The

respondent claimed that it took measures to address the complainant's concerns in a caring, understanding manner but the complainant ultimately resigned despite being urged not to and being offered counselling and alternative employment options.

The matter was resolved at conciliation with the respondent agreeing to pay the complainant the sum of \$5 000 which composed \$2 200 for loss of earnings and \$2 800 in general damages.

Allegation of discrimination in employment on the ground of trade union activity

The complainant stated that he is a union delegate in his workplace, a federal government department, and was involved in antagonistic negotiations with management over the agency's certified agreement. The complainant alleged that since that time he was treated less favourably, in that his work was over scrutinised and that he had performance measures taken against him when he made a minor calculation error. He alleged that other staff had made similar errors but were not treated as he was. The complainant advised that he transferred from the agency to another government department because of the alleged discriminatory treatment.

The respondent department denied that the complainant had been discriminated against on the basis of his trade union activity. The department stated that the complainant was disciplined because his mistake was very grave and different to mistakes made by other staff.

The complaint was resolved by conciliation with the department agreeing to pay the complainant \$5 000 in general damages and provide a 'without admission of liability' apology.

Complaint handling statistics

Preliminary comments

The following statistical data provides information on enquiries handled by the Commission during 2001-02, an overview of complaints received and finalised and specific details on complaints received and finalised under each of the Acts administered by the Commission.

It is important to note, when comparing complaint data between different agencies and reporting years, that there are often variations in the way the data is counted and collected. Some additional information explaining the Commission's approach to statistical reporting is footnoted. If further clarification is required contact the Commission's Complaint Handling Section.

Summary

Although there was little change in the overall number of complaints received and finalised in 2001-02 compared to the previous year, there were some notable changes in the grounds of complaints the Commission received.

During 2001-02, 36 percent of complaints were lodged under the Disability Discrimination Act, 31 percent under the Sex Discrimination Act, 18 percent under the Human Rights and Equal Opportunity Commission Act and 15 percent under the Racial Discrimination Act.

Complaints under the Sex Discrimination Act increased by four percent compared to the previous year. The grounds of complaint appear to reflect issues raised by the Sex Discrimination Commissioner's policy work. For example, while complaints of alleged pregnancy discrimination made up 16 percent of complaints in 2000-01, they constituted 30 percent of complaints in 2001-02. It would appear that lodgement of pregnancy related complaints is linked to increased public awareness of these issues through the Commissioner's National Inquiry into Pregnancy and Work and the paid maternity leave debate.

There was a small increase in complaints lodged under Human Rights and Equal Opportunity Commission Act compared to the previous year. The main area of alleged human rights breaches concerned conditions and treatment in immigration detention. Although numbers of complaints received are relatively unchanged, it is clear that complaints peak following major incidents in detention centres and inspection visits by the Human Rights Commissioner.

A significant number of complaints are lodged under the Disability Discrimination Act each year. Allegations of discrimination in employment recruitment and retention continue to represent over half of the matters received. These complaints often involve concurrent workers' compensation claims and return to work programs and the ability and/or willingness for the employer to accommodate the disability without unjustifiable hardship.

Complaints lodged under the Racial Discrimination Act fell six percent in comparison with the previous year. The reason for this decrease is unclear particularly in light of public debate over the past year in relation to immigration, religion and other international events. It is unusual not to see an increase in complaints when there has been such public debate. It is possible that as the federal jurisdiction provides limited rights in relation to discrimination and vilification on the basis of religion, those who may be affected by such actions have utilised state anti-discrimination laws as most state laws give rise to enforceable rights for complaints based on religion.

Parties to complaints remain willing to embrace resolution of matters through the Commissioner's conciliation processes. Of all the complaints finalised during 2001-02, 30 percent were conciliated which is in keeping with the expected range. Of those matters where conciliation was attempted, a large majority (62 percent) were successfully resolved.

It is notable that the conciliation success rate varies across the different types of complaints. During 2001-02, complaints under the Sex Discrimination Act had the highest conciliation rate (43 percent) and a high conciliation success rate (64 percent of matters where conciliation was attempted were resolved). Complaints under the Disability Discrimination Act had a conciliation rate of 37 percent and also a high conciliation success rate (69 percent). Complaints under the Racial Discrimination

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Act had a conciliation rate of 15 percent and a success rate of 39 percent. Lower resolution rates for race discrimination matters appear to be linked with difficulties complainants often have in demonstrating a link between their race and the alleged less favourable treatment and the associated limited case precedent in this area.

While only a small number of Human Rights and Equal Opportunity Commission Act complaints were resolved by conciliation (11 percent), 70 percent of matters where conciliation was attempted were resolved. The overall low conciliation rate in relation to these complaints is understandable in light of the fact that many human rights matters brought under this Act do not relate to acts or practices of the Commonwealth and are therefore declined. Human Rights and Equal Opportunity Commission Act complaints that relate to alleged breaches of human rights by the Commonwealth generally have a low conciliation rate (three percent in 2001-02) as they often concern broad policy issues which are difficult to resolve at the individual complainant level. However, Human Rights and Equal Opportunity Commission Act complaints regarding employment under the *International Labour Organisations Convention* (ILO 111) have a higher conciliation rate (17 percent in 2001-02).

Information on the geographical location, sex and ethnicity of complainants is provided in Tables 9, 11 and 12 below. Demographic data voluntarily provided by complainants at the commencement of the complaint process³ provides additional information on complainants. This data, which is broadly similar to data obtained in 2000-01, indicates that many complainants (28 percent) knew about the Commission prior to lodging their complaint and the main source of referral was legal centres/private solicitors and family/friends. A large number of complainants (65 percent) indicated that their main source of income at the time of the alleged act was from full or part-time employment. Approximately 39 percent of complainants advised at the beginning of the complaint process that they were represented⁴. The main forms of representation were privately funded solicitors (26 percent) and representation by a friend, family member or support person (18 percent).

Data collected on respondent categories indicates that in 2001-02 approximately 52 percent of complaints were against private enterprise, 24 percent were against Commonwealth departments and statutory authorities and nine percent were against state departments and statutory authorities. The next main respondent categories were educational institutions (five percent), clubs and incorporated associations (four percent) and non-government organisations (two percent). Once again, this data is very similar to respondent category data for 2000-01.

3 Sixty-eight (68) per cent of complainants returned the Intake Form in 2001-02.

4 Representation status may change during the complaint process.

Complaint Information Service

Table 1: Telephone, TTY, email and in person enquiries received

Enquiry type	Total
Telephone	7 546
TTY	6
Email	379
In person	121
Total	8 052

Table 2: Enquiries received by issue

Issue	Total
Race	661
Race ñ racial hatred	278
Sex ñ direct	399
Sexual harassment	606
Sex ñ marital status, family responsibilities, parental status, breast feeding	146
Sex ñ pregnancy	499
Sexual preference, transgender, homosexuality, lawful sexual activity	107
Disability ñ impairment	1 022
Disability ñ HIV/AIDS, hepatitis	38
Disability ñ workers compensation	66
Disability ñ mental health	216
Disability ñ intellectual disability, learning disability	112
Disability ñ maltreatment, negligence	24
Disability ñ physical feature	56
Age ñ too young	37
Age ñ too old	161
Age ñ compulsory retirement	10
Criminal record, criminal conviction	226
Political opinion	14
Religion, religious organisations	104
Employment ñ personality conflicts, favouritism	255

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Employment ñ union, industrial activity	121
Employment ñ unfair dismissal, other industrial issues	502
Employment ñ workplace bullying	407
Human rights ñ children	81
Human rights ñ civil, political, economic, social	238
Immigration ñ detention centres	45
Immigration ñ visas	79
Prisons, prisoners	28
Police	52
Court ñ Family Court	108
Court ñ other law matters	86
Privacy ñ data protection	86
Neighbourhood disputes	23
Advertising	9
Local government ñ administration	52
State government ñ administration	159
Federal government ñ administration	219
Other	599
Unreported	121
Total	8 052

Table 3: Enquiries received by state of origin

State of origin	Total	Percentage (%)
New South Wales	3 926	49
Victoria	1 021	13
South Australia	484	6
Western Australia	303	4
Queensland	1 527	19
Australian Capital Territory	190	2
Tasmania	157	2
Northern Territory	151	2
Unknown, overseas	293	3
Total	8 052	100

Table 4: Written enquiries received and finalised

Written enquiries	Total
Received	759
Finalised	745

Table 5: Written enquiries received by issue

Issue	Total
Race	84
Race ñ racial hatred	43
Sex ñ direct	23
Sexual harassment	14
Sex ñ marital status, family responsibilities, parental status, breast feeding	25
Sex ñ pregnancy	8
Sexual preference, transgender, homosexuality, lawful sexual activity	16
Disability ñ impairment	63
Disability ñ HIV/AIDS, hepatitis	2
Disability ñ workers compensation	5
Disability ñ mental health	5
Disability ñ intellectual disability, learning disability	5
Disability ñ maltreatment, negligence	1
Disability ñ physical feature	34
Age ñ too young	4
Age ñ too old	19
Age ñ compulsory retirement	ñ
Criminal record, criminal conviction	5
Political opinion	3
Religion, religious organisations	14
Employment ñ personality conflicts, favouritism	12
Employment ñ union, industrial activity	6
Employment ñ unfair dismissal, other industrial issues	43
Employment ñ workplace bullying	17
Human rights ñ children	15
Human rights ñ civil, political, economic, social	30
Immigration ñ detention centres	25
Immigration ñ visas	43
Prisons, prisoners	32

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Police	3
Court ñ Family Court	32
Court ñ other law matters	56
Privacy ñ data protection	6
Neighbourhood disputes	4
Advertising	ñ
Local government ñ administration	11
State government ñ administration	20
Federal government ñ administration	33
Other	22
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Total*	783
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*One written enquiry may have multiple issues.

Table 6: Written enquiries received by state of origin of enquirer

State of origin	Total	Percentage (%)
New South Wales	271	36
Victoria	118	15
South Australia	71	9
Western Australia	84	11
Queensland	149	20
Australian Capital Territory	20	3
Tasmania	17	2
Northern Territory	8	1
Unknown, overseas	21	3
<hr/>		
Total	759	100
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Complaints overview

Table 7: National complaints received and finalised over the past two years

	2000-01	2001-02
Received	1 263	1 271
Finalised	1 488	1 298
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Table 8: Outcomes of national complaints finalised over the past two years

	2000-01 (percent)	2001-02 (percent)
Terminated/declined	56	55
Conciliated	35	30
Withdrawn	8	14
Reported (Human Rights & Equal Opportunity Commission Act only)	1	1

Table 9: State of origin of complainant at time of lodgement

State of origin	Total	Percentage (%)
New South Wales	517	41
Victoria	237	19
South Australia	163	13
Western Australia	133	10
Queensland	127	10
Australian Capital Territory	42	3
Tasmania	31	2
Northern Territory	11	1
Overseas	10	1
Total	1 271	100

Table 10: Complaints received and finalised by Act

Act	Received	Finalised
Racial Discrimination Act (RDA)	186	258
Sex Discrimination Act (SDA)	399	376
Disability Discrimination Act (DDA)	452	443
Human Rights and Equal Opportunity Commission Act (HREOCA)	234	221
Total	1 271	1 298

Chart 1: Complaints received by Act

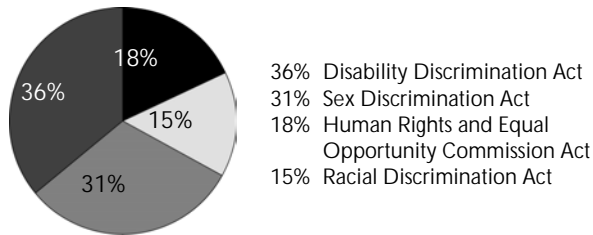


Table 11: Complaints received by category of complainant by Act

	RDA	SDA	DDA	HREOCA	Total
Individual male	117	42	254	174	587
Individual female	61	353	190	46	650
Couple or family	6	2	3	8	19
On others behalf	1	1	2	ñ	4
Organisation	ñ	1	3	6	10
Community, other group	1	ñ	ñ	ñ	1
Total	186	399	452	234	1 271

Table 12: Complaints received by ethnicity of complainant by Act

	RDA	SDA	DDA	HREOCA	Total
Non-English speaking background	109	88	104	114	415
Aboriginal and Torres Strait Islander	48	5	15	4	72
English speaking background	29	306	333	116	784
Total	186	399	452	234	1 271

Table 13: Time from receipt to finalisation for complaints finalised during 2001-02

	RDA (%)	SDA (%)	DDA (%)	HREOCA (%)	Total (%)	Cumulative total (%)
0 ñ 3 months	19	19	23	28	22	22
3 ñ 6 months	22	27	27	28	26	48
6 ñ 9 months	24	29	29	21	27	75
9 ñ 12 months	18	13	13	10	13	88
More than 12 months	11	9	7	8	8	96
More than 18 months	3	2	ñ	3	2	98
More than 24 months	3	1	1	2	2	100

Racial Discrimination Act

Table 14: Racial Discrimination Act* – complaints received and finalised

	Total
Received	186
Finalised	258

*Includes complaints lodged under the racial hatred provisions.

Table 15: Racial Discrimination Act – complaints received by ground

Racial Discrimination Act	Total	Percentage (%)
Association	2	1
Colour	18	5
National origin, extraction	47	13
Ethnic origin	101	28
Descent	7	2
Race	119	33
Victimisation	3	1
Racial hatred	60	17
Total*	357	100

*One complaint may have multiple grounds.

Table 16: Racial Discrimination Act – complaints received by area

Racial Discrimination Act	Total	Percentage (%)
Right to equality before the law	ñ	ñ
Access to places and facilities	10	3
Land, housing, other accommodation	9	2
Provision of goods and services	103	29
Right to join trade unions	ñ	ñ
Employment	125	35
Advertisements	ñ	ñ
Education	7	2
Incitement to unlawful acts	6	2
Other ñ section 9	30	8
Racial hatred	67	19
Total*	357	100

*An area is recorded for each ground, so one complaint may have multiple and different areas.

Table 17: Racial Discrimination Act – outcomes of finalised complaints

Racial Discrimination Act	Total
Terminated	180
Not unlawful	15
More than 12 months old	8
Trivial, vexatious, frivolous, misconceived, lacking in substance	82
Adequately dealt with already	8
More appropriate remedy available	8
Subject matter of public importance	ñ
No reasonable prospect of conciliation	59
Withdrawn	26
Withdrawn, does not wish to pursue, advised Commission	22
Withdrawn, does not wish to pursue, settled outside Commission	4
Conciliated	38
Administrative closure*	14
Total	258

*Not an aggrieved party, state complaint previously lodged.

Chart 2: Racial Discrimination Act – outcomes of finalised complaints

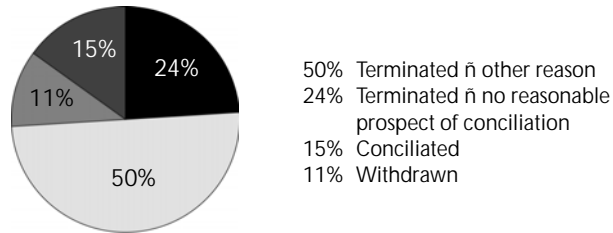


Table 18: Racial hatred complaints received and finalised

	Total
Received	50
Finalised	118

Table 19: Racial hatred complaints received by sub area

Racial Discrimination Act	Total	Percentage (%)
Media	16	32
Disputes between neighbours	11	22
Personal conflict	2	4
Employment	2	4
Racist propaganda	2	4
Entertainment	ñ	ñ
Sport	2	4
Public debate	2	4
Other*	13	26
Total**	50	100

* This category includes complaints in the area of education, provision of goods and services, comments made by people in the street and in passing vehicles.

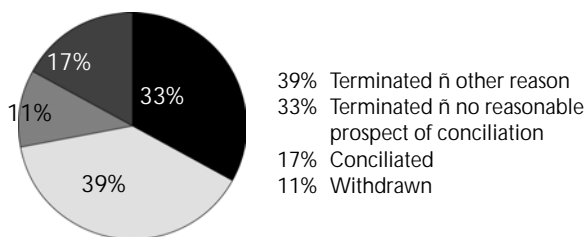
** One sub area is recorded for each racial hatred complaint received.

Table 20: Outcomes of finalised racial hatred complaints

Racial Discrimination Act	Total
Terminated	81
Not unlawful	11
More than 12 months old	2
Trivial, vexatious, frivolous, misconceived, lacking in substance	26
Adequately dealt with already	2
More appropriate remedy available	3
Subject matter of public importance	ñ
No reasonable prospect of conciliation	37
Withdrawn	12
Withdrawn, does not wish to pursue, advised Commission	10
Withdrawn, does not wish to pursue, settled outside Commission	2
Conciliated	19
Administrative closure*	6
Total	118

*Not an aggrieved party, state complaint previously lodged.

Chart 3: Outcomes of finalised racial hatred complaints



Sex Discrimination Act

Table 21: Sex Discrimination Act – complaints received and finalised

Sex Discrimination Act	Total
Received	399
Finalised	376

Table 22: Sex Discrimination Act – complaints received by ground

Sex Discrimination Act	Total	Percentage (%)
Sex discrimination	237	33
Marital status	25	4
Pregnancy	212	30
Sexual harassment	195	28
Parental status, family responsibility	16	2
Victimisation	22	3
Total*	707	100

*One complaint may have multiple grounds.

Table 23: Sex Discrimination Act – complaints received by area

Sex Discrimination Act	Total	Percentage (%)
Employment	597	85
Goods, services and facilities	57	8
Land	ñ	ñ
Accommodation	6	1
Superannuation, insurance	1	ñ
Education	9	1
Clubs	10	1
Administration of federal laws and programs	19	3
Application forms etc.	ñ	ñ
Trade unions, accrediting bodies	8	1
Total*	707	100

*An area is recorded for each ground, so one complaint may have multiple and different areas.

Table 24: Sex Discrimination Act – outcomes of finalised complaints

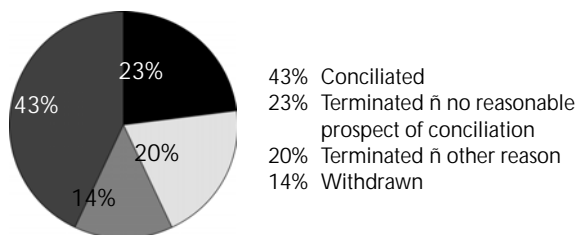
Sex Discrimination Act	Total
Terminated	158
Not unlawful	10
More than 12 months old	4
Trivial, vexatious, frivolous, misconceived, lacking in substance	51

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Adequately dealt with already	3
More appropriate remedy available	4
Subject matter of public importance	ñ
No reasonable prospect of conciliation	86
Withdrawn	50
Withdrawn, does not wish to pursue, advised Commission	47
Withdrawn, does not wish to pursue, settled outside Commission	3
Conciliated	155
Administrative closure*	13
<hr/>	
Total	376

*Not an aggrieved party, state complaint previously lodged.

Chart 4: Sex Discrimination Act – outcomes of finalised complaints



Disability Discrimination Act

Table 25: Disability Discrimination Act – complaints received and finalised

Disability Discrimination Act	Total
Received	452
Finalised	443

Table 26: Disability Discrimination Act – nature of complainant’s disability

Disability Discrimination Act	Total
Physical disability	126
A mobility aid is used ñ walking frame or wheelchair	52
Physical disfigurement	8
Presence in the body of organisms causing disease ñ HIV/AIDS	4
Presence in the body of organisms causing disease ñ other	5

Psychiatric disability	91
Neurological disability ñ epilepsy	33
Intellectual disability	17
Learning disability	17
Sensory disability ñ hearing impaired	24
Sensory disability ñ deaf	16
Sensory disability ñ vision impaired	20
Sensory disability ñ blind	10
Work related injury	38
Medical condition ñ diabetes	38
Other	27
Total*	526

*One complainant may have multiple disabilities.

Table 27: Disability Discrimination Act – complaints received by ground

Disability Discrimination Act	Total	Percentage (%)
Disability of person(s) aggrieved	822	95
Associate	25	3
Disability ñ person assisted by trained animal	1	ñ
Disability ñ use of appliance	1	ñ
Harassment	19	2
Victimisation	2	ñ
Total*	870	100

*One complaint may have multiple grounds.

Table 28: Disability Discrimination Act – complaints received by area

Disability Discrimination Act	Total	Percentage (%)
Employment	448	52
Goods, services and facilities	235	27
Access to premises	34	4
Land	ñ	ñ
Accommodation	12	1
Incitement to unlawful acts or offences	2	ñ

Chapter 2: Complaint Handling Section

Advertisements	ñ	ñ
Superannuation, insurance	15	2
Education	82	9
Clubs, incorporated associations	16	2
Administration of federal programs	26	3
Sport	ñ	ñ
Application forms, requests for information	ñ	ñ
Trade unions, registered organisations	ñ	ñ
Total*	870	100

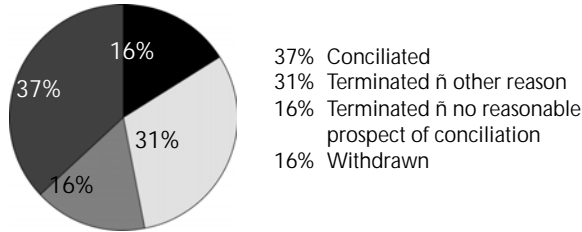
*An area is recorded for each ground, so one complaint may have multiple and different areas.

Table 29: Disability Discrimination Act – outcomes of finalised complaints

Disability Discrimination Act	Total
Terminated	203
Not unlawful	11
More than 12 months old	8
Trivial, vexatious, frivolous, misconceived, lacking in substance	92
Adequately dealt with already	12
More appropriate remedy available	11
Subject matter of public importance	ñ
No reasonable prospect of conciliation	69
Withdrawn	70
Withdrawn, does not wish to pursue, advised Commission	66
Withdrawn, does not wish to pursue, settled outside Commission	4
Conciliated	156
Administrative closure*	14
Total	443

*Not an aggrieved party, state complaint previously lodged.

Chart 5: Disability Discrimination Act – outcomes of finalised complaints



Human Rights and Equal Opportunity Commission Act

Table 30: Human Rights and Equal Opportunity Commission Act – complaints received and finalised

Human Rights and Equal Opportunity Commission Act	Total
Received	234
Finalised	221

Table 31: Human Rights and Equal Opportunity Commission Act – complaints received by ground

Human Rights and Equal Opportunity Commission Act	Total	Percentage (%)
Race ñ ILO 111	ñ	ñ
Colour ñ ILO 111	ñ	ñ
Sex ñ ILO 111	ñ	ñ
Religion ñ ILO 111	12	5
Political opinion ñ ILO 111	4	2
National extraction ñ ILO 111	ñ	ñ
Social origin ñ ILO 111	ñ	ñ
Age ñ ILO 111	30	12
Medical record ñ ILO 111	ñ	ñ
Criminal record ñ ILO 111	37	15
Impairment ñ including HIV/AIDS status (ILO 111)	ñ	ñ
Marital status ñ ILO 111	ñ	ñ
Disability ñ ILO 111	ñ	ñ
Nationality ñ ILO 111	ñ	ñ
Sexual preference ñ ILO 111	18	8
Trade union activity ñ ILO 111	16	7

Chapter 2: Complaint Handling Section

International Covenant on Civil and Political Rights	95	39
Declaration on the Rights of the Child	ñ	ñ
Declaration on the Rights of Mentally Retarded Persons	ñ	ñ
Declaration on the Rights of Disabled Persons	ñ	ñ
Convention on the Rights of the Child	10	4
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	3	1
Not a ground within jurisdiction	ñ	ñ
Not a human right as defined by the Act	17	7
Total*	242	100

*One complaint may have multiple grounds.

Table 32: Human Rights and Equal Opportunity Commission Act – complaints received by area

Human Rights and Equal Opportunity Commission Act	Total	Percentage (%)
Acts or practices of the Commonwealth	112	46
Employment	115	48
Not act or practice of the Commonwealth ñ not employment cases	15	6
Total*	242	100

*An area is recorded for each ground, so one complaint may have multiple and different areas.

**Table 33: Human Rights and Equal Opportunity Commission Act
– non-employment complaints received by sub area**

Human Rights and Equal Opportunity Commission Act	Total	Percentage (%)
Prisons, prisoner	8	5
Religious institutions	2	1
Family Court matters	1	1
Other law court matters	2	1
Immigration	80	52
Law enforcement agency	1	1
State agency	1	1
Other service provider ñ private sector	15	10
Local government	3	2
Education systems	6	4
Welfare systems	3	2

Personal or neighbourhood conflict	1	1
Health system	5	3
Other	24	16
Total*	152	100

*One complaint may have multiple sub areas.

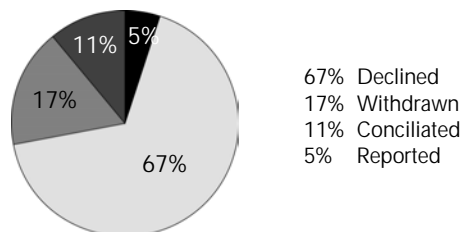
**Table 34: Human Rights and Equal Opportunity Commission Act
– outcomes of finalised complaints**

Human Rights and Equal Opportunity Commission Act	Total
Declined	184
Does not constitute discrimination	16
Human rights breach, not inconsistent or contrary to any human right	51
More than 12 months old	ñ
Trivial, vexatious, frivolous, misconceived, lacking in substance	45
Adequately dealt with already	12
More appropriate remedy available	22
Withdrawn, does not wish to pursue, advised Commission	36
Withdrawn, does not wish to pursue, settled outside Commission	ñ
Withdrawn or lost contact	2
Conciliated	23
Referred for reporting*	10
Administrative closure**	4
Total	221

* Complaints in this category were not conciliable and therefore transferred from the Commission's Complaint Handling Section to Legal Services for Notice and possible report.

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

**Chart 6: Human Rights and Equal Opportunity Commission Act
– outcomes of finalised complaints**



Chapter 3

Legal Services

The primary responsibilities of the Legal Section for the 2001–02 financial year were to:

- ï Assist the President and/or the Human Rights Commissioner in the preparation of notices and reports under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).
- ï Act as instructing solicitor for the Commission in interventions in legal proceedings.
- ï Act as instructing solicitor for the Commissioners in applications to appear as *amicus curiae* in legal proceedings.
- ï Act as counsel or instructing solicitor for the Commission in external litigation such as applications for review of Commission decisions under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).
- ï Schedule and facilitate the hearing of outstanding matters under the Commission's former inquiry function.
- ï Provide internal legal advice on discrimination, human rights and other laws relevant to the work of the Commission.
- ï Assist the Commission to examine enactments or proposed enactments under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).
- ï Assist the Commission to consider applications for exemptions under the *Sex Discrimination Act 1984* (Cth).
- ï Respond to applications under the *Freedom of Information Act 1982* (Cth) on behalf of the Commission.
- ï Monitor the development of the anti-discrimination law jurisprudence in the Federal Court and Federal Magistrates Service. Since 13 April 2000 jurisdiction to hear matters terminated by the President lies with the Federal Court and the Federal Magistrates Service.
- ï Assist in the preparation of submissions to Senate inquiries and committees, especially where the Commission's core legislation is involved.

- i Represent the Commission externally in providing information and education on human rights matters.
- ii Represent the Commission in international project work.

Hearings by the Commission

The Commission's jurisdiction to hear and determine complaints of unlawful discrimination ceased on 13 April 2000 with the commencement of the *Human Rights Legislation Amendment Act (No. 1) 1999* (Cth) and was transferred to the Federal Court and Federal Magistrates Service. The Commission retained the jurisdiction to complete those public inquiries that had commenced prior to 13 April 2000.

During 2001–02, the last of those public inquiries, being three in total, were finalised. No determinations were issued in relation to these matters as one matter settled and the other two matters were terminated by the President as a result of the Federal Court decision in *Kowalski v Domestic Violence Crisis Service* [2001] FCA 1082 (10 August 2001).

Complaints relating to breaches of human rights or discrimination in employment made under the Human Rights and Equal Opportunity Commission Act

Where a complaint is made under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) alleging breaches of human rights and discrimination in employment, the President or her delegate may report to the Attorney-General where conciliation cannot resolve the matter and an inquiry has satisfied the President there has been a breach of human rights or discrimination in employment. The Legal Section assists the President or her delegate to issue Notices of findings, consider submissions and prepare reports to the Attorney-General.

Between 1 July 2001 and 30 June 2002, the following reports were tabled in Parliament by the Minister pursuant to this function:

HREOC Report No. 14

Report of an inquiry into a complaint by Mr Andrew Hamilton of age discrimination in the Australian Defence Force (January 2002)

This Report is of an inquiry conducted prior to the commencement of the *Human Rights Legislation Amendment Act 1999 (No. 1)* (Cth) by the former Human Rights Commissioner. The inquiry dealt with a complaint of discrimination in employment concerning discrimination on the ground of age against the Commonwealth of Australia (Australian Defence Force). The Human Rights Commissioner found that the Australian Defence Force had discriminated against Mr Hamilton on the basis of his age.

In particular, the Human Rights Commissioner found that:

- ï in placing the complainant in Promotion Band D at the June 1995 Promotion Board the respondent engaged in an act of age discrimination
- ï the decision to place the complainant in Promotion Band D was based on a distinction, exclusion or preference on the ground of age which had the effect of nullifying or impairing the complainant's equality of opportunity or treatment in employment or occupation
- ï the distinction, exclusion or preference was not based on the inherent requirements of the job.

HREOC Report No. 15

Report of an inquiry into a complaint by Ms Elizabeth Ching concerning the cancellation of her visa on arrival in Australia and subsequent mandatory detention (February 2002)

This Report is of an inquiry into a complaint by Ms Ching that her human rights were breached when she was questioned by Department of Immigration and Multicultural Affairs (DIMA) officials on her arrival at Brisbane airport, and her subsequent custody at the Brisbane Women's Correctional Centre. The President found that some aspects of Ms Ching's treatment were inconsistent with or contrary to her human rights.

In particular, the President found that:

- ï the act by an officer of DIMA of requiring Ms Ching to provide a response to the notification of the likely cancellation of her visa within a period of ten minutes was in breach of the requirement in article 13 of the *International Covenant on Civil and Political Rights* (ICCPR) which provides that an applicant be allowed to submit the reasons against expulsion.
- ï the act by an officer of DIMA not to advise Ms Ching that she was able to seek legal advice or assistance had the effect that Ms Ching was not able to exercise her rights pursuant to article 13 of the ICCPR to have her case reviewed before a competent authority and to be represented for the purpose of having her case reviewed before a competent authority and therefore amounts to an act which is inconsistent with or contrary to her human rights.

HREOC Report No. 16

Report of an inquiry into a complaint by Mr Hocine Kaci of acts or practices inconsistent with or contrary to human rights arising from immigration detention (May 2002)

This Report concerns an inquiry into a complaint made by an asylum seeker, (Mr Kaci), who had been transferred from an immigration detention centre to a remand

centre as a result of alleged unacceptable behaviour. Mr Kaci alleged that the conditions in which he was detained were contrary to the ICCPR. The President found that the conditions of Mr Kaci's detention were in breach of article 10(2) of the ICCPR.

In particular, the President found that:

- i asylum seekers in immigration detention, as unconvicted persons, should be treated in a different manner to convicted prisoners. Article 10(2) of the ICCPR obliges Australia to ensure that unconvicted persons are subject to separate treatment appropriate to their status
- ii unconvicted persons in detention are entitled to a special regime of treatment as outlined in Part II, Section C of the *UN Standard Minimum Rules for the Treatment of Prisoners*.

HREOC Report No. 17

Report of an inquiry into a complaint by the Asylum Seekers Centre concerning changes to the Asylum Seekers Assistance Scheme (May 2002)

This Report concerns an inquiry into a complaint by the Asylum Seekers Centre alleging that changes to the Asylum Seekers Assistance Scheme made by the Department of Immigration, Multicultural and Indigenous Affairs had breached the human rights of people seeking asylum in Australia. The first changes complained of produced the result that asylum seekers are no longer eligible for the Scheme if their application is being reviewed by the Refugee Review Tribunal. New criteria governing exemptions from the Scheme's waiting period were also introduced. Further revision of the criteria for exemption from the waiting period was made a short time after the initial changes. The Human Rights Commissioner found that the changes made to the Asylum Seekers Assistance Scheme were in breach of articles 3 and 24(2)(d) of the *Convention on the Rights Of the Child* (CROC) and article 26 of the ICCPR.

In particular, the Human Rights Commissioner found that:

- i the best interests of the child were not a primary consideration in making the changes to the scheme, and thus article 3 of CROC had been breached
- ii at a minimum, Australia is required to provide all pregnant women with ongoing assistance and information in relation to their pregnancy. The changes to the scheme resulted in a number of pregnant asylum seekers being denied appropriate prenatal care, and the changes were in breach of article 24(2)(d) of the ICCPR
- iii the changes to the scheme were discriminatory and in breach of article 26 of the ICCPR.

HREOC Report No. 18

Report of an inquiry into a complaint by Mr Duc Anh Ha of acts or practices inconsistent with or contrary to human rights arising from immigration detention (May 2002)

This Report concerns an inquiry into a complaint made by Mr Ha, an immigration detainee, regarding his transfer to a maximum security prison, and his subsequent detention in that prison. The President found that his transfer to a maximum security prison, and his subsequent detention in that prison, was contrary to articles 9(1), 10(1) and 10(2)(a) of the ICCPR.

In particular, the President found that:

- i the lack of access to recreational facilities, locking of Mr Ha in his cell for 22 hours a day, denial of an opportunity to work, and failure to provide time to exercise all amounted to a breach of article 10(1) of the ICCPR
- ii the transfer of Mr Ha to a maximum security prison, and failure to accord him treatment appropriate to his status as an unconvicted person constituted a breach of article 10(2)(a) of the ICCPR
- iii the failure to consider whether or not Mr Ha could be segregated from convicted prisoners was in breach of article 10(2)(a) of the ICCPR
- iv Mr Ha's detention was arbitrary, unjust and inappropriate in the circumstances, and thus in breach of article 9 of the ICCPR.

External litigation

Interventions

The Commission has the power to intervene, with leave of the Court, in proceedings that involve issues of race, sex, marital status, pregnancy and disability discrimination, human rights issues and equal opportunity in employment. The power to seek leave to intervene is contained in the:

- i *Racial Discrimination Act 1975* (Cth), section 20(1)(e)
- ii *Sex Discrimination Act 1984* (Cth), section 48(1)(gb)
- iii *Disability Discrimination Act 1992* (Cth), section 67(1)(l)
- iv *Human Rights and Equal Opportunity Commission Act 1986* (Cth), sections 11(1)(o) and 31(j).

The Commission will consider seeking leave to intervene in cases where the human rights or discrimination issues are significant and central to the proceedings, and where these issues are not being addressed by the parties to the proceedings. The Guidelines that the Commission uses to determine if it will seek leave to intervene in a matter are publicly available on the Commission's website.

During 2001-02, the Commission was granted leave to intervene in nine matters. Summaries of seven of those matters follow:

NAAV & NABE v Minister for Immigration and Multicultural Affairs

The Commission was granted leave to intervene in this matter which was heard by a five member bench of the Federal Court in Melbourne on 3rd June 2002.

The central issue was the construction of the privative clause inserted into section 474 of the *Migration Act 1958* (Cth) which commenced operation on 2 October 2001. This provides that a privative clause decision (including, relevantly, a decision of the Refugee Review Tribunal (IRRTi)):

- i is final and conclusive
- ii must not be challenged, appealed against, reviewed, quashed or called in question in any court
- iii is not subject to prohibition, mandamus, injunction, declaration or certiorari in any court on any account.

In his case, the appellant claimed that he had been denied procedural fairness by the RRT. The RRT was said to have misunderstood the appellant's claims of persecution and therefore failed to address them. In both cases, the appellants submitted that the errors went to the jurisdiction of the RRT and that the privative clause in section 474 of the *Migration Act* did not operate to prevent an appeal on the basis of the types of jurisdictional error of which they complained.

The Commission's submissions in this case can be found on the Commission's website at www.humanrights.gov.au/legal/guidelines/submission_naav.html

At the time of this report the Court has reserved its decision.

Attorney-General for the Commonwealth v Kevin and Jennifer

On 8 February 2002, the Full Court of the Family Court granted leave to the Commission to intervene in the appeal by the Attorney-General against the judgment of Justice Chisholm on 12 October 2001. In that judgment, his Honour declared valid the marriage between Kevin (a post-operative female to male transsexual person) and Jennifer. Both parties had accepted that a valid marriage for the purposes of the *Marriage Act 1961* (Cth) must be between a man and a woman. The issue in dispute was whether Kevin is a man for the purposes of that Act.

The Commission sought to intervene concerning the relevance of principles of international human rights law in considering the interpretation of the word man in the *Marriage Act*. Leave to intervene was sought for the following principles: the guarantees of equality before the law and non-discrimination in articles 2(1) and 26 of the ICCPR; the right to marry and found a family in article 23 of the ICCPR; and; the right not to be subject to arbitrary or unlawful interference with a person's privacy and family in article 17(1) of the ICCPR. The Commission submitted that these principles supported the conclusion reached by the Justice Chisholm, that Kevin is a man for the purposes of the law of marriage.

The Commission's submissions in this case can be found on the Commission's website at www.humanrights.gov.au/legal/guidelines/submission_kevin_jennifer.html

At the time of this report the Court's decision remains reserved.

Members of the Yorta Yorta Aboriginal Community v State of Victoria & Ors

In May 2002, the High Court heard an appeal in the Yorta Yorta native title claim relating to land in south western NSW and north western Victoria. The initial claim was dismissed in December 1998, with the trial judge ruling that the ancestors of the Yorta Yorta people had lost their culture to such an extent that native title could no longer be recognised. An appeal from this decision was dismissed by the Full Federal Court in February 2001. The Yorta Yorta people appealed the Full Federal Court's decision to the High Court.

The Commission was granted leave to intervene in the proceedings before the High Court.

The Commission submitted that wherever the language of the statute permits a construction which is consistent with the terms of a relevant international instrument and the obligations which it imposes on Australia, then the Court should adopt that construction. The strong presumption is that the *Native Title Act 1993* (Cth) should be construed in conformity with the provisions of relevant human rights treaties and the interpretative jurisprudence of human rights treaty bodies.

The Commission's submissions in this case can be found on the Commission's website at www.humanrights.gov.au/legal/guidelines/yorta_yorta.html

At the time of this report, the Court's decision remains reserved.

*Peter Martizi v Minister for Immigration, Multicultural and Indigenous Affairs**Simon Odhiambo v Minister for Immigration, Multicultural and Indigenous Affairs*

The Commission was granted leave to intervene in these proceedings, which were heard together before the Full Federal Court on 24 April 2002. The Commission was represented by Senior Counsel before the Court and made written and oral submissions. The Legal Section of the Commission acted as instructing solicitors.

These proceedings involved a review of the decisions of the RRT in relation to Mr Odhiambo and Mr Martizi (the appellants). At the time of their respective RRT hearings, both of the appellants were unaccompanied minors, that is, they were under 18 years of age and did not have any person in Australia to care for them. Both of the appellants had been detained in Port Hedland Immigration Reception and Processing Centre since their arrival in Australia.

The Commission's submissions in this case can be found on the Commission's website at www.humanrights.gov.au/legal/guidelines/submission_martizi.html

On 20 June 2002, the Full Court handed down its decision. The appeal was dismissed as, amongst other matters, the Court found the absence of a guardian for the appellants did not cause them any disadvantage in their RRT hearings.

The Court, however, noted that there may be a conflict between the role of the Minister as guardian of unaccompanied minors and his role in administering the *Migration Act*. This is because the person administering the *Migration Act*, the Minister, has an interest in resisting challenges to decisions of his delegates and decisions of the RRT that uphold delegates' decisions. That interest is directly opposed

to the interests of an asylum seeker in setting aside a decision unfavourable to him or her.

The appellants are currently considering whether to make an application to the High Court for special leave to appeal against this decision.

Victorian Council for Civil Liberties v Minister for Immigration and Multicultural Affairs and Ors
Eric Vadarlis v Minister for Immigration and Multicultural Affairs and Ors (“*The Tampa Case*”)

The Commission was granted leave to intervene in these proceedings before the Federal Court, Full Federal Court and High Court (27 November 2001).

The primary issue in these proceedings was the lawfulness of the actions of the Commonwealth Government concerning the 433 asylum seekers who were rescued by the *MV Tampa* from their sinking boat on or about 26 August 2001. The Commonwealth Government sought to prevent the asylum seekers from entering the migration zone in Australia as they did not have valid visas to do so. To this end, the Government:

- ï did not permit the *MV Tampa* to enter the port on Christmas Island
- ï did not permit the asylum seekers to leave the ship except to leave Australian territorial waters
- ï through SAS officers, controlled the movements of the asylum seekers on the ship
- ï did not permit the asylum seekers to communicate with persons off the ship or persons off the ship to communicate with them.

The Commission's submissions in this case can be found on the Commission's website at www.humanrights.gov.au/legal/guidelines/tampa.html and www.humanrights.gov.au/legal/guidelines/tampa2.html

On 11 September 2001, Justice North in the Federal Court found that the Commonwealth had detained without lawful authority the asylum seekers rescued by *MV Tampa*. He ordered the Commonwealth to release those asylum seekers and bring them to a place on the mainland of Australia.

The Commonwealth appealed against this decision to the Full Court of the Federal Court. On 17 September 2001, by a majority comprising Justices Beaumont and French, that Court determined that the appeals should be allowed and set aside the orders made by Justice North. The majority judges concluded that the Commonwealth was acting within its executive power under section 61 of the *Constitution* in the steps it took to prevent the landing of the rescuees. The majority has also concluded that the rescuees were not detained by the Commonwealth nor did they have their freedom restricted by anything that the Commonwealth did.

Chief Justice Black dissented. He took the view that whilst the power to expel people entering Australia illegally is undoubted, it is a power that derives only from laws made by the Parliament and not from powers otherwise exercisable by the Executive Government. He took the view that since the powers provided in the *Migration Act* were not relied upon, the Commonwealth Government had no power

to detain those rescued from the Tampa. He considered that on the facts of the case there was a detention by the Commonwealth and that since it was not justified by the powers conferred by the Parliament under the *Migration Act* it was not justified by law. He was therefore of the opinion that the appeal should be dismissed.

On 27 November 2001, Mr Vadarlis made an application to the High Court seeking special leave to appeal against the majority decision of the Full Federal Court. He also sought to challenge the validity of parts of the *Border Protection (Validation and Enforcement Powers) Act 2001* which was passed after the Full Court decision was delivered (the relevant parts of this Act purported to render all Commonwealth action relating to the *Tampa* lawful).

The High Court refused Mr Vadarlis' application. While the High Court found that the issues in this case raised important constitutional questions, there had been a change in the factual circumstances since the Full Court hearing (as the asylum seekers were no longer on a ship controlled by the Commonwealth but in Nauru). The Court indicated that this rendered the arguments on appeal hypothetical and made it difficult to determine what orders the Court should make if the applicants were successful.

Ming Dung Luu v Minister for Immigration and Multicultural Affairs

As reported in the 2000-01 Annual Report, in June 2001 the Commission intervened in proceedings in the Federal Court involving a review of a decision of the Minister for Immigration and Multicultural Affairs.

That decision related to Mr Ming Dung Luu, who was the subject of a deportation order made by the Minister following his conviction on a serious assault charge. Mr Luu was sentenced by the Victorian County Court to a maximum of three years and six months imprisonment in relation to that charge. After being paroled (on 18 June 1997), Mr Luu was placed in immigration detention pending his deportation. The Department of Immigration and Multicultural Affairs determined that Mr Luu should be detained in a maximum security prison rather than in an immigration detention centre.

Mr Luu sought to have the Minister exercise his discretion under section 253(9) of the *Migration Act* to release him or, alternatively, revoke the original deportation order. After Mr Luu commenced Court proceedings in the Federal Court, the Minister determined not to exercise his power to release Mr Luu or revoke the deportation order. Mr Luu sought judicial review, under the *Administrative Decisions (Judicial Review) Act 1977* (Cth), of that decision (and certain other matters).

The Commission's submissions in this case can be found on the Commission's website at www.humanrights.gov.au/legal/guidelines/submissions_luu.html

Since the 2000-01 Annual Report, Justice Marshall (the judge at first instance) handed down his decision in which he dismissed the application of Mr Luu. In relation to the issues raised by the Commission regarding arbitrary detention, his Honour found on the facts for the Minister on the basis of the Minister's understanding of the state of negotiations with Vietnam in relation to a Memorandum of Understanding. The purpose of the Memorandum was said to be to facilitate the deportation to Vietnam

of people in Mr Luu's position. His Honour found that the Minister's understanding of those negotiations meant that he was able to give a 'reasonably specific approximation of when Mr Luu was likely to be deported'.

Mr Luu has since appealed to the Full Federal Court. The Commission made further oral and written submissions (available at www.humanrights.gov.au/legal/guidelines/submissions_luu.html) and the decision is reserved as at the date of this report.

Re McBain; Ex Parte Australian Catholic Bishops' Conference and Another, Human Rights and Equal Opportunity Commission and others intervening

In this case, the High Court considered applications (brought in the court's original jurisdiction) to quash a decision of Justice Sundberg, a Judge of the Federal Court of Australia.

In the proceedings before Justice Sundberg, Dr McBain (a gynaecologist) sought a declaration that certain provisions of the *Infertility Treatment Act 1995* (Vic) were inoperative because they were inconsistent with the *Sex Discrimination Act 1984* (Cth).

The applicants (the Australian Catholic Bishops Conference and the Australian Episcopal Conference of the Roman Catholic Church) were not parties to the action in the Federal Court, but had been granted leave to be heard as *amici curiae*. The parties to the Federal Court action did not appeal Justice Sundberg's decision.

The Commission, along with the Women's Electoral Lobby and the Australian Family Association, was granted leave to intervene in the High Court proceedings. The Commonwealth also intervened.

The Commission's submissions in this case can be found on the Commission's website at www.humanrights.gov.au/legal/guidelines/hcaivf1.html

The High Court unanimously dismissed the applications. The majority (Chief Justice Gleeson and Justices Gaudron, Gummow and Hayne) accepted the Commission's submissions on the first issue, holding that the High Court did not have jurisdiction to consider the applications because they did not give rise to a matter within the meaning of Chapter III of the *Constitution*. The other members of the Court agreed that the application should be dismissed, but on different grounds.

None of the members of the Court gave any detailed consideration to issues raised in the proceedings regarding the validity and interpretation of the Sex Discrimination Act.

Amicus curiae

Section 46PV of the *Human Rights and Equal Opportunity Commission Act 1986* provides that the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Disability Discrimination Commissioner, the Human Rights Commissioner, the Race Discrimination Commissioner and the Sex Discrimination Commissioner may, with permission of the Federal Court or Federal Magistrates Service, seek to appear as *amicus curiae* (or friend of the court) in the hearings of complaints that have

been terminated by the President. The proceedings in which the relevant Commissioner or Commissioners can exercise this function are proceedings:

- i in which the Commissioner thinks that the orders sought, or likely to be sought, may affect to a significant extent the human rights of persons who are not parties to the proceedings
- ii that, in the opinion of the Commissioner, have significant implications for the administration of the relevant Act or Acts administered by the Commission
- iii that involve special circumstances that satisfy the Commissioner that it would be in the public interest for the Commissioner to assist the court concerned as *amicus curiae*.

Guidelines for the exercise of this function are publicly available on the Commission's website.

There was one matter completed in the financial year 2001–02 in which the Sex Discrimination Commissioner was *amicus curiae*. That was the matter of *Ferneley v Boxing Authority of NSW and State of NSW*.

Ferneley v Boxing Authority of NSW and State of NSW

On 26 October 2001, Justice Wilcox granted the Sex Discrimination Commissioner leave to appear as *amicus curiae* in the above matter. The hearing took place before Justice Wilcox on 8 November 2001.

The applicant, Ms Ferneley, a kick boxer, wanted to be able to compete in New South Wales where she resides. However, in order to do so, she had to register as a kick boxer under the *Boxing and Wrestling Control Act 1986* (NSW). However section 8(1) of the Act provides that only men (above the age of 18 years) can register as a boxer. In addition, section 62D of the Act provides that women shall not take part in any amateur boxing contest.

The Commissioner appeared as *amicus curiae* solely in relation to the interpretation of the exemption in section 42 of the *Sex Discrimination Act*, although at the hearing on 8 November 2001, Justice Wilcox was willing to hear brief submissions on other aspects of the case.

The Sex Discrimination Commissioner's submission can be found on the Commission's website at www.humanrights.gov.au/legal/guidelines/amicus_ferneley_case.html

Justice Wilcox's decision was handed down on 10 December 2001. He dismissed the applicant's application on the basis that section 22 of the *Sex Discrimination Act* does not apply to this case. He found that section 18 of the *Sex Discrimination Act* applies to this case, which makes it unlawful for authorities empowered to confer an authorisation or qualification needed for engaging in an occupation to discriminate on the basis of sex. Section 18 does not bind the Crown in right of the State and therefore the actions of the Boxing Authority were not unlawful.

Despite this finding, Justice Wilcox made findings in relation to section 42 of the *Sex Discrimination Act*. He agreed with the submissions of the Commissioner and held that section 42(1) is concerned only with mixed sex sporting activity.

Applications under the Administrative Decisions (Judicial Review) Act

The Commission or a member of the Commission is sometimes a party in judicial review legal proceedings. These legal proceedings occur when the Commission is named as a respondent in matters where an application has been made to the Federal Court or the Federal Magistrates Service seeking judicial review of a decision made by the Commission, the President or a Commissioner. These reviews can be sought pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

In accordance with established legal principle, the Commission ñ as decision maker ñ usually submits to the jurisdiction of the court in these matters, leaving the substantive parties (usually 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 ñ 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 made under this Act for the years 1995ñ2002 are shown in the table below. The significant decrease in the number of judicial review matters in which the Commission is a party in the financial years of 2000ñ01 and 2001ñ02 are the result of the Commission's hearing and determination function in relation to complaints of unlawful discrimination ceasing in April 2000 when it was assumed by the Federal Court and Federal Magistrates Service.

Table 35: Trends in numbers of Administrative Decisions (Judicial Review) Act applications where the Commission is named as respondent

Year	95ñ96	96ñ97	97ñ98	98ñ99	99ñ00	00ñ01	01ñ02
Total	9	11	35	19	22	13	4

International technical assistance work

This work is done on behalf of the Australian Agency for International Development (AusAID) and implemented by the Commission.

Technical cooperation project with the South African Commission on gender equality

As reported in previous annual reports, the Commission has been working on a technical cooperation project with the South African Commission on Gender Equality (CGE). The Legal Section has been involved in one aspect of that project which relates to legal intervention. The aim of that part of the project is to improve the

capability of the CGE to participate effectively in relevant litigation in South Africa concerning gender related issues.

In the Commission's 2000-01 Annual Report, we discussed completion of one component, involving two staff members of the legal section attending the offices of the CGE in Johannesburg in June 2001. The end product of that activity was the development of a draft procedural manual, including guidelines for assessing appropriate matters for intervention by the CGE and a procedural strategy for conducting interventions.

In February 2002, we followed up on that activity, by leading and facilitating a workshop attended by Commission staff and stakeholders of the CGE. In that workshop the draft procedural manual was presented, discussed and finalised.

A further activity is planned for later this year. This time, CGE staff will attend the offices of the Commission in Sydney and have the opportunity to see, first hand, how the Commission conducts its own intervention practice.

Workshop on human rights theory and practice in Australia and Vietnam

The Legal Section participated in preparing and presenting a paper at this workshop in Hanoi organised by the Research Centre for Human Rights in the Ho Chi Minh National Political Academy and the Centre for Asian and Pacific Law in the University of Sydney.

The purpose of the Workshop was to facilitate an exchange of ideas and theories on human law and practice in Vietnam and Australia. Over two days, a series of papers were presented including presentations titled *The Australian Justice System and Human Rights Protection*, *Vietnam's Traditional values of human rights*, *Australian Human Rights: Common Law Heritage* and *The role of international law in developing Human Rights Law in National Legal Systems*.

Other activities

During 2001-02, staff of the Legal Section undertook a range of external activities. These included the following:

Publications

- i Contributing an article entitled *Human Rights and Equal Opportunity Commissioners as Amici Curiae* for publication in Law Society journals around Australia.
- i Presenting a paper at the National Conference of Community Legal Centres in Perth entitled *The Intervention and Amicus Curiae Functions of the Human Rights and Equal Opportunity Commission and Its Commissioners*.
- i Providing a paper titled *Proscription of Hate Speech in Australia* to the XVIth Congress of the International Academy of Comparative Law.

Conferences and workshops

- ï Being facilitators at the National Youth Summit on Racism and at a consultation towards the World Conference on Racism, Race Discrimination, Xenophobia and Related Intolerance.
- ï Attending a meeting of the Asia Pacific Forum of National Human Rights Institutions in Sri Lanka.
- ï Attending as an observer the Workshop for Judges on Justiciability of Economic, Social and Cultural Rights in South Asia in New Delhi.
- ï Attending the National Legal Officers Conference for State, Territory and Federal Anti-Discrimination Bodies.
- ï Attending the *Alternative Law Week* at the University of Sydney and the *Alternative Law Fair* at the University of Technology Sydney to discuss with current law students the career opportunities that are available at the Commission.

Chapter 4

Aboriginal and Torres Strait Islander Social Justice



Dr William Jonas, AM
Aboriginal and Torres Strait Islander Social Justice Commissioner

Aboriginal and Torres Strait Islander Social Justice Commissioner

Dr William Jonas was appointed Aboriginal and Torres Strait Islander Social Justice Commissioner in April 1999. He is also the acting Race Discrimination Commissioner, a position held since September 1999.

Statement from the Commissioner

The past year has been one of great upheaval in regard to the importance that the community attaches to human rights generally and the rights of Indigenous peoples in particular. The year has seen the Government continue with an approach that seeks to obscure important human rights considerations from the Indigenous policy making lens.

Nowhere is this more clearly present than in the government's impractical reconciliation agenda. I have criticised this approach in great detail in the *Social Justice Report 2001* and *Native Title Report 2001*. In short, my concerns with the government's approach can be summarised as relating to the largely ahistorical context within which they apply their policies; their failure to acknowledge the extent of the marginalisation faced by many Indigenous people and the systemic, institutionalised nature of the very real oppression that continues to be felt as a result; and the lack of recognition of the distinct status of Indigenous families and communities which require solutions that extend beyond individualism and self-empowerment and which instead recognise and protect Indigenous cultures.

Instead, practical reconciliation presents itself as a cruel illusion of equality which manages and maintains the status quo of the inequality faced by Indigenous peoples and makes little effort to re-empower or transfer power back to Indigenous communities. Indigenous communities, many of which are dysfunctional and have broken down structures of authority, are treated as passive recipients of government directed programmes and priorities. Ironically, the rhetoric of government policy also attacks those same communities for being passive recipients and for not escaping the extreme poverty and dire circumstances that they face.

Integral to this process of directing policy making towards practical assistance measures has been the refusal to respond to the broader agenda of issues that have been raised by Indigenous peoples, by the now defunct Council for Aboriginal Reconciliation and in my Social Justice Reports.

The Council for Aboriginal Reconciliation had been mandated to develop over a 10 year period a series of recommendations for transforming the relationship between Indigenous and non-Indigenous people. Yet more than two years after the Council presented its *Australian Declaration towards reconciliation* and four national strategies for reconciliation at Corroborree 2000; and over eighteen months after it made six final recommendations to the Government in December 2000, there has been no formal, public response to these documents. There has similarly been no formal response to the fourteen recommendations on human rights and reconciliation contained in the *Social Justice Report 2000* and a rejection of the call by Indigenous people to negotiate 'unfinished business'.

The failure to respond to these important processes is of great concern. But they form part of a broader picture in which we have seen significant rises in the number of Indigenous people in the criminal justice system and in rates of Indigenous over-representation. This has also been accompanied by an increase in the number of Indigenous deaths in custody and only a marginal decrease in the rate of such deaths over the past decade. As I note in my review of ten years since the Royal Commission into Aboriginal Deaths in Custody in the *Social Justice Report 2001*, Indigenous juveniles now regularly comprise 42 percent of all people in juvenile detention and Indigenous adults comprise 20 percent of the adult corrections population on a national basis. This is worse than the circumstances at the time the Royal Commission was established and exists despite Indigenous people constituting just over two percent of the total Australian population.

The situation is similar regarding standards of health and education, employment status and other measures of socio-economic status. Some gains are being made, but they are overwhelmed by the continued hardship, stress and trauma faced by the majority of Indigenous peoples and the extremely slow pace of change.

Issues about which the community would have once expressed great concern, even outrage, now pass by almost unnoticed or simply accepted. But we can never accept this situation as inevitable, to be expected or a reflection of the way things are. This situation reflects serious failure to make progress towards an equal society. It also reflects a serious breakdown in government accountability for human rights.

What concerns me greatly is the lack of momentum to change this situation. The status of Indigenous communities should be attracting bi-partisan political support for commitments at the national level to address it as a matter of urgency and priority, with clear targets and goals for the short, medium and long terms, with funding directed towards meeting such goals, and with processes being instituted which facilitate Indigenous participation in decision making processes. It is in everybody's interests for such change to occur.

An opportunity to make real changes based on the inherent rights of Indigenous people was presented in the High Court's recognition of native title 10 years ago. Rather than maximising the potential of native title to deliver economic, social and political outcomes for Indigenous people the government's response has been to encase native title in a legal armature that is aimed at restricting rather than maximising this potential. The amendments to the Native Title Act which ensure that the grant of a non-Indigenous interest extinguishes, partially extinguishes or prevails over Indigenous interests render native title powerless to transform the lives of Indigenous people.

Through the combination of the Council for Aboriginal Reconciliation, the landmark report of the Commonwealth Grants Commission, the work of the Aboriginal and Torres Strait Islander Commission, a plethora of parliamentary committees and other agencies there is much guidance on how to go about improving this situation.

As Social Justice Commissioner I will continue to analyse critically the adequacy of governmental efforts towards this goal even though it gives me no pleasure to report on governmental failure.

I will also continue to give prominence to positive initiatives by government and by Indigenous communities – such as through my focus in my latest reports on governance initiatives and community capacity building processes, developments in the introduction of diversionary processes for juveniles in the Northern Territory, and agreement making processes under the Native Title Act.

I will continue my efforts to provide a broader understanding of the importance of human rights standards to Indigenous people's lives, through the redevelopment of the National Indigenous Legal Studies Curriculum for Aboriginal Legal Services' field officers; the redevelopment and outreach of the *Tracking your Rights* package; the distillation of further best practice principles and case studies similar to those developed for juvenile diversion in the past year; and the enhancing of Indigenous community capacity to understand and incorporate human rights to protect culture and land through my ongoing corporate responsibility, land and resources project.

And I will continue to seek to persuade the broader community to recognise and respect the valuable, distinct characteristics of Indigenous cultures.

Monitoring and reporting



Social Justice Report 2001

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

The *Social Justice Report 2001* is the third by the current Commissioner. It was transmitted to the Attorney-General on 23 December 2001, and tabled in both houses of Federal Parliament after 15 sitting days on 14 May 2002.

The Report expresses concern at developments ten years on from the Royal Commission into Aboriginal Deaths in Custody:

The sense of urgency and commitment to addressing Indigenous over-representation in criminal justice processes has slowly dissipated. Indigenous people have continued to die in custody at high rates in the decade since the Royal Commission, and the average rate of Indigenous people in corrections has steadily increased on a national basis since the Royal Commission. Yet in 2001 this hardly raises a murmur of discontent yet alone outrage among the broader community. These facts either go unnoticed, or perhaps even worse in the age of reconciliation, are simply accepted and not challenged. As a consequence, Indigenous affairs seem to have become a series of anniversaries ñ operating as an annual reminder of the unfulfilled promises and commitments of governments. (*Social Justice Report 2001, page 7*).

In reviewing government progress in the first year since the final report of the Council for Aboriginal Reconciliation, the Report also focuses on measures adopted to ensure reconciliation is ongoing; processes for measuring and evaluating outcomes; and the leadership of the federal government.

The Report notes that in this period there has been no formal response by the federal government to the documents of reconciliation or the final report of the Council for Aboriginal Reconciliation:

There is a danger that the reconciliation walks from last year will be the high watermark of support for reconciliation, as national attention (necessarily related to the ability of Reconciliation Australia and the government to keep a national profile for reconciliation) slowly dissipates. better results may have been achieved with a more active leadership role being played by the Commonwealth, including through the use of forms of leverage to ensure compliance such as performance conditions on grants to states and territories. (*Social Justice Report, page 203*).



Dr William Jonas speaks to members of the media at the launch of the 2001 Social Justice and Native Title reports.

To refocus attention on the reconciliation process, and to ensure adequate accountability and transparency of government, the Commissioner makes two recommendations in the Report relating to reconciliation, namely that the Senate establish a committee inquiry into the response of government to the reconciliation process and that the government provide a response to the Social Justice Report in Parliament within 15 sitting days of tabling the Report.

The Report also analyses criminal justice issues relating to juvenile diversionary schemes and mandatory sentencing in Western Australia and the Northern Territory. There are four recommendations directed at the Western Australian government to improve the juvenile diversionary system. This does not currently benefit Indigenous juveniles due to a range of factors including the culturally inappropriate nature of the system, the lack of Indigenous participation in designing and delivering programs, and the lack of services outside Perth.

There are six recommendations for the Northern Territory government to improve their newly introduced juvenile diversionary schemes. The Report finds that the schemes have been rapidly progressed in their first year but require additional legal safeguards and must involve greater government coordination and Indigenous participation.

The Report also considers the mutual obligation approach to welfare reform. While noting it has many positive features the Report also expresses concern at the limitations of this approach and its potential to affect Indigenous people detrimentally. The Commissioner calls for a more widespread, consultative approach to be adopted to Indigenous welfare reform which gives sufficient acknowledgement of Indigenous specific dimensions of Indigenous welfare dependency, which range from cultural to historical factors. The Report also provides case studies of community capacity building and governance initiatives which provide examples of alternatives to the mutual obligation approach.

An executive summary and the full report can be found on the Commissioner's website at www.humanrights.gov.au/social_justice/.



Native Title Report 2001

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

The *Native Title Report 2001* is the third by the current Commissioner. It was transmitted to the Attorney-General on 2 January 2002 and tabled in both houses of the federal Parliament on 14 May 2002.

The Report considers progress in the 10 years since native title was first recognised in the Mabo decision. It finds that the potential outcomes of native title have not been realised because the native title system, as structured by the Native Title Act and the common law, operates to restrict rather than enhance the capacity of native title to deliver real outcomes.

The Report evaluates, against human rights standards, the administrative practices developed in Western Australia, Northern Territory, Queensland, New South Wales, and Victoria in creating and managing non-Indigenous interests (largely mineral tenements) on land where native title does or may exist. It also evaluates against the same standards, the management of the expedited procedure (a process where a government can 'fast track' a proposed development where there will be only limited effects on Indigenous interests in the relevant land) by state governments and the National Native Title Tribunal. The Report concludes that:

the failure to provide native title parties with the opportunity to negotiate about the development of their native title lands favours the property rights of kinds held by non-Indigenous people over those held by Indigenous people.
(*Native Title Report*, page 51).

The Report considers how the allocation of funds by the Commonwealth government to institutions participating in the native title system impacts on the level of protection extended to native title. The Report explains the distribution of funding within the native title system, assessing the division between the Federal Court, National Native Title Tribunal, Commonwealth Attorney-General and native title representative bodies. Following these comparisons the Report then looks at the level of funding of native title representative bodies compared to their statutory functions, and demonstrates the critical factors that are not reflected in the levels of funding:

From a human rights perspective, it is essential that the organisations whose function is to ensure the recognition and protection of native title and the participation of native title parties in economic development of their land are properly funded. The allocation of funds in the Federal budgetary process has not apportioned sufficient funds to the representative bodies responsible for carrying out these functions. The inadequate funding of representative bodies relative to their statutory functions has had the cumulative effect of undermining their capacity to adequately promote and protect Indigenous interests in the native title process. (*Native Title Report*, page 55).



Left to right: John Southalan (Human Rights and Equal Opportunity Commission), Professor Ciaran O’Faircheallaigh (Griffith University), Margaret Donaldson (Human Rights and Equal Opportunity Commission), Rhonda Kelly (Griffith University), Robynne Quiggan (Terri Janke and Company, Lawyers) – attending the Forum on Resource Development on Aboriginal Land: A Human Rights Approach.

In view of the limitations in the current native title system and the practices developed to administer native title policies, the Report considers the use of framework agreements as an opportunity for both Indigenous and non-Indigenous parties to settle upon a set of standards for the co-existence of their interests in land.

The Report argues that the content and process in the development of a framework agreement needs to be guided by human rights standards. Issues such as recognising Indigenous interests, contemporary Indigenous culture, and the communal nature of native title are vitally important to developing an equitable agreement. Issues that can be addressed through agreements consistent with human rights principles include meaningful acknowledgement of Indigenous interest in the relevant area, recognition and protection of contemporary cultural practices, allowing (and where necessary, assisting) the involvement of all native title holders who may be affected by outcomes of any framework agreement, and ensuring a cooperative approach to implementing any agreement.

Framework agreements can provide certainty and stability in the relationships that they engender, and will be a viable option for commercial entities wanting to do business with Aboriginal people. The drawback however, is that while framework agreements may provide an effective way forward, they depend on being voluntarily adopted by those engaging directly with Indigenous people. While native title rights are seen as limited non-exclusive, easily extinguishable rights, it will be increasingly difficult to convince developers, mining and resource companies, pastoralists, local and state governments, to voluntarily adopt a human rights approach.

An executive summary and the full report can be found on the Commission’s website at www.humanrights.gov.au/social_justice/.

Submissions

The Commissioner provided submissions into a number of projects and reviews in 2001-02. These include:

Review of the Project Development Approvals System (Western Australia)

The Western Australian Government commissioned an independent committee to review the system in Western Australia for dealing with proposals to develop projects in the State. The Commissioner made a submission on the interim report urging the Committee to address, in its analysis of the development approval system in Western Australia, the human rights of Indigenous peoples and their relationship to that system.

A threshold issue of concern in the review was the lack of Indigenous input. Various human rights standards indicate that the effective participation of Indigenous peoples is essential in decision making that will affect their traditional lands and lifestyles. The Committee was urged to ensure that its deliberations were well publicised to Indigenous organisations and people who may be affected by those deliberations, and that, where necessary, the participation of those parties be facilitated by the Committee.

In the Commissioner's view the interim report adopted a development oriented perspective at the expense of human rights principles relevant to Indigenous people. Even where the status and role of Indigenous people is centrally important, for example in discussing the operation of the Native Title Act and Aboriginal heritage, this is not reflected in the report.

Mining, Minerals and Sustainable Development Project

The Mining Minerals and Sustainable Development (MMSD) project, is a two year global project run by the World Business Council for Sustainable Development (a coalition of 150 international companies united by a shared commitment to sustainable development) and the International Institute for Environment and Development (an independent, non-profit organisation promoting sustainable patterns of world development through collaborative research, policy studies, networking and knowledge dissemination). The MMSD Project is divided into regions, with the Australian part including various projects and meetings to:

- i identify how the mining and minerals industries can best contribute to sustainable development
- ii build understanding and trust between the industry and people affected by its operations
- iii develop a common understanding of the industry's contribution
ñ positive and negative ñ to society
- iv develop a shared vision for future minerals development in Australia.

MMSD Australia has prepared research studies and an overall draft report. The Commissioner made submissions in relation to the studies and the draft report and participated in key meetings and workshops. The Commissioner is pleased that the final report of the Australian component of the project included, as one of its critical issues, "The promotion of the rights and well being of Indigenous communities". The report recognised that it was essential that mineral development operations receive the prior informed consent of local Indigenous communities; that traditional owners are able to assess and respond to mining proposals; and benefits of the project are equitably distributed between companies, communities and government.

Wand Review of the State Governments "General Guidelines for Native Title Determinations and Agreements"

The "Wand Review" established a set of draft negotiating principles for the settlement of native title applications in Western Australia. The Draft Guidelines state that the Government will pursue a "cooperative approach" to the resolution of native title claims. The main focus of the Guidelines is to establish the level of evidence that will be required by Government of connection to country before they will engage in negotiations.

On 14 August 2001 the Commissioner made a submission to the Review which applauded the attempt of the Western Australian Government to identify and adopt appropriate processes for negotiating agreements, but noted with concern that in some respects, the approach adopted did not endorse essential minimum standards that require outcomes to be consistent with basic human rights standards.

The submission recommended that any minimum standards should recognise that:

- i Native title interests are entitled to the same level of protection as non-Indigenous interests.
- ii Negotiations be based on the non-extinguishment of native title.
- iii Agreements should be negotiated that encourage and allow continued observance of Indigenous laws and customs.
- iv Agreements should be negotiated that encourage and allow Indigenous governance within their traditional lands.
- v Native title holders should be recognised as owners or joint owners and managers of the land.
- vi Joint management arrangements in national parks should be provided for.
- vii Native title is a group right and that the intergenerational aspect of the right must be protected.
- viii Native title parties' "connection" to land should not be interpreted restrictively.

It was submitted that the process for negotiation of native title agreements should also reflect these principles.

Technical Taskforce on Mineral Tenements and Land Title Applications

In August 2001 the Western Australian Government released a discussion paper on mineral tenements and land title applications which recommended amendments to Western Australian mining legislation aimed to reduce the backlog of mining lease applications.

The Commissioner commended some elements of the Technical Taskforce's recommendations, but remained concerned about:

- ï The focus of the recommendations on the reduction of the backlog of mining license applications (and other future act applications), rather than the development of a long term approach to the inclusion of native title rights within land management in Western Australia.
- ï The substitution of heritage agreements for more substantial negotiation with native title parties.
- ï The failure to adopt a policy of non-extinguishment for all dealings with native title land.

Protection of human genetic information

The Commissioner made a submission to the Australian Law Reform Commission's Inquiry into the Protection of Human Genetic Information. The submission noted the particular vulnerability of Indigenous people to exploitation of their genetic heritage, the necessity for specific protection from such exploitation and the necessity for processes to require their informed consent and participation. The submission also referred to developing international human rights standards for the protection of genetic information. The submission is available on the Commission's website at www.humanrights.gov.au/social_justice/genetic_information.html.

Senate motion regarding mandatory sentencing

On 13 April 2000 the Senate passed a motion requesting that the Commission inquire into all aspects of mandatory sentencing in the Northern Territory and Western Australia in two stages.

The Commission responded to the first stage of the request in May 2000 and indicated that the Commissioner would then:

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

The Commissioner addressed the Senate Legal and Constitutional References Committee Public Hearing for their Inquiry into Mandatory Sentencing on 14 August 2001 in Sydney and updated his progress in this work. A submission was also provided to the Committee.

The Commissioner published the results of his research on mandatory sentencing and diversionary schemes in the *Social Justice Report 2001* which was tabled in Parliament on 14 May 2002.

Promoting awareness and discussion of human rights issues

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

Corporate Responsibility Forum

In May 2002 Commissioner co-hosted, with Griffith University, a forum in which approximately 30 Aboriginal people from diverse resource regions of Australia developed a set of principles for resource development on their land. The forum explored the question: iWhat would the relationship between Indigenous communities and resource development companies look like if human rights, such as the right of Indigenous people to effective participation in the management of their land and the right to cultural recognition, were shared values?i

The significance of this forum lay, not only in the principles, but also in the unique process by which their formulation took place. The forum was held over three days. On the first two days Indigenous participants and representatives developed principles as a response to the issues that have arisen for them on their land. Fundamental to this process was the belief that, as an exercise of the right to self determination, Indigenous people must be given the opportunity to decide, from their perspective, the obstacles that need to be overcome and the priorities that need to be set in their relationship with resource companies.

On the third day of the forum the draft principles were presented to mining company representatives and non-government organisations for feedback and discussion. Company representatives were asked to provide the participants with honest feedback on whether, and if so how, the principles could best operate in the field. It was agreed that as a result of this process, both company representatives and Indigenous people gained a greater understanding of their respective values and priorities.

The principles are intended to have a number of uses including: for the use of Indigenous communities wishing to develop their own policy on mining; to assist in framing issues for negotiation with mining companies; for incorporation into social responsibility policies of companies, and for use by auditors and assessors in developing benchmarks for company's social responsibility performance.

Further information and documents concerning the forum can be found at www.humanrights.gov.au/social_justice/corporateresponsibility/.

National Reparations Conference

The Commissioner co-hosted *Moving Forward ñ Achieving Reparations for the Stolen Generations* with the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Public Interest Advocacy Centre (PIAC) on 15-16 August 2001 at the University of New South Wales.

The Commission, ATSIC and PIAC were concerned about the inadequacy of the responses of governments and the churches to the issues raised in *Bringing them home*, the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. The three organisations agreed to join in a partnership to convene a national conference to facilitate discussion about ways to move forward and better meet the needs of those people forcibly removed from their families.

The conference sought to provide a forum to consider the adequacy of government measures to meet the needs of those affected by forcible removals; international law principles and models for providing reparations for violations of human rights; the findings of PIAC's national consultation process on reparations; government and church responses to the history and effects of forcible removals; and the importance of reparations in advancing the process of reconciliation.

Funding for the conference and a conference secretariat were provided by ATSIC. The Commission agreed to manage the organisation of the conference, provide finance processing, website design and public awareness.

The conference featured a number of international guests providing perspectives on proposals for reparations in other countries, as well as representatives of government, the opposition, the churches and stolen generations groups in Australia.

What became apparent fairly early in the conference was that members of the stolen generations continue to suffer great hardships, and that efforts to date have not ameliorated their harm. Stolen generations members needed to be able to share their stories and experiences as part of their individual healing process. Throughout the conference, members of the stolen generations rose to speak about their lives and the problems they face as a consequence of their removal.

Ultimately, 28 recommendations were formed at the conference. These remained open for comment and community consultation for approximately 10 weeks after the conference and were finalised in early November 2001.

The recommendations reflect concerns at the level of implementation of the recommendations of *Bringing them home*, with conference participants urging the Government to see the recommendations as a package of integrated, complementary measures. Conference participants considered that there are significant social and economic costs to the current approach of not adequately responding to the recommendations, and reaffirmed the ongoing and urgent need for reparations and healing.

A strong message from the conference was the need for broader consultations with stolen generations' members about the forms reparations should take. They considered that PIAC's reparations tribunal model was an appropriate basis on which to conduct further consultations.

One of the main outcomes of the conference was that it expanded the knowledge of participants on the reparations approach and national and international developments in this regard. Many people left the conference keen to go back to their communities to share their experiences and their knowledge. They saw the conference outcomes as the start of further important processes which might bring some resolution to their calls for redress.

The conference recommendations and speeches are available at the conference website at www.humanrights.gov.au/movingforward/.

International activities

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

In accordance with these functions, and in his dual capacity as Social Justice and acting Race Discrimination Commissioner, the Commissioner attended the World Conference Against Racism in South Africa in August–September 2001. A full report on the World Conference is contained in the Race Discrimination Section at Chapter 7 of this Report.

In May 2002, the Commissioner also attended the inaugural session of the United Nations Permanent Forum on Indigenous Issues in New York. The establishment of a Permanent Forum was identified as one of the major goals of the United Nations International Decade for the World's Indigenous People which ends in 2004.

The Commissioner made two interventions in the Forum, highlighting issues of human rights significance in the Forum's interaction with United Nations agencies and setting out key considerations for how the Forum should operate from an Australian Indigenous perspective. Information about the Permanent Forum and copies of Commissioner Jonas' interventions are available on the Commissioner's website at www.humanrights.gov.au/social_justice/.

A new International Indigenous issues section was added to the Social Justice Commissioner's website in May 2002 which provides simple access to relevant United Nations documents on Indigenous issues and international scrutiny of Australia's Indigenous affairs policies. The address is www.humanrights.gov.au/social_justice/internat_develop.html.

Research and educational programs

Under section 46C(1)(c) of the *Human Rights and Equal Opportunity Commission Act 1986* the Commissioner is required to undertake research and educational programs for the purposes of promoting respect for, and enjoyment and exercise of, human rights by Aboriginal peoples and Torres Strait Islanders.

National Indigenous Legal Studies Curriculum

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

Nationally recognised accreditation for the curriculum was due to expire in April 2002. The package of courses that make up the curriculum must be reformatted from their current module based format into a competency framework in accordance with national training accreditation guidelines in order for them to be reaccredited.

The Commission obtained an extension for re-accreditation from the Australian National Training Authority until 2003, and during the past financial year the Commissioner commenced the re-accreditation process.

In 2001, the Business Services Advisory Board of the Australian National Training Authority conducted a mapping exercise for the Commission to identify how current modules of the curriculum could be matched against competencies in existing registered training packages. The results of this process were then used to consult with existing registered training providers about the re-accreditation process.

The Commission has since been provided with \$30 000 funding from the National Policy Office of the Aboriginal and Torres Strait Islander Commission and other assistance from the Legal Preventative Services Branch of this Commission towards the necessary process for the re-accreditation of the curriculum. Curriculum designers will shortly be hired by the Commission to complete the necessary revisions, and a Curriculum Development Advisory Committee comprising educational providers, Aboriginal legal services and peak bodies is currently being formed to guide the process in accordance with national reaccreditation guidelines.

The Commission will be able to apply for reaccreditation of the Curriculum by February 2003. Further details about the accreditation process can be obtained from the Commission's website at www.humanrights.gov.au/social_justice/education.

Best practice principles for diversion of juveniles

In November 2001 the Commissioner released the fifth instalment in the *Human Rights Brief* series – *Best practice standards for the diversion of juveniles*. The Brief provides practitioners and policy makers with a simple, schematic guide to human rights principles relevant to the establishment of diversionary mechanisms from custody for juveniles. It includes a practitioner's checklist to ensure compliance

with human rights standards. The principles in the Brief were utilised in the review of juveniles diversion in the Northern Territory and Western Australia contained in Chapter 5 of the *Social Justice Report 2001*.

The brief is available on the Commission's website at www.humanrights.gov.au/human_rights/briefs/brief_5.html.

National Community Education Program – *Tracking Your Rights*

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

Tracking Your Rights was launched in January 1998. The implementation of the program relies heavily on coordination with federal agencies and with the states and territories. A number of initiatives that are currently in place to promote the program were discussed in last year's Annual Report.

During the financial year the Commissioner began to consider options for the updating and review of the project.

Intervention in court proceedings

Section 11(1)(o) of the *Human Rights and Equal Opportunity Act 1986* provides that the Commission may seek to intervene in court proceedings.

On 23 May 2002 the Commission was granted leave by the High Court to intervene in the native title case of *Members of the Yorta Yorta Aboriginal Community v The State of Victoria & Ors*.

The Commission made submissions on the substantive issues of the appeal, namely, abandonment of native title; the concept of traditional laws and customs; the requisite connection with the claimed land or waters; the burden of proof in relation to cessation, and the role of oral testimony in native title claims. The Commission submitted that the provisions of the Native Title Act which affect these substantive issues, among others section 223(1), must be construed consistently with human rights standards relating to equality before the law, the rights of indigenous minorities to practice and revitalise their culture, and freedom of religion. Further information can be found in the Legal Section at Chapter 3 of this Report.

The High Court has reserved its decision in the case.

Speeches

A selection of speeches, seminars and presentations made by, or on behalf of, Commissioner Jonas during 2001–02 are listed below. Further speeches are available on the Commission's website at www.humanrights.gov.au/speeches/social_justice.

Welfare Poison or Welfare Autonomy, University of New South Wales: Social Policy Conference, Sydney, 6 July 2001.

Indigenous Disadvantage: Australia's Human Rights Crisis, Australian Council of Social Services/Australians for Native Title and Reconciliation Seminar: Practical Reconciliation or Treaty Talks, Canberra, 25 July 2001.

Moving forward – from 'practical reconciliation' to social justice, Moving Forward – Achieving Reparations for the Stolen Generations Conference, Sydney, 14 August 2001.

Evolving Law and Order Policy – A Rights Perspective, Aboriginal and Torres Strait Islander Commission Conference: The Royal Commission into Aboriginal Deaths in Custody Forum – Unfinished Business, Sydney, 2 November 2001.

Capacity Building Workshop for Native Title Representative Bodies, Noosa, 20 November 2001.

International Workshop on Indigenous People and Relationships with the Mining Sector, MMSD Australia, Perth, 4–6 February 2002.

Indigenous Rights Recognition in Public Policy – a domestic perspective, Aboriginal and Torres Strait Islander Commission: National Policy Conference, Canberra, 28 March 2002.

Community Justice, Law and Governance, Reconciliation Australia: Indigenous Governance Conference, Canberra, 4 April 2002.

Opening Speech, Human Rights and Equal Opportunity Commission Corporate Responsibility Forum, Alice Springs, 6 May 2002.

The right to self-determination of Indigenous Peoples – an Australian perspective, The International Centre for Human Rights and Democratic Development: Self-determination workshop, New York, United States, 18 May 2002.

Reflections on the History of Indigenous Peoples' Struggle for Human Rights in Australia – What Role Could A Treaty Play, Treaty – Advancing Reconciliation, Murdoch University, Perth, 27 June 2002.

Chapter 5

Disability Rights



Dr Sev Ozdowski, OAM
Acting Disability Discrimination Commissioner

Acting Disability Discrimination Commissioner

Dr Sev Ozdowski OAM commenced duty as acting Disability Discrimination Commissioner in December 2000 in addition to his duties as Human Rights Commissioner. In February 2002 the Attorney-General announced an extension of this acting position to run until 10 February 2003.

Statement from the Commissioner

This is the 10th year of operation of Australia's federal Disability Discrimination Act. There have been some substantial achievements in that time. In particular, achievements include widespread progress in accessibility of public transport, and increased accessibility of communications and information to people with sensory disabilities.

However, there are also many areas where progress has been slower than might have been hoped. Setting of detailed standards to clarify what access and equality mean is a key feature of the scheme of the legislation but no disability standards under the Disability Discrimination Act are in force at the time of writing. I am confident that this will improve before next year's report, with the Disability Standards for Accessible Public Transport anticipated to be put before the Parliament in the Spring 2002 session. Progress can be seen towards standards on access to premises. At the time of writing it was not clear whether standards on non-discriminatory access and opportunity in education will advance through the relevant Ministerial council.

Even more serious concerns must be noted regarding the effectiveness of the legislation in relation to employment. There is little evidence of the employment situation for people with disabilities having improved significantly since 1992 – even though employment was the original central motivation for introduction of the Disability Discrimination Act. I intend to make this area a major focus for policy examination in the coming year.

It also has to be acknowledged that we have been able to achieve less for some sections of the disability community so far than for others using the

Disability Discrimination Act. In particular, people with intellectual or psychiatric disabilities have not had the same clear benefits as people with physical or sensory disabilities.

The Commission's own policy has been to concentrate first on issues where broad gains can be achieved most readily. These have often been in areas of physical and communications accessibility rather than in more subtle or diffuse forms of discrimination.

There will still be plenty of challenging issues to deal with in disability discrimination, and beyond that in wider issues of human rights and disability, even once (or if) we reach the point where the specific accessibility issues presented by disability have been resolved.

Organisations at local, state, and federal level all have important roles in advancing the human rights of people with a disability. At the international level, the United Nations system this year commenced consideration of development of a binding Convention on disability and human rights. The Commission will be offering its experience and expertise in this process and seeking to facilitate participation by the Australian disability community.

Deputy Disability Discrimination Commissioner – Mr Graeme Innes AM

Mr Graeme Innes is a lawyer and mediator, and has been an equal opportunity practitioner for 20 years. He commenced as Deputy Disability Discrimination Commissioner in September 1999. In this role he assists with the handling of public enquiries, exemption applications and the development of standards under the Disability Discrimination Act. Mr Innes has worked in this field in New South Wales and Western Australia and is currently a part-time member of four Tribunals.

Promotion of awareness, understanding and compliance

Most work in this area has focused on development of accessibility standards in consultation with industry and community representatives as detailed under other headings of this report. The Commissioner and staff also undertake more general consultations with disability organisations and relevant industry bodies to ensure that these organisations are aware of possibilities for constructive use of the legislation and to discuss suggestions for further Commission projects.

A summit for national disability peak organisations was hosted by the Commissioner and opened by the Attorney-General in December 2001. Papers from this summit are available on the Commission's website.

Major speeches given during 2001-02 are published on the Commission's website. A list of significant speaking engagements is provided in this report. Public use of the disability rights area of the website continues to increase with over 400 000 page views being recorded for the Commission's disability rights web pages in this period.

Research and policy

Access to electronic commerce

Following its report in June 2000 on access to electronic commerce and other new service and information technology by people with disabilities and older Australians, the Commission has been assisting government and industry bodies to develop initiatives in this area, including through an Accessible Ecommerce Forum sponsored by the Commission and the Australian Bankers Association.

In April 2002 the Australian Bankers Association launched industry accessibility standards on automatic teller machines, EFTPOS and voice response services and internet banking. The Commission is now discussing plans for implementation of these standards with individual banks.

The Commission has commenced planning for a survey of website accessibility similar to but broader than that conducted regarding Commonwealth government websites for the electronic commerce Inquiry.

Accessible taxis

The Commissioner conducted a Public Inquiry on aspects of wheelchair accessible taxi services during the second half of 2001. Over 90 submissions were received from industry, government and the disability community. Public hearings were held in western Sydney, Melbourne, Newcastle and Perth. A final report was released in March 2002 after consultation on a draft report released in November 2001. The Inquiry found evidence that response times were significantly longer for passengers requiring wheelchair accessible taxis than other passengers making taxi bookings in some parts of Australia. It was not possible to judge conclusively whether numbers of accessible vehicles in taxi fleets overall need to increase to achieve equitable service, because most jurisdictions did not have, or had only very recently established, adequate performance monitoring for accessible taxis. Discussions with transport regulators on improved performance monitoring are continuing.

Television captioning

The Commission has been chairing a forum on captioning of free to air television arising from a number of complaints in this area. As at June 2002 free to air broadcasters jointly have indicated that they will very shortly be tabling a large scale proposal for increases in captioning.

A similar forum on captioning of pay television services has seen constructive discussions between industry and disability community representatives but without the same degree of specific progress to this point.

Education: Access to materials

In response to a number of complaints, the Commissioner convened a national forum on access to tertiary educational materials for blind and vision impaired

students in May 2002. Almost all universities participated, together with disability representatives, publishers, the Copyright Agency, the Attorney-General's Department and the Department of Education Science and Training. Recommendations were agreed on access to copyright materials, provision by publishers of electronic formats, and better coordination of production and provision of materials in accessible formats. These recommendations are available on the Commission's website. A working party involving the Commission, the Australian Vice Chancellors Committee and other interested parties is being formed to carry these issues forward.

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.

The Commission views the temporary exemption mechanism as an important mechanism for managing the process of transition over time from discriminatory and inaccessible systems and environments to inclusive, accessible non-discriminatory systems and environments. Exemption processes are open to public participation, through publication online of the Commission's notice of inquiry and details or text of applications and also publication of submissions from interested parties.

A temporary exemption for a period of six months was granted to Queensland Rail in February 2002 regarding installation of tactile ground surface indicators to permit clarification of safety issues and other issues affecting design and installation of the indicators. The exemption was designed to facilitate discussions between relevant interested and expert parties. These discussions were close to successful conclusion as at June 2002.

An application from Westbus Ltd for temporary exemption regarding carriage on buses of unrestrained and unoccupied wheelchairs (the passenger having transferred to a fixed seat) was under consideration as at June 2002. This exemption application seeks clarification of relevant safety issues.

Action Plans under the Disability Discrimination Act

The Disability Discrimination Act provides for service providers to lodge voluntary Disability Action Plans with the Commission. An Action Plan is not a complete defence against complaints (except in those cases where an exemption is applied for and granted on the basis of implementation of an Action Plan) but it can be taken into account in dealing with a complaint. The Commission views Action Plans as a good means for organisations to structure and gain credit for their own compliance with the legislation. There has been particularly strong take-up of Action Plans from local government and from universities. The number of plans from major businesses remains small but does include two of the major banks and the two

major telecommunications providers. Several major businesses are expected to lodge Action Plans early in 2002-03.

As at 30 June 2002, 228 plans were registered with the Commission (increased from 211 in June 2001). The plans comprise 27 business enterprises, 23 non-government organisations, 30 Commonwealth government departments, 32 State and Territory government departments, 88 local government organisations and 38 education providers. The register of Action Plans, and those plans provided electronically to the Commission (183 of the total), are available through the Commission's website. A number of organisations have also submitted revised plans or implementation reports during 2001-02.

Legislative reform and assessment

Disability Standards

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

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

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 has continued to work with the Australian Building Codes Board, and industry, community and government members of the Building Access Policy Committee established by the Board, towards 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. This work has proved more complex than was earlier hoped but a draft standard is expected to be able to be published in late 2002 with a view to adoption in 2003.

Education

A taskforce of the Ministerial Council on Employment, Education, Training and Youth Affairs has developed draft disability standards on education. The Commission has been providing advice to participants in this process. As at June 2002 the draft

standards were before the Australian Education Senior Officials Committee which was close to finalising a recommendation to the ministerial council on adoption of the standards, with only a small number of issues regarding the relationship of the draft standards to existing obligations to be clarified.

Employment

Development of disability standards on employment did not advance significantly during 2001-02, with standards development efforts being concentrated on the areas of access to premises, public transport and education.

Public transport

The Commission welcomed the passage in June 2002 of the Disability Discrimination Amendment Bill, providing power for the Commission to grant exemptions from the Disability Standards for Accessible Public Transport in the same way that it is able to grant exemptions from the existing non-discrimination provisions of the Disability Discrimination Act. Agreement previously given by the Australian Transport Council to authorisation of the standards was contingent on this provision for regulatory flexibility through exemptions being made. The standards are now expected to be placed before the Parliament in the Spring 2002 session.

Speeches

A selection of speeches, seminars and presentations made by, or on behalf of, Commissioner Ozdowski during 2001-02 are listed below. Further speeches are available on the Commission's website at www.humanrights.gov.au/disability_rights/speeches/speeches.html.

Launch of Westpac Action Plan, Westpac, Sydney, 24 July 2001.

An ABC for all Australians: Launch of Disability Awareness Resources, ABC, Sydney, 9 August 2001.

The Human Rights of Mentally Ill People: The Commission Inquiry and After, Mental Health, Criminal Justice and Corrections Conference, Sydney, 19 October 2001.

Acting Locally against Disability Discrimination, Barossa Council, Tanunda, South Australia, 29 October 2001.

Equal Employment Opportunity for People with Disabilities: How to Move from the Theoretical to the Actual, Equal Opportunity Practitioners in Higher Education Australasia, Canberra, 30 November 2001.

International Day for People with Disabilities 2001, Alice Springs, 3 December 2001.

Opening of the Commission Summit for Peak Disability Organisations, Sydney, 4 December 2001.

Presentation of Certificate of Recognition to National Australia Bank, Melbourne, 19 February 2002.

Disability Discrimination legislation in Australia from an International Human Rights Perspective: History, Achievements and Prospects, University of New South Wales, Sydney, 8 April 2002.

Launch of Banking Industry Accessibility Standards, Human Rights and Equal Opportunity Commission, Sydney, 15 April 2002.

Launch of Disparity: A Journal of Policy, Practice and Argument, ACROD Dinner, Australian War Memorial, Canberra, 22 May 2002.

The Deputy Disability Discrimination Commissioner gave around 35 speeches during 2001–02 including: access to premises in every capital city in February 2002; speeches to internet conferences on access to the web; law and other university courses on the Disability Discrimination Act and its implications; presentations to state government department heads on Action Plans; and conferences and workshops on the implications of the Disability Discrimination Act.

Chapter 6

Human Rights



Dr Sev Ozdowski, OAM
Human Rights Commissioner

Human Rights Commissioner

Dr Sev Ozdowski was appointed Human Rights Commissioner in December 2000 for a five year term. He is also the acting Disability Discrimination Commissioner.

Statement from the Commissioner

The year under review has been dominated from a human rights perspective by the issue of asylum seekers. As a result and because of my work with the National Inquiry into Children in Immigration Detention I have given much thought to the multitude of issues involved. From this process some fundamental principles have evolved which I would like to present, as a way of furthering informed discussion on the topic. In this manner I would hope that, in time, sufficient Australians will think about this subject deeply enough to encourage a significant policy shift.

To recapitulate, Australia maintains a mandatory detention policy which requires that all those who come to our shores without authorisation are detained in immigration centres on arrival. This is until they are either granted visas or returned to their country of origin or in the case of people who land on the excised territories of any of the Christmas, Cocos or Cartier Islands or Ashmore Reef, removed to Papua New Guinea or Nauru under the colloquially named 'Pacific Solution'. Most of these people see themselves as refugees and are seeking asylum in Australia.

A substantial proportion of them will subsequently satisfy Australia's refugee assessment criteria thereby engaging our protection obligations as behoves a signatory to the 1951 Convention and 1967 Protocol relating to the Status of Refugees.

The first point to be made about this situation is that asylum seekers who arrive in this unauthorised fashion have not committed any crime under Australian domestic law. The second point is that under our Migration Act, asylum seekers who arrive 'unauthorised' must be detained pending resolution of their refugee status.

An initial period of mandatory detention, thereby enabling rudimentary

health, identity/security and refugee status backgrounding to occur, is reasonable. In this respect the Swedish model – which similarly imposes mandatory detention on all unauthorised arrivals, but completes first phase processing in a matter of weeks if not days, followed by supervised release into the general community pending final determination of refugee status – is acceptable, in my view.

In contrast, the current Australian law requires verification and adjudication finalisation of all aspects of an asylum seeker's application within detention. This is a process that takes months on average and in some cases years.

The next sticking point is the virtual elimination of judicial oversight by Australian judges, from this massive exercise in administrative decision making. Again the Swedish model seems to have developed a more realistic appreciation of the perils of unrestrained administrative activity, by scheduling windows of compulsory judicial review into their refugee determination system. In other words, at periodic intervals the authorities must present the applicant refugee before a judge if they wish to continue with an assessment regime that is outside the previously mandated parameters.

Again, by way of contrast, Australia, with the exception of the constitutional protections of the High Court of Australia, has now successfully enacted a suite of laws which ensures that just about every aspect of a refugee determination decision is immune from judicial oversight as the applicant travels along the assessment line. The lessons from history teach us that administrative decision making on a large scale, without the normal rights of judicial appeal, is an explosive cocktail. It may also undermine our civil liberties which underpin our democracy.

Of parallel concern is the fact that this unprecedented (in Australian terms anyway) diminution of an individual's rights was conducted by the legislature without any reference to a statutory Bill of Rights, thereby obscuring the extent to which the forfeiture was occurring. It is very difficult to make a judgement on what is being given up, if you have nothing by which to measure it.

Much of the current rhetoric justifying this assessment regime is coupled with the catchcry of 'border protection'. Australia's sovereign right to decide who will enter and ultimately reside in this country is not disputed; but what has that issue got to do with the need for long term mandatory detention? If the answer is deterrence of other aspiring asylum seekers, egged on by unscrupulous 'people smugglers', then clearly there should be doubts about the long term sustainability of the policy and its high moral cost.

Camp style detention effectively began in the early 90s and one would expect the cumulative affect of its operation to have resulted in a dramatic reduction of boat people towards the end of the decade. This did not happen. Admittedly there is a current lull in numbers, but it would be a brave person who predicts this heralds the end of the storm, especially in light of the many complex social interactions at work here. Certainly the Government's decision to construct a \$230 million, 1 200 person permanent detention camp, in addition to the existing facilities on Christmas Island, implies that someone else shares this scepticism.

In any event, an issue of proportionality arises here. Contemporary western philosophical thought has long accepted that the means of deterrence must be proportional to the moral price it exacts. Thus it would be unacceptable to punish habitual pickpockets by cutting off their right hand, as was the case in medieval Christian times, because the deterrence value is outweighed by the moral repugnance of the act.

Similarly, the proclaimed efficacy of the immigration detention policy must be measured against its high moral cost.

Finally, we come to the vexing subject of adherence to United Nations inspired human rights treaties and conventions. Due to the necessarily legalistic nature of these commitments, proponents of any particular point of view can make a strong legal argument in support of their case. Accordingly, where the Commission might find that the Government has breached a particular human rights convention, a battalion of lawyers can produce arguments to the contrary.

The fact is Australia has much to gain from adhering to not just the black letter law of our international treaty commitments, but also the spirit that underpins them. The apologists for Australia's current, hard line asylum seeker stance, make much of the fact that the Government's actions are lawful by reference to our domestic laws. Leaving aside the fact that South Africa's abhorrent apartheid laws were domestically lawful while simultaneously offending a plethora of international human rights conventions, one would hope that for the sake of Australia's long term future a little common sense prevails here.

Consider this: in international terms Australia is a very small player indeed and so our economic lifeblood is almost totally regulated by the extent to which our trading partners adhere to the letter and spirit of a whole raft of international trade agreements. Therefore we can't afford to cherry pick between those treaties we want observed and those we would rather ignore. Treaties implying moral obligations towards refugees, using this criterion, become just as important for our long term future as those which help secure our economic and trading interests.

As Human Rights Commissioner, I have previously called for the total closure of Australia's remote site detention centres. My detailed inspections of them have, over time, convinced me that they are un-Australian. I happen to believe that operationally they also breach many human rights conventions, but as previously indicated, this can be something of a dry argument.

Australia prides itself, justifiably, on being the land of the fair go, where a spirit of mateship enabled us to flourish in a difficult and unforgiving physical environment. It is nonsense to pretend that the integrity of our borders is threatened by the small, sad, flotilla of leaky boats with their desperately fragile cargo of asylum seekers. We can maintain a system of visas and identity, security and health checks without stomping all over our fair go heritage.

The current policy of long term mandatory detention in containment camps is exacting an extremely high moral toll; future generations of Australians will undoubtedly question whether that price was worth paying. Therefore let us, as a

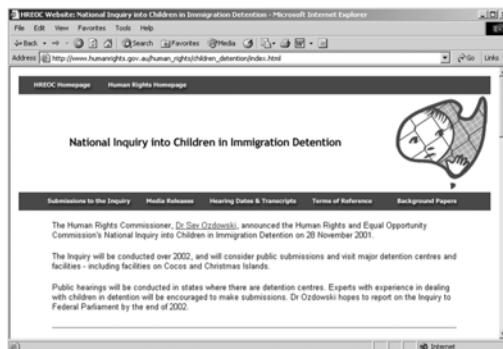
community, harness all the money, ingenuity and effort expended on the current detention system into a new way, a way which will achieve the appropriate policy objectives while simultaneously drawing on the rich Australian heritage of compassion and decency.

If we can achieve this we will, almost subconsciously, be fulfilling both the letter and the éspirit of our human rights commitments.

In order to reach this goal it will be necessary to convince a majority of our fellow Australians, who overwhelmingly support the current Government policy, that change is essential. In the year ahead I will be working assiduously to achieve that outcome.

National Inquiries

National Inquiry into Children in Immigration Detention



This Inquiry was announced by the Commissioner on 28 November 2001, and arose in part from the Commissioner's visits to immigration detention centres and from concerns raised by a number of individuals and organisations about the conditions of centres, the length of detention, and changes in legislation which appeared to discriminate against refugees on the basis of religious and racial

background. The main objectives are to determine if there have been breaches of international conventions, particularly the *Convention on the Rights of the Child* arising from legislation, policies and practices relating to immigration detention.

It is hoped that a major outcome will be an increase in the broader community's awareness that human rights issues are an integral part of everyday life, and are of relevance to everyone.

The Commissioner is assisted in this Inquiry by two Assistant Commissioners, Mrs Robin Sullivan, Commissioner for Children and Young People, Queensland, and Professor Trang Thomas, Professor of Psychology, Royal Melbourne Institute of Technology.

Directions

The Commissioner issued directions concerning anonymity and confidentiality in respect of written submissions, information given in public hearings and the identity of individuals. The main objective of these directions were to protect individuals who gave evidence, especially children, and those who might otherwise have been named in submissions or public evidence as having acted against refugees.

Methodology

The Inquiry adopted a multi-pronged methodology to secure access to, and test, relevant information. As well as advertisements in the major papers and ethnic press, information about the Inquiry was sent to community based organisations and Migrant Resource Centres, and special posters were sent to Immigration Detention Centres and Immigration Reception and Processing Centres. The original closing date for receipt of submissions was 15 March 2002, which was extended to 3 May 2002. As at the end of June 2002, 249 submissions had been received. The Inquiry also intends to carry out a thorough examination of relevant DIMIA/ACM documents.

Submissions

Submissions were provided in several formats, including tapes, drawings, poetry as well as detailed commentary by organisations representing detainees, human rights and legal bodies, members of the public, religious organisations, and a range of non-government policy and service providing groups. Phone calls and letters from detention centres were also accepted, and information provided in these was tested during the Commission's public and in camera hearings.

Most submissions will be placed on the Commission's website at www.humanrights.gov.au/human_rights/children_detention/submissions/. Some have been amended to delete identifying names or situations, and others will need to remain confidential to protect individuals and families.

Hearings

Public hearings were held in Melbourne and Perth on 30-31 May and 10 June 2002 respectively. Further public hearings were planned for Adelaide, Sydney and Brisbane, on 1-2 July, 15-17 July, and 5 August 2002, with additional hearing dates to take evidence from the Department of Immigration & Multicultural & Indigenous Affairs (DIMIA) and Australasian Correctional Management (ACM), the immigration detention centre service provider.

Transcripts of hearings are placed on the Commission's website at www.humanrights.gov.au/human_rights/children_detention/dates.html to facilitate access to this information.

In camera hearings are also being held to take information from a range of individuals and organisations.

Visits to Immigration Detention Centres and Immigration Reception and Processing Centres

In most cases, such hearings preceded or were followed by visits to Immigration Detention Centres and Immigration Reception and Processing Centres, where the Commissioner and Assistant Commissioners had the opportunity to discuss issues and concerns with detainees and ACM and DIMIA staff, and to inspect premises. Where possible, discussions with children, including young adults, featured in these visits, given both the nature of the Inquiry and particular concerns about mental health care and education services for children in detention.

In the case of Woomera Immigration Reception and Processing Centre, the Inquiry visited that location in both January and June 2002. The material collected over a five day period in January which was the subject of a press release at that time will be incorporated into the report along with data from the June visit.

Focus groups and other meetings in the community

Many former detainees wished to provide information to the Inquiry but were hesitant to do so. Some concerns related to a belief that future visas would be compromised if adverse statements were made. Other people were concerned about the severe stress and trauma experienced by many detainees which prevented them from being able to discuss issues in a more formal setting.

A large number of structured meetings and discussions were held with children of all ages and adults, the majority of whom had been in detention in remote centres. A range of questions was asked of participants, with the same questions being included in all discussions to obtain coverage of key issues. These meetings were held in several venues, including private homes. The Commissioner believes that children should be free to speak, to provide their impressions and to talk through issues. At the same time, he was aware that children should not be exposed to unnecessary publicity and that discussions in a public and more formal setting could result in additional trauma. Consequently, discussions with children were both informal and confidential.

Of particular concern was the need to communicate with unaccompanied minors as these lacked parental protection and were often placed in inappropriate accommodation in detention centres; in addition, they had been reported to experience problems when living in the community. Several focus groups were also held with families, the majority of which had been living as a family group within detention centres, and were now living in the community on Temporary Protection Visas.

De-identified summaries of information provided from all meetings will be placed on the Commission's website. Information collected, and allegations made, in discussions will also be tested in hearings and in case studies.

A total of 25 meetings were held during 2001-02.

Report

A draft report is expected to be completed in late 2002.

Monitoring and adhering to human rights

Visits to Immigration Detention Facilities

The Commissioner has undertaken to inspect periodically immigration detention facilities and to evaluate the conditions and treatment of detainees. This builds on the Commission's work on immigration detention over many years.

The visits conducted during 2001-02 continued to reveal a number of significant human rights concerns. Following the visits the Commissioner raised particular issues concerning each facility directly with DIMIA and in some cases corresponded directly with the Minister for Immigration. Additionally pursuant to sections 11(1)(j) and (k) of the Human Rights and Equal Opportunity Commission Act, the Commissioner transmitted a report on these visits to the Attorney-General for parliamentary tabling. In that report not all of the issues raised in each of the individual facilities over this period were discussed. Rather, major recurring themes which require more systematic federal government action have been highlighted. Outlined below is a brief summary of those themes.

During 2001-02 the Commissioner visited the following facilities:

20-21 August 2001	Villawood Immigration Detention Centre
21-23 January 2002	Phosphate Hill Immigration Reception Centre, Christmas Island
25-26 January 2002	Cocos (Keeling) Islands Immigration Reception Centre.

Major issues of concern

During the visits detainees raised a number of concerns ranging from minor complaints about daily conditions through to perceived serious injustices, including mental health issues. Some of the issues raised were specific to a particular facility. However, many of the issues are common, in greater or lesser degree, to all the immigration detention facilities managed by ACM and reflect systemic problems which need to be addressed.

It has become clear during the course of the visits that many of the more serious issues are closely interrelated. In particular, the effect of inferior conditions or perceived ill treatment of detainees in detention facilities is significantly compounded by prolonged periods in detention. Similarly, lack of information about the processing of visa applications becomes more and more intolerable as periods in detention lengthen. Not surprisingly, this has a marked effect on the mental well being of detainees.

Lengths of time in detention

Prolonged periods of time in detention are one of the key problems identified in the immigration detention facilities visited. From discussions with detainees and ACM staff, it is clear that while any detention creates strain, prolonged detention increases exponentially the stress and mental health difficulties experienced by detainees. Prolonged detention may also breach international law standards.

During the visits, DIMIA provides the Commissioner with statistics as to the individual detainee population at the time, in addition to the length of time in detention of each detainee. In 2001-02, DIMIA advised that the average duration of detention had reduced considerably from the previous year. According to DIMIA, during 2001-02 the average length of time spent in detention by people who arrived by boat was 155 days (approximately five and a half months).

Judicial review of detention

In Australia, judicial review of immigration detention is very limited as the detention of unauthorised arrivals is lawful under the *Migration Act 1958*. Asylum seekers are not able to challenge their detention on the basis that there has been a violation of their human rights under any international instrument to which Australia is a party including the *International Covenant on Civil and Political Rights* or the *Convention on the Rights of the Child*. Without this possibility, there is little to pressure government to speed up processing times, to allow for either the release of a detainee or safe removal to a third country.

Access to legal assistance

During the Commissioner's visits to detention facilities, a number of detainees complained that they had not been fully informed of their status and the progress of their asylum applications, including their right to access legal assistance. Many detainees interviewed indicated they had never been informed of the reason why they were in detention.

Access to general information and contact with the outside world

The lack of access to information concerning application processing is mirrored in a general lack of access to information from the outside world for many of those in immigration detention facilities. Nothing in their detention should prevent detainees from exercising rights to communicate with their families, communities, legal representatives or relevant refugee and human rights organisations. In particular, detainees should be allowed to inform family members, whether in Australia or overseas, of their safe arrival in Australia, within a short period of arrival. Nor should detention prevent access to newspapers, magazines and television news reports.

Education and recreation

The provision of materials and facilities for educational and recreational purposes is not only consistent with international human rights standards for detainees, but is also a sensible approach to the management of detention facilities. Meaningful activities may alleviate stress particularly for long term detainees. Considering that a large number of detainees on the mainland, at least, would be likely to be released into the community on Temporary Protection Visas, it is essential that they be facilitated to use their time as constructively as possible.

The Commissioner noted during the visits that there were minimal educational activities available to adults, consisting mostly of English lessons. Only in some facilities could detainees use a computer room and attend computer lessons.

Accommodation

The Commissioner noted that immigration detention facilities are, in general, not equipped for long term detention. This is reflected in dormitory and demountable style accommodation arrangements, paucity of educational and recreational programs and a general atmosphere of uncertainty and insecurity. The contingency

nature of these facilities becomes even more apparent when the numbers of detainees increase at particular facilities.

Health care

All facilities visited had certain basic health care services available. All services had on site nursing staff. All services on the mainland facilities, except Perth, had General Practitioners on staff, although in some facilities this was on a part-time or rotational basis. Reports about the accessibility and quality of health care in the facilities were mixed. Some detainees praised the service they received, especially for the more serious cases which required transfer to hospital. On the other hand, a common and persistent complaint among many detainees was the feeling that their illnesses were not being treated seriously.

Mental health issues

One of the most important and disturbing issues in all detention facilities is the prevalence of depression and stress among detainees. In all facilities visited, detainees had experienced or were experiencing mental distress themselves or observed mental distress among others.

Children's needs in detention

The effects of detention on children are of major concern. The situation in detention is particularly inappropriate for children because of the lack of schooling and exposure to violence and psychological stress.

Security and discipline

Security and discipline in detention facilities is another major area of concern. A recent phenomenon appears to be the use of isolation detention for behaviour management in several detention facilities.

Conclusion

Australia is under an obligation to ensure the basic human rights of all those who come within its jurisdiction. This includes all people who arrive on our shores, whether unauthorised or authorised, adult or child.

We have a particular responsibility to ensure that the human rights of people who have been deprived of their liberty are safeguarded. They are especially vulnerable as they are almost completely dependent on the care and protection of DIMIA and ACM. Hence authorities responsible for detention must ensure minimum human rights standards and humane detention.

Some of the most essential of these include the right not to be arbitrarily detained, to have access to information and legal assistance, the right to humane treatment and the rights of children to special protection. If detainees are deprived of their basic rights, a situation of distress, anxiety and grievance is created, which all too often results in the protests and violence we have seen over the previous year.

Education and promotion

An Australian Bill of Rights

In the course of the last year the Commissioner has presented the case for the introduction of a legislated Bill of Rights to three major forums. One of these forums was a nationally televised address to the National Press Club. Also, the Commissioner has used general speech opportunities to broaden community understanding on the issue.

Firstly, the Commissioner believes an Australian Citizens' Charter (or Bill of Rights) would assist Australians by replacing some of the institutional protections that previously existed but have now arguably diminished. Governments of all persuasions are mainly interested in basic service provision such as health, education, defence and law and order; trade union membership is low and struggling to remain relevant; parliament is inhibited by the discipline of voting along party lines; courts cannot imply individual rights out of the common law without stretching the legal framework almost to breaking point; and the media's defence of the individual, while it does occur, is too idiosyncratic to be of ongoing assistance. A Bill of Rights would encourage us to react more proactively to the global changes that are engulfing us all.

Secondly, if that was not a strong enough reason prior to September 11, then the proposed curtailing of personal freedoms explicit in the Government's war on terrorism and the consequential package of laws enacted by it, makes it essential.

It is difficult to measure what we are being asked to give up when the Government proposes legislation, that either explicitly or implicitly advocates change to the way we are allowed, as individuals or groups, to conduct ourselves, when there is currently no checklist of mandated civil rights (other than the very limited ones present in the Australian Constitution).

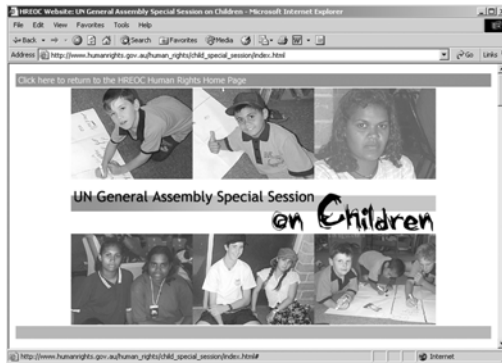
And thirdly, the Commissioner believes the maximum degree of public support for a Bill of Rights must be achieved; modern democratic governments of all political persuasions are very focus group driven. This is now the *sine qua non* of any successful public campaign, no matter how overwhelming the logic, if it requires federal legislation for its implementation. In line with this, the Commissioner will therefore continue to use all appropriate opportunities to present the case for a Bill of Rights.

So, what kind of Charter should be developed? In the Commissioner's view it must not be too ambitious. It should be limited to basic freedoms (freedom from arbitrary arrest or detention, right to a fair trial or due process, the freedom of association, equality of all persons before the law) and should be statutory not constitutional. It must reflect Australian values and traditions.

However, before this can happen there must be a national debate. There must be discussion on what rights to protect and how it should be done; in other words development of a sufficient groundswell of public opinion to encourage the Australian Parliament to establish those guidelines, or Citizens' Charter, for the courts to interpret. In a democracy like Australia's, with its Westminster traditions, and the chequered history of this subject, it is undoubtedly the only model likely to achieve success.

International activities

United Nations Special Session on Children



The principal purpose of the Commissioner's visit to the USA was his attendance at the United Nations Special Session on Children in New York. In preparation for this attendance, the Commissioner consulted children and youth non-government organisations and Children's Commissioners in advance of the Special Session.

He held consultations on the Special Session in Sydney, Brisbane, Melbourne, Hobart, Adelaide and Canberra. He also had discussions in Broome about children with disabilities and met with members of UNICEF Australia's Taskforce on Child Rights.

The Commissioner attended the Special Session as a member of the Australian Government delegation and participated in its work, including representing the leader of the delegation, the Minister for Children and Youth Affairs at the Gates Foundation Concert iTurn This World Around ñ Leadership for Childrenñ on 9 May 2002.

The Minister's statement delivered on behalf of Australia to the 27th Special Session of the General Assembly on Children mentioned the work of the Commission.

In addition, during the visit to New York, the Commissioner conducted a number of consultations with Australian and other non-government organisations present at the Session and with UNICEF officials.

First Global Meeting of Independent Human Rights Institutions for Children

The Commissioner attended the First Global Meeting of Independent Human Rights Institutions for Children on 7 May 2002, prior to the United Nations Special Session.

Seventeen countries were represented including Australia, Belgium, Bolivia, Canada, Columbia, Denmark, France, Iceland, Macedonia, New Zealand, Nicaragua, Northern Ireland, Norway, Poland, South Africa, Spain and Sweden. Three observers and relevant UNICEF office holders participated in the meeting. Australia was represented by the Human Rights Commissioner. The Tasmanian Commissioner for Children participated as an invited guest of UNICEF.

During the meeting, the institutions shared information on their strategies, activities and challenges to their work. The Commissioner was invited to give a report on Australia's achievements regarding the rights of children and to outline the functions

and structure of the Commission. He also spoke about the role of the Asia Pacific Forum.

The Meeting agreed to:

- ï urge Governments and the United Nations system to mainstream and give a priority to children's rights and to develop appropriate mechanisms, including legislation to advance children's rights
- ï support development of children's independent human rights institutions in every State
- ï call on the United Nations system to give formal recognition to independent human rights institutions to enable them to be active participants in all UN proceedings
- ï develop a list of long term follow-up and commitments, including a commitment to establish a global network of Independent Human Rights Institutions for Children and the organisation of regular meetings and exchanges of information.

Inspections of the INS detention centres

In Los Angeles the Commissioner was briefed by US Immigration and Naturalisation Service (INS) officials and inspected the San Pedro Service Processing Center and the Los Pardinós Juvenile Hall and Juvenile Court on 26 April 2002.

The San Pedro Processing Center holds about 500 criminal deportees and asylum seekers. The Commissioner was briefed on US asylum law and procedures and inspected female and male dormitories, medical unit, recreation yards, reading rooms, law library, immigration court rooms and other facilities.

The Los Pardinós Juvenile Hall holds some 400-600 juvenile offenders over 12 years old and a limited number of children in immigration detention. During the visit there were only 12 unaccompanied minors in immigration detention. Children are usually held for one to two weeks in detention, although there was recently one case where a child spent three months in detention. Immigration detainees are held in separate accommodation and attend school seven hours per day. Both facilities were inspected by the Commissioner.

Meetings with US Government Officials in Washington DC

During the Commissioner's visit to Washington DC a number of meetings were held with officials from the Departments of State and of Justice. The meetings in the Department of Justice involved separate meetings with Immigration and Naturalisation Service officials and with Civil Rights Division officials.

Discussions included issues such as a new immigration bill, including provisions for unaccompanied minors (the Unaccompanied Alien Child Protection Act), current immigration practices and procedures, UNHCR regular inspections of the INS detention centres, settlement services available for refugees, affirmative action, the new Presidential Freedom Initiative, e-commerce for people with visual impairment and application of new technologies for voting by vision impaired and others.

The meetings in the Department of State involved discussions with the Principal Deputy Assistant Secretary, Bureau of Population, Refugees and Migration and the Assistant Secretary for Human Rights. This discussion focussed on US policies toward off shore refugees and the fact that the program is being revised to become more global and give more focus to Africa. Last year the US took in some 70 000 refugees (key groups included Vietnamese and Jews from the former Soviet Union).

Meeting with the US Commission on Civil Rights

The Commissioner met with the Staff Director of the US Commission on Civil Rights. Issues discussed included the mandate and structure of the Commission, current investigations, including their Inquiry into pollution associated with location of industrial plants in poorer areas, aspects of civil liberties in connection with US anti-terrorist measures, and handling of asylum seekers by the INS, amongst other things.

Speeches

A selection of speeches, seminars and presentations made by, or on behalf of, Commissioner Ozdowski during 2001-02 are listed below. Further speeches are available on the Commission's website at www.humanrights.gov.au/speeches/human_rights/.

Economic, social and cultural rights in Australia – the roles of the Human Rights and Equal Opportunity Commission and the corporate sector, Asia Pacific Forum meeting, Panel presentation, Hong Kong, 11 July 2001.

Building an Australia Fit for Children, Keynote presentation, Eighth National Conference of the Association for the Welfare of Child Health – Children on the margin: addressing the health care needs of marginalised children and young people, 11 October 2001.

Issues around racism in Australia, National Ethnic and Multicultural Broadcasters Council Conference, Melbourne, 9 November 2001.

Addressing Age Discrimination: The Need for Legislation, Council on the Ageing National Congress, Canberra, 13 November 2001.

Human Rights in Contemporary Australia, United Nations Association of Australia – Human Rights Seminar: –Human Rights from the Perspective of Individual, Collective and Corporate Responsibilities, Tasmania, 17 November 2001.

Discrimination, a Stocktake and Quo Vadis?, Equal Opportunity Practitioners in Higher Education Australasia Conference, Canberra, 30 November 2001.

Protection of Human Rights in Australia, Second National Conference on Reconciliation, Multiculturalism, Immigration and Human Rights, Geelong, 1 December 2001.

Detention of Asylum Seekers: Key Themes, International Conference on the Refugee Convention, Sydney, 7 December 2001.

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Human Rights ñ A Challenge for Australia, National Press Club, Canberra, 6 February 2002.

Asylum Seekers ñ Human Rights Issues, Governorís Leadership Foundation Seminar, Keynote presentation, Adelaide, 9 April 2002.

Monitoring Implementation of the Convention on the Rights of the Child: challenges for Australia, PLAN International Australia conference, Keynote presentation, Melbourne, 17 April 2002.

The Content of an Australian Bill of Rights, 2002 Bill of Rights Conference, Sydney, 21 June 2002.

Chapter 7

Race Discrimination



Dr William Jonas, AM
Acting Race Discrimination Commissioner

Acting Race Discrimination Commissioner

Dr William Jonas commenced duty as acting Race Discrimination Commissioner in September 1999 in addition to his duties as Aboriginal and Torres Strait Islander Social Justice Commissioner.

Statement from the Commissioner

In my capacity as acting Race Discrimination Commissioner I was engaged for much of 2001 in preparing for and participating in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance which was held in Durban, South Africa, during late August and early September.

Combating the diverse and complex contemporary manifestations of racism and related intolerance is a challenging task. The difficulties were certainly reflected in the negotiation process for the World Conference as well as in the debates on the Conference outcomes at the Economic and Social Council and the General Assembly that followed.

While the World Conference was plagued by some well publicised problems, it did provide encouragement and direction for those engaged in the continuing battle against racism. Particularly pleasing was the way in which both the Conference and the Australian Government acknowledged the important role of national human rights institutions in this battle.

For the first time at such a World Conference the national institutions were allocated their own space at the plenary venue and those wishing to speak were granted sufficient time for meaningful interventions. A collective statement prepared by participating national institutions was one of the first universally accepted statements of the Conference. It was read on our behalf in the plenary session by the then President of the South African Human Rights Commission and was incorporated into the Conference documents.

The Australian Government also recognised the significance of national institutions and the importance of protecting their independence from government when Senator the Hon Dr Kay Paterson said in her statement on behalf of the nation:

Ö Australia would like to see the conference recognise that a positive vision for racial and cultural diversity needs to be backed by effective racial discrimination legislation, robust and independent national human rights institutions, and innovative human rights education to raise awareness of individual and collective rights.

The important role of national human rights institutions in education and public awareness-raising activities to combat racism was particularly emphasised. The Committee on the Elimination of Racial Discrimination has also recently recognised the importance of this role for national human rights institutions in its latest General Recommendation, Number 28, on follow-up to the World Conference.

Among the activities which I conducted in preparation for the Conference were 28 community consultations on racism throughout the country. Unfortunately, these consultations led me to the conclusion that racial discrimination is still widespread in Australia and often institutional in nature. Every community consultation identified Indigenous people as most affected by racism and, as one Indigenous woman sadly told us:

We just live with racism every day. It is like getting up, washing your face and having a cup of tea.

A highly successful national conference on racism titled 'Beyond tolerance', which I convened in Sydney in March 2002 as a follow-up to the World Conference and to the 2001 national consultations, came to similar conclusions. From all of these activities it has become clear that strategies to combat racism need to be highly calibrated to the subtleties of institutionalised and systemic discrimination and multi-faceted to confront racism head on in each sector, even each locality, where it is found.

Key opinion leaders must be encouraged to act responsibly and, if necessary, required to act in conformity with the law. The World Conference Against Racism recognised, for example, 'that the media should represent the diversity of a multicultural society and play a role in fighting racism'. While the Conference noted 'with regret' that 'certain media, by promoting false images and negative stereotypes of vulnerable individuals or groups of individuals, particularly of migrants and refugees, have contributed to the spread of xenophobic and racist sentiments among the public and in some cases have encouraged violence by racist individuals and groups', it also welcomed the positive contribution which could be made by the media and by new information and communications technologies such as the internet, drawing attention to its potential to create educational and awareness raising networks against racism.

Participants in our national consultations and the governments deliberating at the World Conference Against Racism concurred in calling for a media code of conduct with effective and transparent monitoring, complaint handling and enforcement mechanisms with participation by representatives from the general community.

Education, new media and the minorities most vulnerable to racism are the three principal focuses of my anti-racism work in the coming year.

I will continue to disseminate factual, accurate and easy to understand material about human rights and racism. One of the most successful educational projects that the Commission has undertaken in recent years is a booklet aimed largely at the media, school students and the community titled *Face the Facts*. This booklet, currently in its second edition, illustrates a number of common misconceptions relating to Indigenous people, migrants and refugees and provides factual information which shows how often the public perception or understanding is quite different from the actual situation.

I plan to consult experts in racial vilification and internet regulation on measures to improve the internet's compliance with Australian law on racial vilification and develop online anti-racism education modules for teachers and students. I am also working with Australian Arabic communities on strategies to enhance their security and to protect their members from racist violence provoked by events both at home and overseas, particularly in the Middle East.

Education and promotion

World Conference Against Racism

The United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), held in Durban, South Africa from 31 August to 8 September 2001, was the focus for the major activities of the Race Discrimination Commissioner in the past year.

Consultations with civil society in preparation for WCAR included seeking submissions and conducting community consultations. The consultations were supported by a discussion paper, *Combating racism in Australia*, of which more than 2 800 copies were distributed.

Australian activities

The Commission received 42 written submissions during the WCAR consultations from individuals and organisations in every state and territory in Australia, including the Broome Diocesan Office of Justice, Ecology and Peace, Western Australian Equal Opportunity Commission, Muslim Women's Welfare Association (Australian Capital Territory), Amnesty International Australia, Australian Macedonian Human Rights Committee, Morisset High School (New South Wales), National Ethnic Disability Alliance and Multicultural Affairs Queensland. Extracts from selected submissions were reproduced on the Commission's website in a moderated bulletin board at www.humanrights.gov.au/worldconference/wcar_bulletin.html.

Public meetings were convened in July 2001 in Hobart, Melbourne, Cairns, Brisbane, Parramatta, Orange, Newcastle and Canberra. Also in July, youth forums were convened in Perth and Sydney, a Victorian Indigenous community consultation was convened in Melbourne and the Commission's Sex Discrimination Unit held immigrant and refugee women's focus groups in Sydney and Indigenous women's focus groups in north west New South Wales.

Records of all consultations can be viewed on the Commission's website at www.humanrights.gov.au/racial_discrimination/national_consultations/regional.html.

It's our right to respect and equality: A Summary of Consultations with Civil Society on Racism in Australia was launched on 3 December 2001 and attracted considerable interest. Three thousand copies were distributed. Every Federal, state and territory parliamentarian received a copy. On its release, the Commissioner commented:

Everywhere we went, from the capital cities to rural and regional areas, I was struck by the sense of marginalisation felt by Indigenous people and people from non-English speaking backgrounds who do not fit the stereotype of the typical Australian. It is clear that racism is still alive and well in Australian society. People spoke of the covert and systemic racism they experience in employment, education and the delivery of government services.

Among the 29 recommendations on which a substantial consensus emerged were the following:

- i the need to build strategic partnerships between governments, the private sector and community representatives to develop practical anti-racism programs
- ii a media code of conduct to eliminate racial vilification in all media
- iii compulsory school subjects to recognise Indigenous history, the impact of colonisation and the contribution of migrants to the nation's development
- iv a formal Commonwealth government apology to Indigenous peoples.

The Commission's civil society consultations were made possible by a grant of \$US 26 000 from the Office of the United Nations High Commissioner for Human Rights.

International WCAR meetings

In addition to the national activities, the Commissioner also participated at two of the three Preparatory Committee meetings in Geneva. The third and last of these was held 31 July to 10 August 2001.

Commissioner Jonas, together with Sex Discrimination Commissioner Pru Goward and Commission staff, also attended two preparatory forums in South Africa in late August 2001. A pre-conference Strategic Planning Meeting of National Human Rights Institutions was hosted by the South African Human Rights Commission in Johannesburg from 26 to 28 August. This forum was attended by 52 national institutions and adopted a joint statement for presentation to the WCAR plenary session. In this statement, participating institutions committed themselves to:

- i work to encourage their respective governments to develop, through consultation and cooperation with national institutions, national human rights plans of action, including those addressing racism, and to monitor their implementation

- i work with civil society, including non-government organisations (NGOs), and, in particular, with groups and individuals who have experienced or continue to experience discrimination or threats of discrimination, when developing policies and programs to ensure their perspectives are reflected
- ii pay special attention to preventing racism and work with the appropriate institutions to ensure that educational authorities and other relevant institutions integrate human rights, anti-racism, tolerance, diversity and respect for others into their work and institutions.

Both Commissioners and staff also attended sessions of the NGO Forum held in Durban in preparation for the World Conference from 28 August to 1 September and the Race Discrimination Commissioner was the rapporteur for a panel discussion on 'Globalisation and Racism'.

At the World Conference Against Racism, the Commissioner was a member of the Australian Government delegation. In his independent capacity as Race Discrimination Commissioner he addressed a parallel session panel on the role of national human rights institutions, especially in the UN human rights treaty system and treaty reform. He also addressed the WCAR plenary session on behalf of the Commission on 4 September. Among other things, the Commissioner said:

[T]here can be no doubt that the greatest problem of racial discrimination in Australia is the situation of Aborigines and Torres Strait Islanders. This discrimination is institutional and systemic in nature, and historically derived as a consequence of colonialism.

A major obstacle to the full realisation of equality and inclusion of Indigenous Peoples is [the] emphasis among States and in the UN system on individual rather than collective rights including rights to land and resources, self-determination and autonomy, development and to practice culture.

The World Conference adopted the 'Durban Declaration and Programme of Action' to renew efforts to combat racism, racial discrimination, xenophobia and related intolerance. These outcomes were overwhelmingly endorsed by the UN General Assembly early in 2002.

WCAR follow-up

The Commissioner convened a series of meetings during January and February 2002 to discuss Australian implementation of the WCAR outcomes. He consulted with Neville Roach, then chair of the Council for a Multicultural Australia, Jeremy Jones (Executive Council of Australian Jewry), Fred Chaney (Reconciliation Australia), Thu Nguyen-Hoan (Department of Immigration and Multicultural and Indigenous Affairs), Sandra Power (Attorney-General's Department) and each state and territory equal opportunity agency head. On 14 March 2002 the Commissioner convened a workshop to discuss WCAR follow-up with state and territory Equal Opportunity Commissioners, Human Rights and Equal Opportunity Commissioners and staff and the New Zealand Race Discrimination Commissioner.



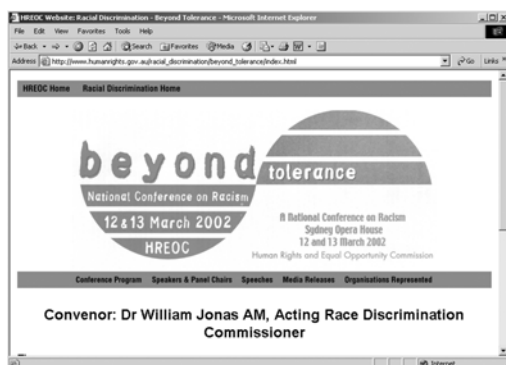
Beyond tolerance: National Conference on Racism

The *Beyond tolerance* conference on racism in Australia was convened by the Commissioner at the Sydney Opera House on 12 and 13 March 2002. The conference themes were:

- ï The fragility and strengths of Australia's commitment to diversity, reconciliation and equality of opportunity.
- ï The forms of discrimination experienced by Indigenous people and people from culturally and linguistically diverse backgrounds, including multiple discriminations.
- ï The priorities for reforms to eliminate racial discrimination from all sectors of Australian society.

Most of the papers delivered at the conference are available on the Commission's website at www.humanrights.gov.au/racial_discrimination/beyond_tolerance/index.html.

A media forum associated with the conference and entitled *Reporting Diversity* was held on the evening of 12 March 2002 also at the Sydney Opera House. It was chaired by ABC journalist John Highfield with panellists Julie Nimmo (ICAM, SBS), Paul Murray (Radio 6PR, Perth) and Farah Farouque (*The Age*, Melbourne). The Forum was recorded by the ABC and edited for broadcast on ABC Radio National's *Big Ideas* program on 31 March 2002, repeated 2 April 2002.



Research and policy

Alcohol restrictions

Following on from the 1995 *Alcohol Report* the Commissioner continues to be approached by local Indigenous communities requesting support for agreements to restrict the sale or distribution of alcohol to their community members. Such restrictions may be justified as special measures to advance the enjoyment of human rights for Indigenous communities and therefore a lawful exception to the prohibition on racial discrimination in the provision of goods and services.

The Commissioner granted one year extensions on two exemption certificates in November 2001. One dealt with an agreement between the Wiluna Aboriginal Community and the Club Hotel in Wiluna Western Australia while the other dealt with restrictions imposed on a liquor licence held by Kings Creek Station for the benefit of the Wanmarra and Ukaka Aboriginal Communities in the Northern Territory. The Wiluna agreement includes provision to ban the sale of takeaway wine and spirits to members of the Wiluna Aboriginal community and to limit sale of takeaway beer, in cans only, to certain hours. The Wanmarra licence conditions ban the sale of alcohol altogether to members of the two communities and their visitors.

In August 2001 the Commissioner wrote to the South Australian Premier expressing his concerns that the creation of dry zones in the city of Adelaide may indirectly discriminate against Indigenous people. The dry zone provisions restricted consumption of alcohol within the zones to people eating a meal in a restaurant. The Commissioner noted that many Aboriginal people would not be able to afford to buy a meal in a restaurant and that the imposition of dry zones may therefore impact disproportionately on them. Such a disproportionate impact would not be unlawful if the imposition of a dry zone was reasonable in all the circumstances and the Commissioner sought information from the Premier about the services which would be provided for Indigenous drinkers to ameliorate the effects of forcing them further away from the city precinct.

In June 2002 the Commissioner made a submission on the scope of the special measures exception in the context of restrictions on alcohol sales to a liquor licensing inquiry convened by the Western Australian Director of Liquor Licensing. The community affected is the Irrungadji Community of Nullagine Western Australia.

Access to water

One recommendation in the 1994 *Water Report* was that the Commission should follow-up the water supply situation in the ten case study communities after five years. Dr Bruce Walker, Director of the Centre for Appropriate Technology in Alice Springs, undertook the review. His report, *Review of the Water Report*, was launched on 3 October 2001. Dr Walker found that, since 1994, a number of measures have been adopted to provide water and sanitation and improve the health of Indigenous people. In seven of the 10 communities, there were significant improvements.

Although he concluded there have been improvements in technical delivery and higher levels of spending, he found, however, that safe, clean, sustainable water supplies are still not guaranteed. He recommended that the design and implementation of systems of water delivery should reflect a cooperative process of negotiation, community education, forward planning and cultural awareness.



Consultations

Post 11 September

On 12 September, following the terrorist attacks on New York and Washington, the Commissioner wrote to all state and territory Multicultural Affairs Commissions, Equal Opportunity Commissions, Ethnic Communities Councils and peak Arabic and Islamic community organisations. Commissioner Jonas raised concerns regarding an anticipated increase in anti-Arab and anti-Muslim vilification and offered to establish an email clearinghouse to exchange information and consider possible joint strategies and action. There was a solid response from state and territory equal opportunity agencies and from relevant non-government organisations and the group operated until the end of the year. While agencies were grateful for information shared in this way, few had the time or capacity to contribute information during the crisis.

To assist agencies to advise clients victimised by racism, the Commission sent resource packages to 36 Migrant Resource Centres and to Arabic and Islamic community organisations.

In October 2001 the Commissioner met with Dr Thu Nguyen-Hoan, Assistant Secretary for Multicultural Affairs, Department of Immigration and Multicultural Affairs, to exchange information and discuss strategies to head off, if possible, a further escalation of racist attacks.

During 2002 the Commissioner has progressed consultations with Australia's Arabic communities, meeting with staff at Sydney's Noor Al Houda Islamic College and members of the Australian Arabic Council in Melbourne, while staff have participated in other meetings.

In January 2002 the Commissioner met Emeritus Professor Ken McKinnon and Jack Herman of the Australian Press Council to discuss approaches to ethnic descriptors and racial stereotyping in the print media.

Race relations in Kalgoorlie Western Australia

Staff of the Commission, with a representative of the State Equal Opportunity Commission, visited Kalgoorlie-Boulder in May 2002 following expressions of concern about deteriorating race relations in the city. They consulted widely with Indigenous and non-Indigenous people and organisations.

The Commissioner concluded there were two underlying issues which, if addressed by the community, could help to resolve shared issues of concern. The first was a significant lack of accurate information about each other and about legal rights and obligations. The second was a failure on the part of community leaders to consult fully and effectively on issues affecting Indigenous people in the city.

Following consultations with the Acting Equal Opportunity Commissioner for Western Australia, the Commissioner recommended two interlinked strategies. The first would involve delivery of information, education and training covering legal rights and obligations, cultural awareness and cross cultural communication. The second would involve the key stakeholders in negotiating an Indigenous consultation protocol. The Commissioner has proposed a mediator be engaged to assist in this process.

International consultations

During a visit to London in April 2002, the Commissioner and staff consulted with staff at the Commission for Racial Equality, the Institute for Public Policy Research, the Runnymede Trust and the UK Secretariat of the European Monitoring Centre on Racism and Xenophobia and European and International Policy on race equality laws in the UK and on WCAR implementation planning.

Speeches

A selection of speeches, seminars and presentations made by, or on behalf of, Commissioner Jonas during 2001-02 are listed below. Further speeches are available on the Commission's website at www.humanrights.gov.au/speeches/race/.

Combating Racism in Australia, Human Rights and Equal Opportunity Commission Regional Consultation for the World Conference Against Racism, Melbourne, 5 July 2001.

Combating Racism in Australia, Human Rights and Equal Opportunity Commission Regional Consultation for the World Conference Against Racism, Newcastle, 27 July 2001.

Expectations for the World Conference Against Racism, Australian anti-racism non-government organisations, Sydney, 23 August 2001.

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Commentary on the Draft Durban Declaration, Pre-Conference Strategic Planning Meeting of National Human Rights Institutions, Johannesburg, South Africa, 27 August 2001.

National human rights institutions and human rights treaty bodies, Elements of a Global Alliance Against Racism [etc]: Roles and Responsibilities of the Human Rights Treaty Bodies, National Human Rights Institutions and Other Relevant Institutions, WCAR parallel forum, Durban, South Africa, 3 September 2001.

Statement on behalf of the Australian Human Rights and Equal Opportunity Commission, Plenary Session of the World Conference Against Racism, Durban, South Africa, 4 September 2001.

National institutions and the World Conference Against Racism, Sixth Annual Asia Pacific Forum Meeting, Colombo, Sri Lanka, 27 September 2001.

World Conference Against Racism – outcomes and relevance to Australia, post-WCAR briefing for Australian anti-racism NGOs and agencies, 4 October 2001.

Opening address, Beyond tolerance: national conference on racism, Sydney, 12 March 2002.

Moving beyond tolerance towards the elimination of racial discrimination in Australia, Beyond tolerance: national conference on racism, Sydney, 13 March 2002.

Community Harmony and Multiculturalism, Rockdale City Council, Sydney, 21 March 2002.

Procedures and remedies for dealing with complaints of racial discrimination and vilification, Sixth International Workshop of National Human Rights Institutions, Copenhagen, Denmark, 11 April 2002.

Chapter 8

Sex Discrimination



Ms Pru Goward
Sex Discrimination Commissioner

Sex Discrimination Commissioner

Commissioner Pru Goward's appointment to the position of Commonwealth Sex Discrimination Commissioner was announced on 29 June 2001. She commenced her term on 30 July 2001.

Statement from the Commissioner

Since assuming the position of Sex Discrimination Commissioner in July 2001, I have sought to deal with a number of issues important to the rights of Australian women. Over a five year term such as mine there is clearly the opportunity to pursue a number of major objectives but at the outset I considered there was also the need to ensure the approach was neither piece-meal nor the outcomes insubstantial.

At the time, I identified the issues of work and family (including paid maternity leave), discrimination and harassment in sport and the needs of Indigenous women as particular areas where I would devote attention. In the event, the year has ranged more broadly than this and the Sex Discrimination Unit has found itself dealing with the implications of in vitro fertilisation practice for the Sex Discrimination Act, transgender marriage and harassment in the Australian navy, amongst other matters of public interest and concern.

An underlying theme of much of the year's work has been the importance of jurisprudence, seen as the clarification and the development of social issues through the judicial or quasi-judicial processes. The Commission has either intervened or I have sought to be *amicus curiae* in a number of court proceedings. In my view it is important to do so wherever possible, affordable and prudent in order to assist with and hasten the development of sound jurisprudence in sex discrimination law. In large part the acceptability of human rights to the Australian community depends upon the soundness of their legal basis, that is, upon the case law.

There have been still other issues with which I have chosen not to engage at this stage, but the job remains one where the views of the Commission are sought and expected on a very broad front.

The Sex Discrimination Unit's major work this year has been the development of an interim options paper on paid maternity leave, *Valuing Parenthood*. The paper was intended to inform public debate about the need or otherwise for such a scheme. Australia is now one of only two member countries in the Organisation for Economic Cooperation and Development without a national entitlement to paid maternity leave; that is to income replacement when one parent, usually the mother, stays out of the workforce directly following the birth of their children.

Australia provides generous income support to low income families and limited but non-means-tested support to families where one parent stays at home for a number of years. However, Australia is yet to recognise the particular needs of a growing number of young women whose personal, professional or financial circumstances mean that, in the absence of paid maternity leave, they need to return to paid work when their children are very young, as young as a few weeks. The increasing participation of women with young children in the workforce is a paradigm shift; it has occurred very rapidly and reflects the social patterns in other developed countries. Paid maternity leave, in an age when the majority of families are two income families, responds to this national need.

The paper also explored the consequences for Australia's birth rate of compromising the choices women make concerning work and family commitments. Arguably, failing to provide income support to women who are able to choose *not* to have children, will encourage women to have no children at all, or fewer, or later in life. *Valuing Parenthood* also explores the business case for providing paid maternity leave at the enterprise level. It considers the macro economic consequences of not maximising the work force participation of a significant proportion of the potential workforce in a declining population also engaged in global economic competition. Additionally it reflects on the importance of maximising the nation's economic return on its investment in the education and training of young women.

The paper does not recommend any particular national model although it warned against the adoption of a scheme solely funded by employers, pointing out the possible discrimination consequences of direct employer funding in those enterprises where a business case cannot be made.

The paper's release has sparked a wide ranging debate about the need or otherwise for such a scheme. This has reflected the community's concern about work and family life and the need to examine any paid leave proposal in this broader context.

As part of the development of my final report, the Sex Discrimination Unit has engaged in a lengthy consultation process throughout Australia. We have consulted with employers, unions, community groups, academics and individual women in every state and territory, including in regional centres.

Unsurprisingly, there has been a significant majority of people who have opposed the mandating of individual employer-funded leave and a minority of people who oppose the provision of paid maternity leave, even if government funded.

The final report will be released at the end of 2002.

Other major issues that I turned my attention to in the past year included race and gender, sex discrimination and sport and a High Court case on IVF.

In preparation for my attendance at the United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in August and September 2001 in South Africa, the Sex Discrimination Unit produced an issues paper on the intersection of race and gender, highlighting the gendered nature of racism. The paper drew on focus groups with immigrant and Indigenous women and will inform my future work in this area.

Netball Australia's ban on all pregnant players led to the involvement of the Unit in the development of appropriate guidelines for clubs, players and coaches, under the leadership of the Australian Sports Commission. However the year has also seen my direct involvement in discrimination against women in sport when I became *amicus curiae* in the case of Holly Ferneley, the female kick boxer banned from competition in New South Wales. The Federal Court rejected her appeal against the ban but recognised it as a matter for the State legislature. Accordingly I have written to every member of the New South Wales State Parliament. The former Minister for Women, Faye Lo Po, replied that 'the question of women's participation in boxing and kick boxing is an inherently difficult issue'. All other members who replied were either silent on the desirability of the discrimination or expressed their desire to see the law changed.

One of the most contentious legal issues of the year has been the High Court case *Re McBain; Ex parte Australian Catholic Bishops Conference and Another* in which the Commission intervened. The case considered whether Victorian State legislation preventing practitioners from providing fertility treatment to single women was in conflict with the Sex Discrimination Act. Moral and social concerns aside, my interest and that of the Commission was in upholding the powers of the Sex Discrimination Act, which make it unlawful to discriminate, inter alia, on the grounds of marital status.

As the debate over paid maternity leave has demonstrated, there is a profound desire among Australians to better address work and family responsibilities. This is especially relevant to enhancing the choices of women through the amelioration of the economic and social disadvantage they bear as mothers and continuing campaigning against workplace discrimination, direct and indirect. Undoubtedly the coming year will see my continued involvement in these issues.

Meanwhile Indigenous women remain the most disadvantaged group in Australia and I hope to advance better understanding of their position over the next 12 months. Likewise the intersectionality of race and gender and of ethnicity and gender, is of growing importance in Australia and therefore to the Commission. There are some difficult conceptual issues as well as sensitivities involved. However it should be possible to work constructively and practically in these areas so long as our principal focus remains the achievement of better outcomes and better lives for Australian women by enhancing the choices they wish to make.

Research and policy

Valuing Parenthood Options for Paid Maternity Leave: Interim Paper 2002



Australia at present does not have in place legislation that deals with the provision of universal paid parental or maternity leave at either the national or state or territory level. Australia retains its reservation to article 11(1) of the *Convention on the Elimination of All Forms of Discrimination Against Women* concerning paid maternity leave.

In 1999, the Commission's report of the National Pregnancy and Work Inquiry, *Pregnant and Productive: It is a right not a privilege to work while pregnant*, recognised the importance of paid maternity leave to Australian women and recommended that the Government commission economic modelling to assess the viability and consequences of such a scheme.

Economic modelling has not yet been made publicly available by the Government. The Commissioner decided that the debate around paid maternity leave in Australia would be assisted by the production of a paper raising for discussion the various options for a national scheme for paid maternity leave in Australia.

An interim options paper on paid maternity leave *Valuing Parenthood Options for Paid Maternity Leave: Interim Paper 2002* was released in April 2002 in order to consult, inform the debate and examine the options for paid maternity leave in Australia. Consultations on the Interim Paper were conducted with major stakeholders in each State and Territory capital and two regional centres.

The Interim Paper provides background material on current provisions for paid maternity leave, statistics on women's arrangements for combining work and family obligations and information about current government assistance to families. The Interim Paper discusses the objectives for any national paid maternity leave scheme. It also outlines a number of criteria on which a paid maternity leave system could be based and potential options for establishing a paid maternity leave system in Australia. It raises questions and seeks input from interested people, organisations and agencies.

The paper has generated a great deal of interest within government, the media and the community.

A final options paper will be produced at the end of 2002.



Sex Discrimination Commissioner Pru Goward speaking at the launch of *Valuing Parenthood: Options for Paid Maternity Leave*

Race and gender intersectionality

The Commissioner attended the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in August and September 2001 in Durban, South Africa.

In preparation for the Conference, the Commission produced an issues paper on the intersection of race and gender, highlighting the gendered nature of racism. As part of the process focus groups were held with immigrant, refugee and Indigenous women.

Pregnancy and sport

A ban imposed on all pregnant players participating in netball competitions by Netball Australia instigated a national debate about the issues concerning pregnancy and sport.

The Australian Sports Commission developed *Pregnancy and Sport Guidelines* *Pregnancy in Sport: Guidelines for the Australian Sporting Industry* aimed at coaches, sporting administrators and facility managers. The guidelines address legal, medical and ethical issues surrounding pregnancy and sport.

The Commission was represented on the consultation group for the Guidelines, which were launched in May 2002.

Implementation of the pregnancy report and the Sex Discrimination Amendment Bill (No 2) 2002

The Commissioner continued to monitor and implement the recommendations of the Commission's report of the National Pregnancy and Work Inquiry *Pregnant and Productive: It's a right not a privilege to work while pregnant* and to work with relevant government departments to ensure that progress is made towards achieving the goals outlined in the Government's response to the Report.

In particular, the Sex Discrimination Unit provided advice to the Department of Employment and Workplace Relations on the development of a brochure entitled *Working Your Way Through Pregnancy*. This was undertaken in response to the recommendation that information be made available to all workplace participants on their rights and responsibilities under the *Workplace Relations Act 1996*, federal awards and agreements.

In addition, the Sex Discrimination Unit completed an analysis of the data received from Office of the Employment Advocate relating to employees' workplace pregnancy and maternity experiences. The data will be used to inform future work in this area including the paid maternity leave project.

On 27 September 2001 the Attorney-General introduced legislation to amend the *Sex Discrimination Act 1984* to prevent pregnancy or potential pregnancy discrimination during the recruitment process and to ensure that breastfeeding was included under the Act as a characteristic pertaining to sex. The legislation passed the House of Representatives and was referred to the Senate during 2001. The

legislation lapsed when Parliament rose for the federal election in November 2001. It was reintroduced into Parliament in March 2002.

The Sex Discrimination Amendment Bill (No 1) 2002

The Sex Discrimination Amendment Bill (No 1) 2002 was prepared in response to the Federal Court decision of Justice Sundberg in *McBain v State of Victoria et al* in July 2000, in which His Honour held that certain provisions of the Victorian *Infertility Treatment Act 1995* were inconsistent with certain provisions of the Sex Discrimination Act, and to that extent were inoperative pursuant to section 109 of the Australian Constitution.

The Bill is intended to make clear that states reserve the right to restrict single people and same sex couples from accessing IVF and other assisted reproduction services. The Bill seeks specifically to exempt from the operation of the Sex Discrimination Act state legislation that discriminates on the basis of marital status in relation to the provision of such services.

The Australian Catholic Bishops Conference and the Australian Episcopal Conference of the Roman Catholic Church took proceedings in the High Court to challenge the decision of Sundberg J. The Commission appeared at the hearing of *Re McBain; Ex parte Australian Catholic Bishops Conference and Another* before the High Court on 5 and 6 September 2001, having previously been granted leave to intervene. These proceedings are mentioned below and discussed in detail in the report of the Legal Section.

The Sex Discrimination Amendment Bill (No 1) 2001 was passed in the House of Representatives before it lapsed when Parliament rose for the election in November 2001. The Commission is on record criticising the Bill. The Government reintroduced the Bill to the House of Representatives on 27 June 2002.

International projects

Trafficking in women and children

The Commission was a member of a project design mission for the Australian Agency for International Development (AusAID), developing a project design to assist in the prevention of trafficking of women and children in the South East Asian region. The design mission focused on the legal-policy infrastructure of project countries and took a human rights and gender central approach to the issue of preventing trafficking of women and children. The team, of which the Director of the Sex Discrimination Unit was a member, travelled to Jakarta, Bangkok, Phnom Penh, Vientiane and Yangon. The project design document has been submitted to AusAID.

Submissions

Comments to the Senate Foreign Affairs, Defence and Trade References Committee

On 11 June 2002 the Commissioner contributed comments on behalf on the Commission for input into the Senate Foreign Affairs, Defence and Trade References Committee report entitled *Japan Politics and Society: Report 2 on the Enquiry into Japan*.

Intervention and *amicus curiae* functions

The Commission has the power, under both the Human Rights and Equal Opportunity Commission Act and the Sex Discrimination Act, to intervene with the leave of the court in court proceedings that involve human rights or discrimination issues. In addition, section 46PV of the Human Rights and Equal Opportunity Commission Act confers on the special purpose Commissioners, including the Sex Discrimination Commissioner, the function of assisting the Federal Court and the Federal Magistrates Court in certain cases as *amicus curiae* or friend of the court.

With the assistance of the Sex Discrimination Unit the Legal Section monitors and intervenes in appropriate matters concerning discrimination based on sex.

Interventions

The Commission intervened in *Re McBain; Ex parte Australian Catholic Bishops Conference and Another, Human Rights and Equal Opportunity Commission and others intervening* which was heard by the High Court in September 2001. This matter is referred to above and discussed in detail in the Legal Section of this Report. The Australian Industrial Relations Commission heard an appeal about an interim matter in the case of *Gunn and Taylor Pty Ltd v AMWU*.

Australian Industrial Relations Commission intervention

– *Gunn and Taylor Pty Ltd v AMWU (interim matter appeal)*

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union brought proceedings in the Australian Industrial Relations Commission against Gunn and Taylor Pty Ltd on behalf of a female employee requesting an order for equal remuneration for work of equal value under the Workplace Relations Act.

At first instance, the employer argued that the employee had an adequate alternative remedy under the Sex Discrimination Act and the Human Rights and Equal Opportunity Commission Act or the Victorian *Equal Opportunity Act 1995* and that therefore section 170BE of the Workplace Relations Act ousted the jurisdiction of the Australian Industrial Relations Commission to determine the matter.

Commissioner Whelan of the Australian Industrial Relations Commission found that the remedies available under the Sex Discrimination Act, the Human Rights and Equal Opportunity Commission Act and the Victorian Act did **not** provide adequate alternative remedies to the equal remuneration provisions of the Workplace Relations Act. The employer appealed.

The Commission was granted leave to intervene in this interim matter appeal and appeared before the Full Bench on 21 May 2002.

The Commission argued that:

The Workplace Relations Act extended to both systemic discrimination and cases of direct discrimination and this contention was supported by section 40(1) of the Sex Discrimination Act and section 46PW of the Human Rights and Equal Opportunity Commission Act.

The remedies available under the Workplace Relations Act are different to those available under the Sex Discrimination Act and Human Rights and Equal Opportunity Commission Act.

In its decision of 4 June 2002, the Full Bench of the Australian Industrial Relations Commission upheld Commissioner Whelan's decision on this interim matter. The Commission is currently monitoring the progress of the substantive proceedings.

***Amicus curiae* function**

For the first time, the Sex Discrimination Commissioner exercised her function as *amicus curiae* in the case of *Ferneley v Boxing Authority of NSW & State of NSW*. This matter is discussed in detail in the Legal Section at Chapter 2 of this Report.

In addition, a number of matters were monitored by the Commission with a view to considering seeking leave to appear as *amicus curiae*. Matters monitored included *Song v Ainsworth*, *Farrell v Travel Corporation*, *Sandra Escobar v Rainbow Printing Pty Ltd* and *Rispoli v Merck Sharpe & Dohme (Aust) Pty Ltd*. For details on these matters see the Legal Section of this report.

Speeches

A selection of speeches, seminars and presentations made by, or on behalf of, Commissioner Goward during 2001-02 are listed below. Further speeches are available on the Commission's website at www.humanrights.gov.au/speeches/sex_discrim/.

Pregnant Sportswomen and the Sex Discrimination Act, Australian Sports Commission National Forum on Pregnancy and Sport, Canberra, 1 August 2001.

Briefing on the World Conference Against Racism, Human Rights and Equal Opportunity Commission, Sydney, 4 October 2001.

Transforming the Workplace: Cultural Change for Equality, Women Chiefs of Enterprise International National Conference, Perth, 17 November 2001.

Human Rights and Economic Development, Committee for Economic Development of Australia Conference, Melbourne, 12 February 2002.

Human Rights and Economic Development, Australian Mines and Metals Association Conference, Sydney, 1 March 2002.

Obligations under the Sex Discrimination Act, New South Wales Department of Transport, Sydney, 5 March 2002.

Intersectionality, Beyond tolerance: national conference on racism, Panel Chair, Sydney, 13 March 2002.

Role of the Sex Discrimination Commissioner, Murdoch University Women's Networking Forum, Perth, 25 March 2002.

Women and Work: Future Challenges, 25th Anniversary Conference of the New South Wales Spokeswomen's Program, Sydney, 3 May 2002.

Paid Maternity Leave: Can it affect Australia's population growth?, Migration: Benefiting Australia Conference, Sydney, 8 May 2002.

Pregnancy Discrimination and Sport, Australian Sports Commission, Launch of the *National Pregnancy in Sport Guidelines for the Australian Sporting Industry*, Canberra, 13 May 2002.

National Structures Protecting Women's Rights, International Council of Jewish Women, Sydney, 26 May 2002.

Chapter 9

International Activities

In 2001-02, as in past years, the Commission participated in some bilateral international program activities, generally as part of the Australian Government's development cooperation program developed by the Australian Agency for International Development (AusAID).

The Commission's international program role arises due to the expertise the Commission has developed in pursuit of its domestic mandate. The Commission also holds the belief that the strengthening of human rights protection and development everywhere only ensures the enhancement of human rights activities and awareness anywhere, including Australia. In some cases regional countries wish to access this expertise in pursuit of their own human rights objectives, while in other cases the Australian Government wishes to use the expertise in pursuit of its development cooperation objectives. To respond to all requests for program activities could potentially distract the Commission from its primary, domestic mandate. It therefore participates only when a number of pre-requisites are satisfied, including that all of the Commission's costs are met, that the program is clearly capable of achieving its goals and that it does not detract in any way from the Commission's domestic work.

China

The Commission's most substantial international program involvement is with the China-Australia Human Rights Technical Cooperation Program (HRTC), which is an integral part of the annual Dialogue on Human Rights with China. This program encompasses three principal themes: protection of the rights of women and children, protection of ethnic minority rights and reform of the legal system.

HRTC undertakes each year a series of activities intended to assist China to promote and protect human rights. In 2001-02 the program included providing scholarships for Chinese officials to study human rights in Australia and workshops on a range of subjects such as protection of women from family violence, measures to combat trafficking in women and children and reporting on compliance with international human rights treaty obligations. Training has been provided to Chinese officials working in areas vital to human rights protection such as prosecutors and prison officers. The project supported the translation into Chinese and subsequent publication of four seminal texts dealing with mass communication and the right to freedom of expression.

The program has an immediate impact on the formulation of administrative procedures. In the longer term the program aims to have an impact through increasing the level of knowledge of human rights concepts, with a resultant impact on the formulation of Chinese policies and practices. The program therefore seeks to work with the Chinese authorities to demonstrate the value of institutionalising the regard for human rights and to then work with those authorities to formulate and implement practical strategies to realise that value.

Indonesia

During 2001-02 the Commission continued work on the program of cooperation with the Indonesian National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia, commonly known as Komnas HAM). The four year program concluded in May 2002. Its goal was to strengthen the capacity of Komnas HAM to fulfil its broad mandate. This was accomplished both through specific capacity building activities and by directly assisting Komnas HAM to disseminate an understanding of human rights principles amongst Indonesia officials and the general population.

A series of activities was implemented in this reporting year included training for Komnas HAM officials in investigation of gross human rights violations and a workshop on mediation and other forms of alternative dispute resolution. The program also supported the placement of advisers in Komnas HAM to assist in development of public education and awareness raising strategies, including a major anti-violence campaign.

South Africa

The Commission continued its assistance to the South African Commission on Gender Equality. This year's program focused mainly on initiatives to strengthen that organisation's capacity to intervene effectively in relevant litigation in South Africa concerning gender issues.

Vietnam

The Commission participated in the inaugural session of Australia-Vietnam Dialogue on International Organisations and Legal Issues, held in Hanoi on 27 ñ 29 May 2002. The Dialogue included discussion of human rights issues.

Other countries

The Commission has worked with other countries on a small scale, generally in the technical areas of human rights protection. For instance officials of the Commission have worked with the Government of Uganda to develop its capacity to conduct national human rights inquiries and with the Government of Indonesia to develop its capacity to implement ILO Convention 111 (guaranteeing equality in employment).

In addition to these bilateral programs, during 2001-02 the Commission participated in the preparatory stages of a project of regional cooperation to prevent trafficking in people. The project is sponsored by Australia and will involve a number of countries in South East Asia. The initial stages included a consultation and design visit by the project team to countries in the region.

Chapter 10

Asia Pacific Forum of National Human Rights Institutions

Established in 1996, the Asia Pacific Forum of National Human Rights Institutions became an incorporated public company limited by guarantee on 20 March 2002. It is now an independent legal entity and the Forum Secretariat has a formal agreement with the Australian Human Rights and Equal Opportunity Commission for the provision of accommodation and corporate services for its operations.

The positions of Forum Chair and two Deputy Chairs have been established and are rotated on an annual basis. The current Chair of the Forum is the Human Rights Commission of Sri Lanka and Deputy Chairs are the Human Rights Commissions of Nepal and New Zealand.

The annual meetings and workshops of the Forum are among the largest and most comprehensive regular human rights meetings in the Asia Pacific region. They are a mechanism for the practical advancement of human rights, particularly because they bring together national human rights institutions, the United Nations, governments and non-government organisations in a harmonious, practical and largely non-political setting. Through this mechanism the Forum has demonstrated its role as a catalyst for the mobilisation of technical cooperation funds for human rights initiatives and as a facilitator for the establishment of new national institutions.

The Australian Government, through the Minister for Foreign Affairs and Trade, and the Australian Agency for International Development (AusAID) has provided financial support for the Forum. Additional funding is provided by a range of donors including the United Nations High Commissioner for Human Rights on a project-by-project basis.

The work of the Forum can be categorised under three broad areas:

1. Strengthening the capacity of individual Forum members to enable them to more effectively undertake their national mandates.
2. Assisting governments to establish their own national institutions in compliance with the minimum criteria contained in the Paris Principles.
3. Promoting regional cooperation on human rights issues.

During 2001-02 the Secretariat's operations focused on four main areas of activity:

- the development and delivery of technical assistance and cooperation projects
- information dissemination
- administrative support for the Forum and its activities
- transforming the legal, managerial and operational structure of the Forum to become an independent entity.

The main projects undertaken from 1 July 2001 to 20 March 2002 have included the following:

Workshop on the Role of Human Rights Institutions and Other Mechanisms in Promoting and Protecting Economic, Social and Cultural Rights

This Workshop was held from 11-13 July 2001 in the Hong Kong Special Administrative Region, People's Republic of China. It was organised by the Forum Secretariat, in collaboration with the host institution, the Hong Kong Equal Opportunities Commission. It was co-sponsored by the United Nations High Commissioner for Human Rights and financially assisted by AusAID. It was attended by regional national human rights institutions, governments, non-government organisations and United Nations Treaty Body representatives including the Chair of the United Nations Committee on Economic, Social and Cultural Rights, a Member of the United Nations Committee on the Elimination of Racial Discrimination and an Independent Expert on the Right to Development.

The Workshop covered issues including:

- the corporate sector and economic, social and cultural rights
- justiciability of economic, social and cultural rights
- the International Covenant on Economic, Social and Cultural Rights
- the relationship between the right to development and economic, social and cultural rights
- the relationship between racism and economic, social and cultural rights.

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

In September 2001 the Forum held its Sixth Annual Meeting in Colombo, Sri Lanka. The meeting was organised by the Forum Secretariat in collaboration with the host institution, the Human Rights Commission of Sri Lanka. It was co-sponsored by the United Nations High Commissioner for Human Rights and financially supported by the New Zealand Government, through its Ministry of Foreign Affairs and Trade, and the Australian Government, through AusAID. The meeting was attended by over 130 delegates representing all Forum members, 20 regional governments and non-governmental organisations from 24 countries. The main decisions of the meeting included:

- a commitment to develop a reference on trafficking for the Advisory Council of Jurists
- a decision to hold a regional workshop in 2002 on trafficking with a focus on HIV/AIDS, internal displacement and the rights of women.

A highlight of the meeting was the official launch of the Forum's video documentary, featuring the work of the national human rights institutions of India, Indonesia and Fiji.

In addition the members of the Forum adopted a new Constitution for the Forum. This decision followed a two year review of the Forum's legal and governance structure by a working group established by members at the Fourth Annual Meeting in 1999. Members unanimously resolved that the organisation should become an independent, non-profit, legal entity. To drive the new organisation the organisational structure of the Forum was revised to be more inclusive with policy making clearly in the hands of its members. At this meeting the Mongolian Human Rights Commission was admitted as the ninth full member of the Forum.

HIV/AIDS and Human Rights: The Role of National Human Rights Institutions in the Asia Pacific Region

This meeting was held in Melbourne, Australia in October 2001. It was organised by the Forum and sponsored by the United Nations High Commissioner for Human Rights and Joint United Nations Program on HIV/AIDS. It was held under the auspices of the Sixth International Congress on AIDS in Asia and the Pacific. The goal was to enhance awareness of and cooperation on HIV/AIDS related human rights issues in the Asia Pacific region through support to and strengthening of national human rights institutions.

The workshop focused on HIV/AIDS related human rights issues, including the right to health, the right to education, the right to equality and non-discrimination and the right to information and education, and how the core functions of national human rights institutions (complaint handling and investigation, education and promotion and legal reform) can address these issues. It also addressed regional issues of concern including migration and population mobility, commercial sex, trafficking and conflict and displacement.

Following this workshop the Forum held discussions with the Joint United Nations Program on HIV/AIDS about the development of a practical manual for national human rights institutions dealing with human rights violations on the basis of HIV/AIDS. It is proposed that the Forum will develop the manual in collaboration with stakeholders. The manual will then be forwarded to the International Coordinating Committee of National Human Rights Institutions for its endorsement. The Joint United Nations Program on HIV/AIDS will publish and distribute the completed manual. It is anticipated that this project will be complete by end of 2003.

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

The Forum was invited to attend and participate in the 10th United Nations Asia Pacific Workshop on Regional Cooperation for the Promotion and Protection of Human Rights, which was held in Beirut, Lebanon from 4-6 March 2002. The workshop was attended by representatives from over 35 countries, international experts, United Nations agencies and non-government organisations. The Forum was represented by the Deputy Chair, the Human Rights Commission of Nepal and a representative from the Forum Secretariat. The Human Rights Commission of Nepal gave a formal presentation on the role of national institutions for the promotion and protection of human rights.

Appendices



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:

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

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

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

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

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

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

- ï proper medical care and therapy
- ï protection from exploitation, abuse and degrading treatment
- ï a decent standard of living
- ï education, training and work
- ï due process of law
- ï 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:

- ï race
- ï colour
- ï sex
- ï religion
- ï political opinion
- ï national extraction
- ï social origin
- ï age
- ï medical record
- ï criminal record
- ï sexual preference
- ï trade union activity
- ï marital status
- ï nationality
- ï disability (whether physical, intellectual, psychiatric or mental)
- ï 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 2001-02

General

Human Rights and Equal Opportunity Commission *Annual Report 2000-01* (tabled report)

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

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

Youth Challenge Video 1: *What About Doug's Rights?*

Youth Challenge Video 2: *Young People and the Workforce*

Aboriginal and Torres Strait Islander Social Justice

Social Justice Report 2001 (tabled report)

Native Title Report 2001 (tabled report)

Disability Rights

Know Your Rights under the Disability Discrimination Act

Human Rights

HREOC Report No. 14: *Report of an Inquiry into a complaint by Mr Hamilton of age discrimination in the Australian Defence Force* (tabled report)

HREOC Report No. 15: *Report of an Inquiry into a complaint by Ms Ching concerning the cancellation of her visa on arrival in Australia and mandatory detention* (tabled report)

HREOC Report No. 16: *Report of an Inquiry into a complaint by Mr Kaci of acts or practices inconsistent with or contrary to human rights arising from immigration detention* (tabled report)

HREOC Report No. 17: *Report of an Inquiry into a complaint by the Asylum Seekers Centre concerning changes to the Asylum Seekers Assistance Scheme* (tabled report)

HREOC Report No. 18: *Report of an Inquiry into a complaint by Mr Duc Anh Ha of acts or practices inconsistent with or contrary to human rights arising from immigration detention* (tabled report)

Racial Discrimination

I Want Respect and Equality: A Summary of Consultations with Civil Society on Racism in Australia

The Racial Discrimination Act: How it works (fact sheet)

The Racial Hatred Act: How it works (fact sheet)

Complaints under the Racial Discrimination Act (information sheet)

Review of the Water Report

Sex Discrimination

Pregnancy Guidelines

Valuing Parenthood, Options for Paid Maternity Leave: Interim Paper 2002

Sex Discrimination (poster)

Appendix 3

Freedom of Information

The Freedom of Information Act gives the general public legal access to government documents.

Freedom of Information statistics

During 2001-02, the Commission received the following 12 requests for access to documents under the Freedom of Information Act:

- ï 10 access requests to documents relating to complaints
- ï two related to administrative matters.

A total of 12 applications were processed, including the resolution of applications from 2000-01.

Categories of documents

Documents held by the Commission relate to:

- ï administration matters, including personnel, recruitment, accounts, purchasing, registers, registry, library records and indices;
- ï complaint handling matters, including the investigation, clarification and resolution of complaints;
- ï legal matters, including legal documents, opinion, advice and representations;
- ï research matters, including research papers in relation to complaints, existing or proposed legislative practices, public education, national inquiries and other relevant issues;
- ï policy matters, including minutes of Commission meetings, administrative and operational guidelines;
- ï operational matters, including files on formal inquiries; and
- ï 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:

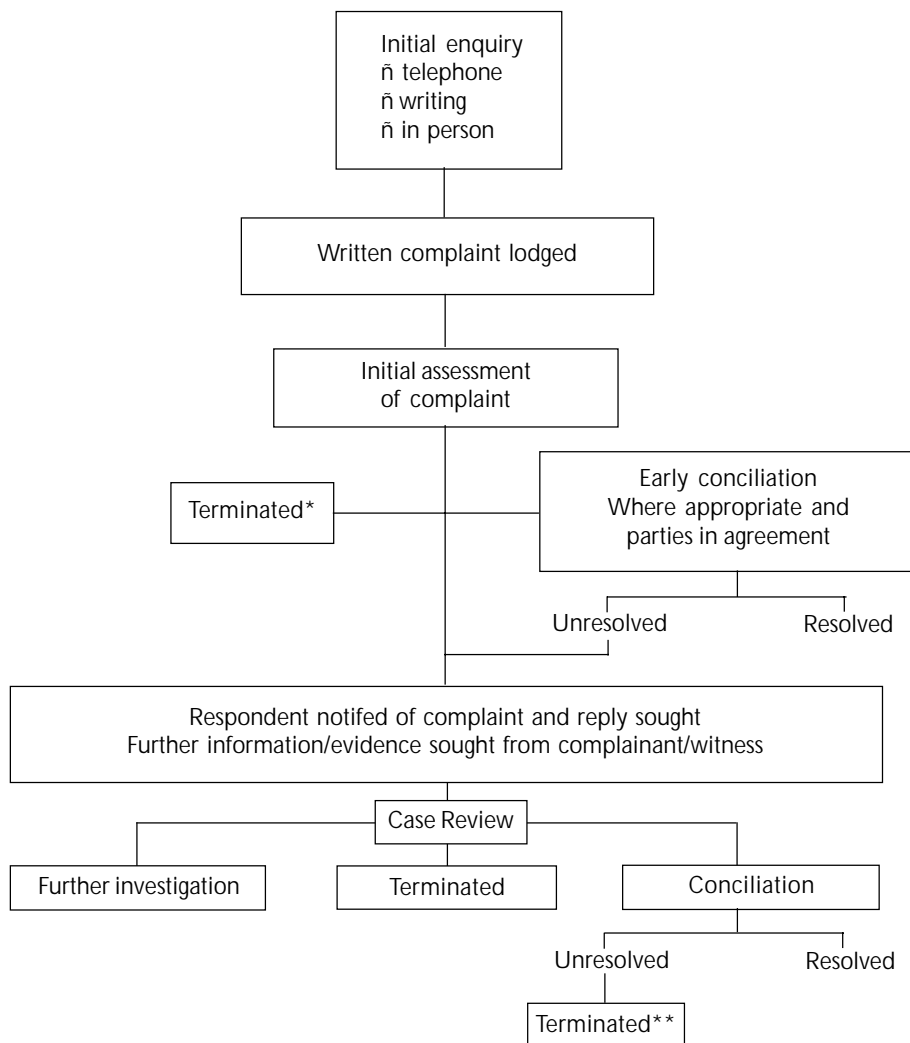
Freedom of Information Officer
Human Rights and Equal Opportunity Commission
GPO Box 5218
Sydney, NSW 1042

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

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

Appendix 4

The complaint handling process



* When complaints under the Racial, Sex and Disability Discrimination Acts are terminated, the complainant may apply to have the allegations heard and determined by the Federal Court or the Federal Magistrates Service.

** Complaints under the Human Rights and Equal Opportunity Commission Act concerning discrimination in employment or a breach of human rights, which cannot be conciliated, cannot be taken to the Federal Court. If the President is satisfied that the subject matter of the complaint constitutes discrimination or a breach of human rights these findings are reported to the Attorney-General for tabling in Parliament.

Appendix 5

Human resources and administrative services

Performance management and staff development

The Commission's Performance Management Scheme provides a framework to manage and develop our staff to achieve our corporate objectives. The scheme provides regular and formal assessment of an employee's work performance and allows for access to training and skill development.

The Commission's Certified Agreement recognises the need to provide adequate training for staff to support workplace changes. This is especially relevant with changes in the information technology area where staff are provided with relevant and ongoing computer training.

As part of the Commission's staff development strategy staff are provided with support under our Studies Assistance policy. The policy provides for access to study leave where study is relevant to the work of the Commission, an individual's work responsibilities and where it assists with career development.

Workplace diversity and equal employment opportunity

The Commission's *Workplace Diversity Plan* has been in operation since September 1999 and will be reviewed in the latter part of 2002. The Commission recognises that diversity in our staff is one of our greatest strengths and assets and is committed to valuing and promoting the principles of workplace diversity through our work practices. The Commission supported an Indigenous trainee during the first part of 2002 as part of the Commission's Indigenous employment strategy. A further placement is planned in the latter part of 2002. Other strategies under the Plan focus on supporting staff with family responsibilities and supporting employment opportunities for people with disabilities.

Occupational health and safety

The Commission's Health and Safety Committee includes a staff health and safety representative and four corporate support staff who met regularly through the year. The focus for the year was on occupational health and safety training for staff and supervisors, with two training sessions held in early 2002. The Committee monitors any issues that arise. Ongoing assistance and support on occupational health, safety and ergonomic issues is provided to new and existing staff. There have been no dangerous accidents or occurrences reported.

The Commission continues to provide staff with access to counselling services through its Employee Assistance Program. This is a free and confidential service for staff and their families to provide counselling on personal and work related problems if required.

Workplace relations and employment

Staff in the Commission are employed under section 22 of the *Public Service Act 1999*. The Commission's current Agreement was certified by the Australian Industrial Relations Commission in June 2000 and is in operation until 1 August 2002. The Agreement is comprehensive and was certified under section 170LK of the *Workplace Relations Act 1976*. The number of Commission employees covered by the Agreement as at 30 June 2001 was 99, including both ongoing and non-ongoing staff. Productivity savings funded a salary increase to staff, delivered in three instalments over the life of the Agreement. A one-off bonus was payable to staff on certification. The Agreement maintains core employment conditions, with some streamlining of allowances, and supports family friendly policies. Staff are able to purchase additional leave and access further benefits such as salary packaging and cashing out five days recreation leave subject to conditions. Salary progression within classification levels is subject to performance assessment. Salary ranges are reflected in the table below. The Commission has three staff covered by Australian Workplace Agreements, including one Senior Executive level staff member.

The Commission provides corporate support to the Office of the Federal Privacy Commissioner, which is co-located with the Commission and has negotiated a Memorandum of Understanding for the provision of corporate support. Staff in the Office of the Federal Privacy Commissioner are covered by the Human Rights and Equal Opportunity Commission's Certified Agreement and related workplace policies until a new Agreement is negotiated after the expiry of the current Agreement. The Commission also provides corporate support to the Secretariat of the Asia Pacific Forum of National Human Rights Institutions which is co-located with the Commission.

Staffing overview

The Commission's average staffing level for the year was 95 staff with a turnover of 13 percent for ongoing staff. This was a similar turnover to the previous year. In order to meet some short-term staffing needs for the year additional non-ongoing staff were employed to assist with the National Inquiry into Children in Immigration Detention. An overview of the Commission's staffing profile as at 30 June 2002 is summarised in the table below. This includes three staff on leave without pay.

Classification	Male	Female	Full-time	Part-time	Total Ongoing	Total non-Ongoing
Statutory Office Holder	2	2	3	1		4
SES Band 2		1	1		1	
SES Band 1						
EL 2 above the barrier (\$79 603 ñ 81 637)		3	2	1	3	
EL 2 (\$67 941 ñ 78 247)	9	10	17	2	16	3
EL 1 (\$58 908 ñ 64 600)	8	2	9	1	10	0
APS 6 (\$45 951 ñ 52 784)	6	19	25		23	2
APS 5 (\$42 544 ñ 45 113)	3	4	7		5	2
APS 4 (\$38 143 ñ 41 416)	3	3	6		6	0
APS 3 (\$34 224 ñ 36 938)	2	15	13	4	11	6
APS 2 (\$30 047 ñ 33 320)	1	5	6		3	3
APS 1 (\$26 550 ñ 29 344)	3			3	1	2
TOTAL	37	64	89	12	79	22

Consultancy services

During 2001-02 the Commission used a range of consultancy services where there was, for example, a need for rapid access to latest technology and experience in its application; lack of in-house resources; the need for independent study; or a need for a change agent or facilitator. There were 10 consultants under engagement during the financial year and total payments of \$245,143.75 were made to consultants. A full listing of the names and amounts is available on the Commission website at www.humanrights.gov.au.

Purchasing

The Commission's purchasing procedures are based on the Commonwealth Procurement Guidelines issued by the Department of Finance and Administration. The procedures address a wide range of purchasing situations, allowing managers to be flexible when making purchasing decisions whilst complying with the Commonwealth's core principle of value for money.

Ecologically sustainable development and environmental performance

The Commission uses energy saving methods in its operations and endeavours to make the best use of resources.

The Commission has implemented a number of environmental initiatives to ensure issues of environmental impact are addressed. Waste paper, cardboard, printer cartridges and other recyclable materials are recycled subject to the availability of appropriate recycling schemes. Preference is given to environmentally sound products when purchasing office supplies. Purchase and/or leasing of iEnergy Star[®] rated office machines and equipment is encouraged, as are machines with 'power save' features.

Fraud control

The Commission has prepared a fraud risk assessment and fraud control plan and has procedures and processes in place to assist in the process of fraud prevention, detection, investigation and reporting in line with the Commonwealth Fraud Control Guidelines. The Fraud Control Plan is made available electronically to all Commission staff.

Commonwealth Disability Strategy

The revised Commonwealth Disability Strategy was launched by the Government in late 2000. Full details on the Strategy can be found on the Department of Family and Community Services' website at www.facs.gov.au/disability/cds. Through the Strategy the Government seeks to ensure its policies, programs and services are as accessible to people with disabilities as they are to all other Australians. This of course is integral to the work of the Commission and evident in the work we do.

The Commission along with all other Commonwealth agencies has to report against the Strategy performance framework annually. The Strategy identifies five core roles that may be relevant to the agency. The Commission's primary roles are that of policy adviser, service provider and employer. Full details on the policies and services highlighted in the appendices can be found within the relevant section of the Annual Report.

The Commission's last Disability Action Plan was reviewed in 2001 and this can be found on the Commission's website at www.humanrights.gov.au/disability_rights/action_plans/. The Commission will be developing a new Action Plan in the latter part of 2002. The Commission is committed to implementing best practices in providing and improving access to its services for people with disabilities. In particular our complaint handling processes, online access to our services and website, and consultation with disability groups provide examples of what we are doing to achieve this. Further details of these can be found within our Annual Report.

COMMONWEALTH DISABILITY STRATEGY PERFORMANCE REPORTING JUNE 2002

Further details on programs and policies outlined against the performance indicators can be found in the relevant section of the Annual Report.

Policy Advisor Role

Performance Indicator 1:

New or revised policy/program assess impact on the lives of people with disabilities prior to decision

Performance measure

- ï Percentage of new or revised policy/program proposals that document that the impact of the proposal was considered prior to the decision making stage.

Current level of performance 2001-02

- ï 100 percent of Terms of Reference for Commission Inquiries are distributed for comment prior to a decision to proceed.
- ï Submissions to Inquiries are taken in a range of formats, including verbal/audio (transcribed by the Commission), email, and handwritten letters.
- ï Submissions are made available to all on the Commission's website, except where otherwise requested or indicated.
- ï Public hearings for the National Inquiry into Children in Immigration Detention were held in venues accessible to people with disabilities.
- ï Disability related email discussion lists are monitored for relevant policy issues, and are used to announce calls for submissions.
- ï Performance measure = 100 percent.

Performance Indicator 2:

People with disabilities are included in consultation about new or revised policy/program proposals

Performance measure

- ï Percentage of consultations about new or revised policy/program proposals that are developed in consultation with people with disabilities.

Current level of performance 2001-02

- ï National racism conference *Beyond Tolerance* held in an accessible venue and included a speaker from Action on Disability within Ethnic Communities. The Executive Director of the National Ethnic Disability Alliance was a member of the conference advisory committee.
- ï The Accessible Ecommerce Forum and Building Access Policy Committee are actively resourced by the Commission. Disability sector representatives work with the Commission in developing ongoing agenda for these fora.

- ï A Summit was hosted to provide an opportunity for national disability peak organisations to express views about the effectiveness of the Disability Discrimination Act, and to suggest priorities and directions for future Commission policy initiatives.

Performance Indicator 3:

Public announcements of new, revised or proposed policy/program initiatives are available in accessible formats for people with disabilities in a timely manner

Performance measure

- ï Percentage of new, revised or proposed policy/program announcements available in a range of accessible formats.
- ï Time taken in providing announcements in accessible formats.

Current level of performance 2001-02

- ï All information about new Commission initiatives is available on a W3C/WAI compliant website simultaneous with public release. For more information on accessibility compliance refer to www.w3c.org. Performance measure for web release = 100 percent.
- ï Email lists deliver information and links to several thousand subscribers. All national disability peaks subscribe to this list.
- ï Added to the race discrimination part of the Commission website were the records of the national consultations undertaken for the World Conference Against Racism, speeches delivered at the national racism conference *Beyond Tolerance* (posted as delivered) and revised fact sheets on the Racial Discrimination Act.
- ï All public announcements and publications issued by the Sex Discrimination Unit are available on the website, including key speeches delivered by the Commissioner, op-ed pieces and media releases.
- ï The *Disability Rights Update* is distributed via Radio for the Print Handicapped, a national network. In 2001, the Disability Rights Unit evaluated the update service via a user survey and incorporated feedback to improve navigation of the website.
- ï Other accessible formats are available on request, and can be provided within three days.
- ï For the provision of announcements in accessible formats the performance measure = 100 percent.

Provider Role

Further details on the Commission's complaint handling function with a full description of its services and relevant statistics can be found in the Complaint Handling Section of the Annual Report.

Performance Indicator 1:

Complaints information service provides information about complaint handling service to people with disabilities

Performance measure

- ï Complaints information service accessible to people with disabilities.
- ï Number of calls/emails/visits to complaints information service related to disability issues.
- ï Number of groups that attended complaint handling information sessions, or were visited by the Complaint Handling Section during regional and interstate visits included disability advocacy and disability legal services.

Current level of performance 2001-02

- ï Commission complaints information is available in electronic and alternative formats. Email facility and accessible online complaint form for the lodgement of complaints is available. TTY facility is available with a national 1300 number at local call cost.
- ï All complaint handling brochures and publications are available on the Commission's website in accessible electronic format. Information about the complaints process and legislation is available in plain English format on the Commission's website. The website is updated regularly.
- ï 19 percent of phone/email enquiries to the Complaint Information Service related to disability issues.
- ï 15 percent of all written enquiries to the Complaint Information Service related to disability issues.
- ï 155 groups attended a Complaint Handling Section session or were visited by Complaint Handling Section staff.
- ï Commission information is available in alternative formats on request.
- ï A complaints information referral list is updated regularly to ensure callers with disabilities can be referred to an appropriate advocacy groups.

Performance Indicator 2:

Complaint handling service accessible to people with disabilities

Performance measure

- ï Number of complaints received under the Disability Discrimination Act.
- ï Number of complaints lodged by people with disabilities under all legislation administered by the Commission.

- ï Number of complainants who identify the need for specific assistance on intake form.
- ï Complaints received about accessibility of service.

Current level of performance 2001-02

- ï 452 complaints were received under Disability Discrimination Act legislation for 2001-02. Refer to the Complaints Handling Section of the Annual Report for further details.
- ï Complaints were received from people identifying as having a disability under all Acts administered by the Commission. Forty seven (47) percent of responses to a demographics question indicated the complainant had a disability.
- ï There were no complaints received regarding access to the Commission complaint handling service or premises. Performance measure = 100 percent.
- ï The Commission's premises are accessible. Premises used for remote conciliations conferences are accessible. Performance measure = 100 percent.
- ï The Complaint Handling Section Access Committee reviews access to the Commission's complaint handling service by the community, including specific focus on people with disabilities. Further details are available in the Annual Report.

Performance Indicator 3:

Staff training and development includes training related to people with disabilities

Performance measure

- ï Percentage of training programs that include information regarding people with disabilities and relevance to complaint handling processes.

Current level of performance 2001-02

- ï Complaint Handling Section investigation and conciliation training courses include specific training on accommodating people with disabilities in the complaint handling investigation and conciliation processes. Performance measure = 100 percent.
- ï Ad hoc Complaint Handling Section training sessions specifically address relevance to people with disabilities who use complaint handling services. Performance measure = 100 percent.
- ï The Commission's Complaint Handling Manual advises staff to consider reasonable accommodation for people with disabilities is provided during the investigation and conciliation process such as provision of Auslan interpreters, use of TTY, use of alternative formats for information. Performance measure = 100 percent.

Performance Indicator 4:

Complaint mechanism in place to address concerns raised about service and addresses requirements of people with disabilities

Performance measure

- ï Established complaint/grievance mechanism in operation. Detailed in Charter of Service which is provided to all parties to a complaint and available on website. Provided in alternative format on request.

Current level of performance 2001-02

- ï Charter of Service addresses roles and responsibilities of the Commission and parties.
- ï No complaints about accessibility of service or disability related issues were received under the charter in the year.
- ï Performance measure = 100 percent.

Employer Role**Performance Indicator 1:**

Employment policies, procedures and practices comply with the requirements of the Disability Discrimination Act

Performance measure

- ï Number of employment policies, procedures and practices that meet the requirements of the *Disability Discrimination Act 1992*.

Current level of performance 2001-02

- ï The Corporate Plan includes reference to Australian Public Service values and social justice principles to ensure access to the Commission's services.
- ï The Certified Agreement contains reference to workplace diversity principles. Most of the Commission's policies on employment are contained within the Agreement.
- ï The Workplace Diversity Plan outlines strategies to maximise employment opportunities for people with disabilities. All new staff on induction are provided with a copy of the Plan.
- ï The Email/Internet Policy is reviewed annually. It specifically refers to the inappropriate use of email that may demean people with disabilities.
- ï No formal complaints/grievances made by staff with disabilities with regard to current work practices.
- ï Reasonable adjustment principles are adhered to in the

modification of an employees duties in the workplace. Two employees have been provided with special voice activated software to enable them to undertake their duties.

Goals for 2002-03

- ï The Commission's Certified Agreement is due to be renegotiated after 1 August 2002. Workplace diversity principles will be maintained in the Agreement and related employment policies updated to reflect these.

Actions for 2002-03

- ï The Workplace Diversity Committee to review the Workplace Diversity Plan. This has been scheduled for the latter part of 2002.

Performance Indicator 2:

Recruitment information for potential job applicants is available in accessible formats on request

Performance measure

- ï Percentage of recruitment information requested and provided in alternate electronic formats and accessible formats other than electronic.
- ï Average time taken to provide accessible information in electronic formats and formats other than electronic.

Current level of performance 2001-02

- ï Performance in providing accessible formats for recruitment material = 100 percent.
- ï Recruitment information is able to be provided in any format. All recruitment material is on the Commission's website and available by download simultaneously as advertising in the press. Advertisements in the press advise that information is available at contact phone number, by TTY phone and on the Commission's website. The Commission website meets the criteria for accessibility as outlined in the Government Online Strategy. The Job Vacancies section at www.humanrights.gov.au/jobs/ received approximately 36 350 page views during the period 1 July 2001 ñ 30 June 2002.
- ï There was one request for Braille during 2001-02 and this was provided within a week.

Actions for 2002-03

- ï Website to include that information is able to be provided in other alternate formats such as Braille etc.
- ï Continue to provide recruitment material on the website.
- ï Monitor use of the website and requests for alternate formats.

Performance Indicator 3:

Agency recruiters and managers apply the principle of reasonable adjustment

Performance measure

- ï Percentage of recruiters and managers provided with information on reasonable adjustment.

Current level of performance 2001-02

- ï Selection guidelines include information on reasonable adjustment and guidelines for interviewing staff with disabilities.
- ï Recruitment action is managed internally and not outsourced.

Performance Indicator 4:

Training and development programs consider the needs of staff with disabilities

Performance measure

- ï Percentage of training and development programs that consider the needs of staff with disabilities.

Current level of performance 2001-02

- ï Due to the small number of staff, training is coordinated by each of the unit managers under the Commission's Performance Management scheme.
- ï Training nomination forms include specific requirements that may be needed such as:
 - ñ wheelchair access
 - ñ accessible toilets/parking
 - ñ a hearing device
 - ñ sign language interpreter
 - ñ an attendant
 - ñ a support person
 - ñ information in Braille, audio cassette, large print, ASCII format.

Performance Indicator 5:

Training and development programs include information on disability issues as they relate to the content of the program

Performance measure

- ï Percentage of training and development programs that include information on disability issues as they relate to the program.

Current level of performance 2001-02

- ï As noted above training is coordinated by each individual section.
- ï Induction includes information on workplace diversity and relevant legislation that the Commission administers, including the Disability Discrimination Act.
- ï The Complaint Handling Section conducts training and information on disability issues for staff.

Performance Indicator 6:

Complaint/grievance mechanism, including access to external mechanisms, in place to address issues and concerns by staff

Performance measure

- ï Established complaints/grievance mechanisms, including access to external mechanisms in operation.

Current level of performance 2001-02

- ï There is an established process in the Certified Agreement for complaints/grievances, which includes access to external review through the Australian Public Service Commission.
- ï All staff are advised of access to the Commission's Employee Assistance Program and encouraged to use this service when needed. This free service provides counselling and support for staff and their families.
- ï Provision of access to complaints/grievance mechanisms = 100 percent.

Actions 2002-03

- ï The Commission's new Workplace Agreement will continue to provide access to grievance procedures.

Note: Accessible electronic formats include ASCII (or .txt) files and HTML for the web. Non electronic accessible formats include Braille, audio cassette, large print and easy English. Other ways of making information available include video captioning and Auslan interpreters.

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