



Human Rights and Equal Opportunity Commission

Annual Report 2003—2004

Working towards an
Australian society where the
human rights of all
are respected,
protected and
promoted



Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly
resolution 217 A (III) of 10 December 1948

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for, and observance of, human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, THE GENERAL ASSEMBLY proclaims

This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

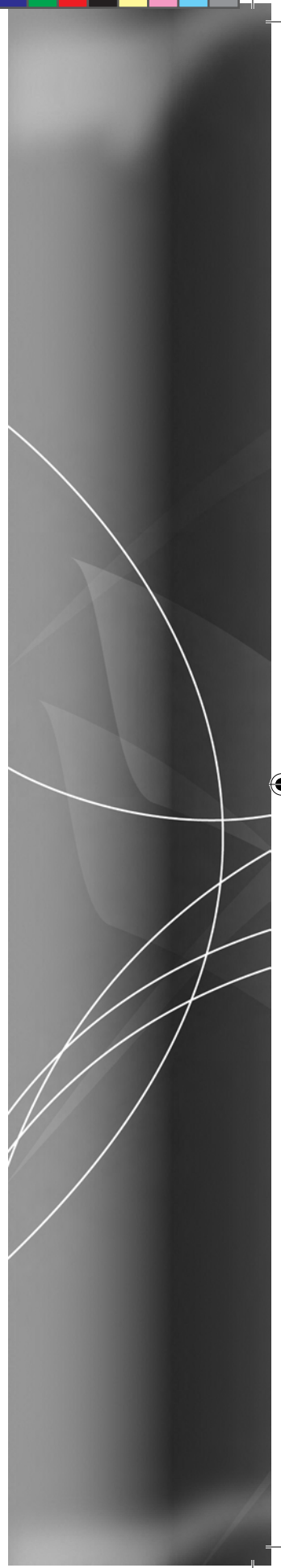




*Human Rights and
Equal Opportunity Commission*



Annual Report 2003–2004



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www.humanrights.gov.au/annrep03_04/



9 September 2004

The Hon. Philip Ruddock MP
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 2004, 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 section 70 of the *Public Service Act 1999*.

Yours sincerely,

The Hon. John von Doussa, QC
President
Human Rights and Equal Opportunity Commission



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Significant achievements

- Launch of *A last resort? The report of the National Inquiry into Children in Immigration Detention* in states and territories around Australia. **See page 140.**
- Launch of summary report *Ismaḡ – Listen: national consultations with Arab and Muslim Australians* at events throughout Australia. **See page 150.**
- Release of a package of materials on workplace sexual harassment, including: *20 Years On: The Challenges Continue: Sexual Harassment in the Australian Workplace*; *A Code of Practice for Employers*; and *A Bad Business: Review of Sexual harassment in employment complaints 2002*. **See page 165.**
- 38 percent of finalised complaints were conciliated. **See page 50.**
- Release of new Commission video/DVD titled '*Pathways to Resolution: The conciliation process of the Human Rights and Equal Opportunity Commission*'. **See page 53.**
- Publication of '*Federal Discrimination Law 2004*'. **See page 102.**
- The *Bringing them home* education module released for use in Australian schools. **See page 35.**
- Over 4 392 429 page views on the Commission's website during 2003–04. **See page 30.**
- An increase of 7 400 self subscribers to the Commission's electronic mailing list service. **See page 30.**
- There were over 2 550 media enquiries to Public Affairs during 2003–04, including over 600 media interviews arranged for the President and Commissioners. **See page 25.**
- Continued progress towards the adoption of Disability Standards on access to premises and education. **See page 132.**
- 320 Action plans submitted under the Disability Discrimination Act (an increase of 44 from last year's total). **See page 133.**
- A series of community workshops on Indigenous rights conducted across Australia with Aboriginal and Torres Strait Islander Services. **See page 120.**
- A high level of interest and enrolments in the National Indigenous Legal Advocacy Courses (NILAC). **See page 124.**

Statement from the President

It is now just over one year since I took up my appointment as President of the Commission. During this time, the world's attention has been focussed on the international terrorist threat and how governments, including our own, can contain and counter that threat. In Australia, the Commission has been mindful of the fact that any counter-terrorism measures must be enacted and administered in accordance with existing domestic and international laws, including human rights laws. Indeed, strengthening respect for and compliance with human rights standards is an essential component of a comprehensive response to terrorism.



The Hon. John von Doussa, QC
*President
Human Rights and Equal
Opportunity Commission*

Human rights standards are among the foundation stones of our functioning democracy. If we seek to justify the sacrifice of particular rights in an attempt to safeguard our society, such as the right to a fair hearing, we risk foregoing the very rights that are essential to the maintenance of the rule of law. Equally, if we fail to strike the right balance between national security objectives and respect for human rights standards, we jeopardise the very security we so value.

As the body with a statutory responsibility to ensure the observance of human rights in Australia, much of the Commission's work over the last year has involved vigorously defending human rights standards before the Parliament and the Courts.

The Parliamentary Committee process is the main forum for the Commission to fulfil its statutory responsibilities to assess legislative proposals for their compliance with human rights standards and to foster debate and greater awareness about human rights in the community. The Commission has also contributed to other law reform processes by drawing attention to the human rights implications of proposed changes. This included providing submissions to various stages of the Australian Law Reform Commission Inquiry into the

protection of classified and security sensitive information, and the federal Government's Migration Litigation Review. Details of the submissions made to these bodies are contained in Chapter 3 of this Report.

The Commission has actively sought to ensure that Australian law develops in a manner consistent with human rights standards. Our involvement in court proceedings is predicated on the matter involving issues of public importance that extend beyond the parties before the Court. We continue to find that our role in legal proceedings, either as an intervener or as an *amicus curiae* (friend of the court), is also an important element of our human rights education work, as it demonstrates how universal human rights principles may be applied to resolve issues before domestic Courts.

During the last year, Commissioners were granted leave to appear as *amicus curiae* in four matters relating to pregnancy and family responsibility, sex discrimination, racial vilification and disability discrimination. Leave was also granted for the Commission to intervene in five matters, thereby assisting the Courts to consider significant human rights issues in the context of immigration detention, children's rights and transgender identity.

Two of these interventions, the *Al Khafaji* and the *Sakhi* cases, have been the subject of considerable media attention and warrant special mention. Both cases dealt with the question of whether the Commonwealth can indefinitely keep asylum seekers, both adults and children, in immigration detention. More detailed information about the cases is available in the Commission's legal publication *Federal Discrimination Law 2004*, and in the Legal Section of this Report.

The Commission's intervention in the *Sakhi* matter drew upon and complemented the work of the Human Rights Commissioner, Dr Sev Ozdowski, over the last two years on the report of the National Inquiry into Children in Immigration Detention entitled *A last resort?* Tabled in the Australian Parliament in May 2004, this key report found that Australian laws relating to immigration detention have resulted in numerous and repeated breaches of the *Convention on the Rights of the Child*. This, together with the finding that nine out of 10 of asylum seeker children in detention end up calling Australia home – because they are eventually found to be genuine refugees children – led the Human Rights Commissioner to conclude that there is no valid reason for the continued detention of children.

Another key document released by the Commission relates to the national consultations that the Acting Race Discrimination Commissioner, Dr Bill Jonas, convened with Arab and Muslim Australians, which we called the Ismaḡ Project. These national consultations were set up in response to concerns expressed by Arab and Muslim organisations about the rise in anti-Arab and anti-Muslim prejudice in Australia, set against the backdrop of the terrorist attacks in the United States and Indonesia, and the arrival of growing numbers of asylum seekers from Middle Eastern and Muslim countries.

Both of these publications have promoted significant public discussion about human rights in Australia and continue to foster a deeper understanding of these complex issues. Following their public launch in capital cities around the country, each has been the subject of innumerable media articles, radio interviews and speeches by the Commissioners. The publications are available in hardcopy or CD-Rom form, as well as on our website in a variety of internet applications including summary format. Our Public Affairs Unit has also developed an interactive internet-based teaching module for the Children in Immigration Detention Report for use by schools, and downloadable audio resources for the Ismaε Project. These enable students to access reliable information and resources on human rights issues to help them ask questions, analyse, debate and, finally, draw their own conclusions.

These online resources complement the Commission's online human rights education modules, such as the very popular *Face the Facts – Teaching Resources for use in Australian Classrooms*, and the new *Bringing them home* education module, which was launched at the end of 2003. This latter module provides students and teachers with a range of resources based on *Bringing them home: the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. The Commission welcomes the strong interest teachers have shown in this resource and regards it as a valuable means of educating new generations of Australians about this aspect of Australia's history that Indigenous communities are still coming to terms with.

The success of the Commission's schools program can be measured by the fact that the education resources on the Commission's website have recorded over 460,000 page views in the last year and that more than 4,000 teachers are subscribers to the Commission's regular electronic newsletter.

In addition to these on-line education materials, the Sex Discrimination Commissioner, Pru Goward and I ran a series of 'Human Rights Youth Challenge' programs in secondary schools around the country, addressing the theme of 'tackling sexual harassment in your school'. These forums provided students with practical ways to help them understand their rights and responsibilities and to counter the myths and stereotypes which are often at the heart of discrimination and harassment.

As the Commission's complaints statistics indicate, sexual harassment in the workplace remains an ongoing concern, despite the fact that 2004 marks the twentieth anniversary of the enactment of the Sex Discrimination Act. The findings of Commissioner Goward's benchmark national study, which suggested that as many as 230,000 Australians have been sexually harassed in the workplace in 2002–03, are cause for renewed action on this front. The Commission has an important educative role in this regard, and I welcome the proactive approach Commissioner Goward has taken with employers' groups to advise them of how to meet their obligations to prevent and eliminate sexual harassment in the workplace. I also welcome her determination to tackle the rising tide of pregnancy discrimination complaints with a similar resolve.

The Sex Discrimination Commissioner has also been an active participant in public discussion on a range of gender issues, including the role of men and boys in achieving gender equality, paid maternity leave, access to childcare, and gender pay equity. Together with the Sex Discrimination Unit, she has continued to monitor the trafficking of women in Australia and the Asia Pacific region, and commenced work on anti-trafficking and domestic violence programs as part of the Australia-China Human Rights Technical Cooperation Program.

Whilst the role and functions of the Commission are primarily directed towards human rights issues within Australia, the Commission does have an international education and training role, with a specific focus on agencies in the Asia Pacific region.

Our international role reflects the Commission's belief that helping to strengthen human rights protection in other countries, particularly our regional neighbours, has flow-on benefits for all concerned. Collaboration on human rights issues with other government agencies, civil society groups and national human rights institutions provides a valuable opportunity for the Commission to keep abreast of international developments in human rights and models of best practices that are relevant to the Australian context. This interaction also enables us to share our experience where it is relevant to strengthening the capacity of other agencies and institutions to protect and promote human rights and the rule of law.

The Commission is an active member and supporter of the Asia Pacific Forum of National Human Rights Institutions (the APF), of which we are a founding member. The strength and vitality of human rights institutions in this region is demonstrated by the fact that membership of the Asia Pacific Forum of National Human Rights Institutions now numbers 14 countries. Particular commendation is due to the Advisory Council of Jurists to the APF, which has written an outstanding report on Rule of Law and Terrorism that will be an invaluable resource to all manner of organisations and authorities working on this issue.

The APF, through its member institutions, has also made an important contribution to the development of a draft International Convention on Human Rights and Disability at the United Nations. The Commission has been actively involved in this process from its initiation, and has been well represented by Deputy Disability Discrimination Commissioner Mr Graeme Innes on each of the three official Australian delegations to the UN meetings.

Given that over 40 percent of the complaints received by the Commission concern disability discrimination, the Commission has continued to push for progress on a range of policy and law reform fronts. These include ongoing work with a range of industry, community and government representatives to develop Disability Standards in relation to access to premises, and their extensive contributions to the review of the Disability Discrimination Act by the Productivity Commission. Following this review and the High Court's decision in *Purvis v NSW*, the Commission is very conscious of the need for significantly more progress to be made in relation to the employment situation for people with disabilities, particularly in the Australian Public Service.


Another area where the Commission has identified the need for urgent progress is addressing Indigenous disadvantage. The final Social Justice Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr William Jonas, has been hailed as a blueprint for Australia in this regard. Reflecting on the successes, failures and omissions of government policy and program delivery over the last five years, this report details what needs to occur to ensure an acceptable rate of progress towards addressing Indigenous disadvantage. Complementing this approach, Commissioner Jonas' *Native Title Report* outlines how the goals of native title policy and those of broader Indigenous policy can be aligned to improve the economic and social conditions of Indigenous peoples' lives.

Commissioner Jonas served as Aboriginal and Torres Strait Islander Social Justice Commissioner for over five years, and as Acting Race Discrimination Commissioner for nearly as long. In both roles he made an enormous contribution to the work of the Commission. His annual *Social Justice* and *Native Title Reports* are highly respected for their depth of research, objective reporting and forward-looking recommendations. The Australian community owes him a debt of gratitude. The Commission thanks him, and we wish him well in whatever role he now takes up.

The close of 2003–04 brought with it a number of significant changes for the Commission. With the end of Commissioner Jonas' term approaching, the Attorney-General appointed a new Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Tom Calma, who will also take on the responsibility of Acting Race Discrimination Commissioner in his first year. Mr Calma, an Aboriginal elder from the Kungarakan tribal group (traditional lands south west of Darwin), will assume these responsibilities in July 2004, and on behalf of the Commission, I welcome him and extend him every support.

Another significant development was the passage of the long-awaited *Age Discrimination Act 2004* (Cth). Whilst we raised a number of concerns about the draft legislation during the consultation process and made a submission to the Senate Inquiry into the Bill to seek improvements to the Bill, the Act is a welcome tool for the enforcement of the human rights for those who suffer discrimination on the basis of their age. For the first time, Australia has an enforceable remedy in federal law for people both young and old, who want a better opportunity to be full and active participants in the community. Given the rapidly ageing population, the passage of the legislation is particularly timely.

The Complaint Handling Section continues to play a vital role in fulfilling the Commission's objective of delivering an Australian society in which human rights are protected. Last year the Commission handled more than 9 600 individual complaint inquiries, received over 1 110 complaints, and successfully conciliated over 460 complaints. Despite this volume of work, the clients using the services felt the Commission dealt with their complaint in a timely manner, and 89 percent of parties were satisfied with the services they received.



There are many people to be thanked for their contributions to the work of the Commission. I would like to thank the Commissioners and their staff and the valuable contribution the Complaint Handling Section, Legal Section and Public Affairs provide to all units in the Commission throughout the year. Outside the Commission, the work of many of its staff is invisible, but without our Personnel, Finance, Record Keeping, Reception, Library, and IT Sections, there would be no Commission.

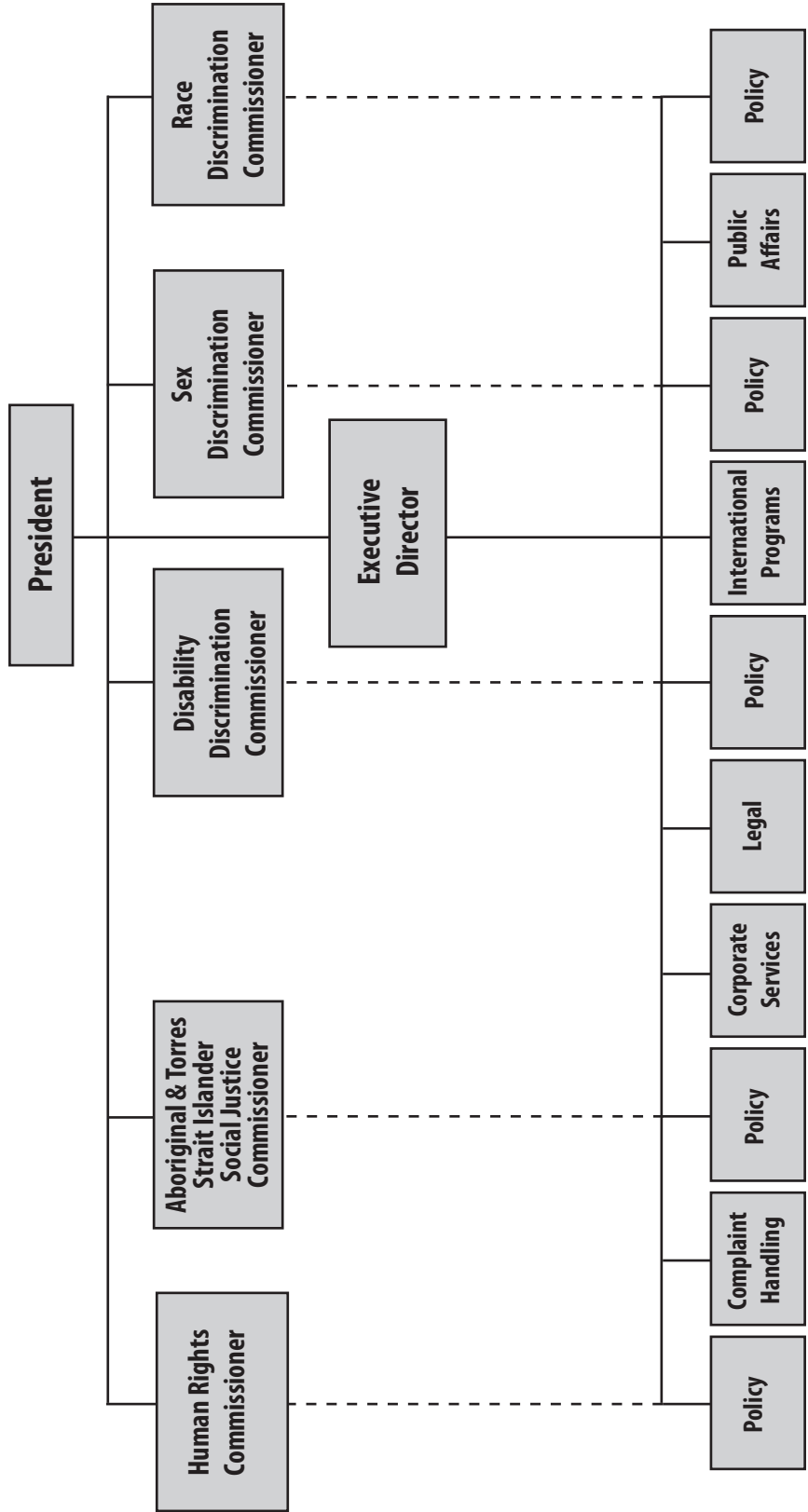
All these people have worked tirelessly, and I would like to express my sincere thanks to them and to all the staff of the Commission for their professionalism and dedication, and not least for the consistently high quality of their work throughout the year.

In the promotion and protection of human rights both in Australia and internationally, the contributions made by non-government organisations in civil society play a very important role. They are able to bring attention to human rights abuses that would otherwise be inadequately reported, and their depth of experience in particular fields can be invaluable in program planning. The Commission frequently interacts with these organisations, and I would like to acknowledge and pay tribute to their important work in defending human rights and fundamental freedoms.

Finally, I would like to pay tribute to my predecessor, Professor Alice Erh-Soon Tay, who died in April 2004 after a long illness. She was one of those rare people who are able to combine distinguished academic scholarship with active engagement in public affairs. She was both a formidable thinker *and* a tenacious doer. As such, her term as President of the Human Rights and Equal Opportunity Commission for almost five years was one characterised by outstanding service to the nation. Professor Tay's passionate work as a human rights defender, academic, author and editor remain a source of inspiration at the Commission, and will ensure that she is long remembered both in Australia and internationally.

The Commission remains committed to staunchly defending the rule of law, promoting of the importance of human rights education, and striving to build a more tolerant and inclusive community for all.

Human Rights and 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:

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

To ensure that Australians:

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

As an effective organisation, we are committed to:

- unity of purpose
- valuing our diversity and creativity
- 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 – The Hon. John von Doussa, QC

The Hon. John von Doussa was appointed President of the Human Rights and Equal Opportunity Commission on 1 May 2003 for a five year term.

At the time of his appointment he was a Judge of the Federal Court of Australia, an appointment he had held since 1988. He was also the President of the Australia Competition Tribunal, a Presidential Member of the Administrative Appeals Tribunal, an Additional Judge of the Supreme Court of the Australian Capital Territory, and a Judge of the Industrial Relations Court of Australia. From 1992 until shortly before his appointment he was also a part-time Commissioner of the Australian Law Reform Commission. From 1986 to 1988 he was a Judge of the Supreme Court of South Australia.

Before his appointment as a Judge he was a Queens Counsel practicing mainly in South Australia, and had served terms as the President of the Law Society of South Australia, and Vice-President of the Law Council of Australia.

In South Australia he had a close interest in the organisation and provision of practical legal training for newly qualified graduates in law. At different times he was the chair of advisory committees for the graduate diploma courses in legal practice conducted by the University of South Australia and by the Law Society of South Australia. In 1996 he was awarded an Honorary Doctorate of the University of South Australia in recognition of that involvement. He received a Centenary Medal in 2003.

In 1993 he sat as an Acting Judge in the Supreme Court of Vanuatu. In 1997 he became a member of the Court of Appeal of Vanuatu. In 2003 he was appointed a non-resident member of the Supreme Court of Fiji. He continues to hold these appointments.

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.

The five year term as Aboriginal and Torres Strait Islander Social Justice Commissioner expired on 5 April 2004. The Attorney-General asked Dr Jonas to extend his term of office of Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner for a period of three months (from 6 April 2004 and 10 April respectively).

Mr Tom Calma succeeded Dr Jonas as the Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner and commenced on 12 July 2004.

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 board 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.

*Ms Goward has also been appointed Commissioner responsible for Age Discrimination.

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*
- *Age Discrimination Act 2004.*

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:

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

- promote equality before the law for all persons, regardless of their race, colour or national or ethnic origin
- make discrimination on the basis of race, colour, descent or national or ethnic origin, unlawful
- provide protection against racial hatred.

Sex Discrimination Act

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

Its main aims are to:

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

Disability Discrimination Act

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

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

Age Discrimination Act

The objectives of the *Age Discrimination Act 2004* are to:

- promote equality before the law for all persons regardless of their age
- eliminate discrimination against persons on the ground of age in many areas of public life such as employment, education and the provision of services or facilities
- change negative stereotypes about older people.

Functions and powers

The Commission's responsibilities fall within four main areas:

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

In order to fulfil its obligations, the Commission:

- Fosters public discussion, and undertakes and coordinates research and educational programs to promote human rights and eliminate discrimination in relation to all Acts.
- Investigates complaints of alleged unlawful discrimination pursuant to the Age Discrimination Act, 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 Court within 28 days of a Notice of Termination issued by the President.

- 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 Commission 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.
- 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 (Age, 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 the President and Commissioners

In addition to the broad functions outlined above, the President, the Aboriginal and Torres Strait Islander Social Justice Commissioner and the Sex Discrimination Commissioner have specific responsibilities.

President

The President is the senior member of the Commission, responsible for managing its administrative affairs.

One of the major functions of the President relates to the complaint handling function of the Commission.

All complaints to the Commission alleging unlawful discrimination must be referred to the President. The President is required to inquire into each complaint and attempt to conciliate it. If the complaint is not able to be conciliated, the President is required to terminate it on one or other of the grounds specified in the *Human Rights and Equal Opportunity Commission Act 1986*. Once a complaint is terminated, the complainant may apply to the Federal Court of Australia or the Federal Magistrates Court seeking a remedy to the alleged unlawful discrimination.

In addition, the President is required to perform the Commission's function of inquiring into complaints made under the *Human Rights and Equal Opportunity Commission Act 1986* alleging breaches of human rights or discrimination in employment. As with unlawful discrimination complaints, the President attempts to resolve those complaints through conciliation. If the President has not declined the complaint and it is unable to be resolved through conciliation, and the President is satisfied after inquiry that there has been a breach of human rights or discrimination in employment has occurred, the President reports on the matter to the Commonwealth Attorney-General. The President can also make recommendations to address any damage suffered by the complainant. The Attorney-General is then required to table the report in Parliament within 15 sitting days of receipt of the report. The reporting process does not involve the President or delegate making findings that the respondent has acted unlawfully. The President or delegate only has the power to make recommendations in any reports to the Attorney, meaning that a successful complainant does not obtain a binding remedy.

The Act permits the President to delegate these complaint-related functions.

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 Philip Ruddock 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:

- to make, vary or revoke an arrangement with states or territories for the performance of functions relating to human rights or to discrimination in employment or occupation
- to declare, after consultation with the states, an international instrument to be one relating to human rights and freedoms for the purposes of the Act
- 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 2003–04 \$'000	Actual Expenses 2003–04 \$'000	Budget 2004–05 \$'000
<i>Total Administered Expenses</i>	–	–	–
<i>Prices of Department Outputs</i> Output Group 1 – Australians have access to independent human rights complaint handling and public inquiry processes and benefit from human rights education, promotion and monitoring and compliance activities.	13 683	14 823	13 685
<i>Subtotal Output Group 1</i>	<i>13 683</i>	<i>14 823</i>	<i>11 973</i>
Revenue from Government (Appropriation) for Departmental Outputs	11 971	11 971	11 973
Revenue from other sources	1 712	2 852	1 712
Total Price of Outputs	13 683	14 823	13 685
<i>Total for Outcome (Total Price of Outputs and Administered Expenses)</i>	<i>13 683</i>	<i>14 823</i>	<i>13 685</i>

	2003–04	2004–05
Staff years (number)	98	95



Chapter 2: ***Human rights education and promotion***

A central function of the Human Rights and Equal Opportunity Commission is to undertake education programs that increase public awareness and generate discussion of human rights and anti-discrimination issues within Australia.

The Commission's legislative responsibilities are:

1. To promote an understanding and acceptance of, and compliance with, the relevant Act:
 - ◇ Human Rights and Equal Opportunity Commission Act section 11(1)(g)
 - ◇ Racial Discrimination Act section 20(1)(b)
 - ◇ Sex Discrimination Act section 48(1)(d)
 - ◇ Disability Discrimination Act section 67(1) (g)
 - ◇ Age Discrimination Act section 53(aa)
2. To undertake research and education programs for the purpose of promoting the objects of the relevant Act:
 - ◇ Human Rights and Equal Opportunity Commission Act section 11(1)(h)
 - ◇ Racial Discrimination Act section 20(1)(c)
 - ◇ Sex Discrimination Act section 48(1)(e)
 - ◇ Disability Discrimination Act section 67(1)(h)
 - ◇ Age Discrimination Act section 53(ac)

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.

All work undertaken by the Commission has a human rights educative base, from the handling of individual complaints of discrimination or harassment to the conduct of National Inquiries which involve important human right issues, such as the detention of children in immigration detention.

Education and communications strategy

The Commission uses a range of strategies to communicate its key human rights messages to the community including:

- Regular media engagement by the President and Commissioners with metropolitan, regional and specialist press, radio and television outlets.
- The Commissioners and staff holding consultations with a range of peak bodies, community groups, NGOs, parliamentarians, business and industry groups, academics and government officers.
- The development of an extensive and accessible website which provides human rights education materials for individuals, students, teachers, employers, government and community groups.
- Curriculum-linked human rights education materials for teachers and students.
- Preparation and distribution of plain English publications on human rights and discrimination.
- Organisation of promotional events such as the annual Human Rights Awards.

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

Media engagement

The Commission's communication strategies are based on the necessity to target all Australians wherever they live and whatever their background, age, or gender. The Commission uses the mainstream and specialist media to disseminate human rights messages, and works with peak business and community groups in the development and delivery of messages. The Commission also provides human rights education materials for schools direct to teachers via the Commission electronic mailing listserve.

Engagement with the media is a crucial aspect of the Commission's public education function. Wherever possible the Commission engages in public debate via the print and electronic media to provide substantial information to the public, and directly to journalists and editors.

The Commission also uses community announcements and niche or specialist media such as ethnic and Indigenous radio and press, as well as country and regional media outlets to provide general information on the work of the Commission and of the Commissioners.

There were over **2 550** media enquiries to Public Affairs during 2003–04, including over **600** media interviews arranged for the President and Commissioners.

In the past year, the Commission has issued **89** media releases and alerts, and the President and Commissioners have had over **20** opinion pieces and articles on a range of topics published in major newspapers throughout Australia.

In the past year, Commissioners have contributed to public debate on human rights and discrimination issues including refugees and asylum seekers, racial vilification and discrimination, Indigenous social justice, native title, sex discrimination and sexual harassment in the workplace, 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.

The Sex Discrimination Commissioner, Pru Goward, was the focus of significant media interest throughout the year, particularly on paid maternity leave, work/family balance, pay equity, child custody and proposed amendments to the Sex Discrimination Act (SDA).

The Commissioner also did a range of media interviews on the release of a package of materials on workplace sexual harassment, the 20th anniversary of the SDA, Stop the Traffic II Conference on sex trafficking, the Sex Discrimination Amendment (Teaching Profession) Bill 2004 and exemptions to the SDA for the Catholic Education Office.

There was also substantial media interest in the launch of the Report of the National Inquiry into Children in Immigration Detention and the public launches which were held in all Australian states.

Human Rights Commissioner, Dr Ozdowski, did a range of media interviews following the release of the Report after its tabling in federal Parliament and also around the 10 June deadline for the removal of all children from immigration detention.

Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr Bill Jonas, launched his 2003 Social Justice and Native Title reports at public events throughout Australia which outlined an agenda for change for Indigenous policy. Indigenous speakers at the launches included Senator Aden Ridgeway and Professor Larissa Behrendt, who discussed the future of reconciliation, self determination and the issues raised in the reports. There was media coverage of most of the launches by print media, radio and television.

Chapter 2: Human rights education and promotion

Dr Jonas also launched the summary Report of *Ismaḡ – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians* with launches throughout Australia, which attracted considerable media interest.

Acting Disability Discrimination Commissioner Dr Sev Ozdowski and Deputy Commissioner Graeme Innes made statements to the media on a range of disability issues including: the release of a draft Premises Standard, Education Standards, changes to Transport Standards, improved access to interpreting services for deaf people in medical consultations and a new pay TV captioning plan.

The Youth Challenge program for students on 'Tackling Sexual Harassment in your school' received constant media promotion. Commissioner Goward presented at the Brisbane, Fremantle, Adelaide, Melbourne, Sydney, Wollongong and Canberra programs, and the President presented at the Darwin and Adelaide programs. Both did a range of media interviews on the program and the issue of sexual harassment in schools.

The new audio-visual resource titled '*Pathways to resolution: The conciliation process of the Human Rights and Equal Opportunity Commission*' received wide media attention at launches in Sydney and Melbourne.

Public Affairs developed promotional material and media packs for educational writers, education editors, specialist teaching publications and internet magazines for a range of Commission educational resources including: Face the Facts, Bringing them home, Youth Challenge and Children in Immigration Detention Report.

The Commission also issued statements about the HREOC Bill, SDA Amendments Bill, age discrimination, welcoming the new chair of UN Commission on Human Rights, Internet forum on Australian South Sea Islanders, and the new Indigenous legal advocacy courses to name a few.

Community consultations

Community consultations are an important part of the Commission's human rights education program and provide a valuable two-way exchange of information. The President, Commissioners and their staff met with a very wide range of peak bodies, community groups, NGOs, parliamentarians, business and industry groups, academics and government officers during the year.

A range of these consultations are detailed below:

- The Human Rights Commissioner and staff conducted over 115 consultations and made approx. 60 speeches during 2003–04. These included community information and feedback consultations, pursuant to the parliamentary tabling of '*A last resort?*', in Brisbane, Sydney, Melbourne, Adelaide, Perth, Darwin, Alice Springs, Hobart and Launceston.

- Throughout the year the Acting Disability Discrimination Commissioner, Deputy Commissioner and staff have conducted over 80 consultations and made approx. 30 speeches. The Commissioner has maintained regular contact with a range of industry bodies, including the financial services industry, TV and cinema organisations, local government and educational institutions. The unit has also continued regular meetings with representatives from peak and state/territory disability advocacy groups.
- The Sex Discrimination Commissioner and staff were involved in approximately 55 consultations and made 100 speeches during 2003–04. These consultations have been with, community organisations and activists, academics, employers and employer groups, unions and Commonwealth Government officers.
- The Acting Race Discrimination Commissioner and staff held national consultations with Arab and Muslim Australians as part of the Ismae Project throughout 2003. Over 1 400 people participated in 69 consultations in all states and territories around Australia between April and November 2003. In total, the Commissioner and staff held over 130 consultations and made 11 speeches throughout 2003–04.
- The Aboriginal and Torres Strait Islander Social Justice Commissioner and staff conducted community workshops on Indigenous rights which were convened in each state and territory, including the Torres Strait, and were attended by approximately 250 people. Community forums were also held on support services for Indigenous women exiting prison in each state and territory, excluding Tasmania, and were attended by approximately 150 people from government departments, community-based organisations and academia.
- The Social Justice Commissioner and staff consulted with the National Native Title Tribunal, Federal Court, Native Title Representative Bodies, Aboriginal and Torres Strait Islander Commission, federal Attorney-General's Department, state and territory departments and mining companies on the operation of the *Native Title Act 1993*, as well as with native title holders and claimants.

Commission website – www.humanrights.gov.au

The Human Rights and Equal Opportunity Commission's (HREOC) 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.

Web resources include an online complaints form and useful information for complainants and respondents, a range of useful human rights education resources, information for employers, the legal section (which provides full details of HREOC legislation and other legal issues), and information on the work of the Commission's President and Commissioners.

Major additions and improvements in 2003–04

- *Ismae Summary Report* published online. This mini-site includes a range of useful audio resources in both Arabic and English for use by the community.
- *A last resort? The Report of the National Inquiry into Children in Immigration Detention* published online. Additional resources including a Summary Guide, Media Pack and audio statements were also published.
- *Sexual Harassment in the Australian Workplace* website published online. This site is designed to provide both employers and employees with important information on the issue of sexual harassment in the workplace.
- Useful online information sheets published including: *The Human Rights and Equal Opportunity Commission*, *The Complaints Guide* and *Social Justice and Human Rights for Aboriginal and Torres Strait Islander Peoples*.
- *Face the Facts 2003* published online, including HTML and Text only versions and PDF for download options.
- *Human Rights Medal and Awards* website published to promote HREOC's annual Human Rights Awards competition.
- National Legal Advocacy Courses mini-site published online – including course information and license application forms for educational institutions to download.
- A range of useful information sheets in the Complaints Information Section including:
 - ◇ *Complaints under the Sex Discrimination Act*
 - ◇ *Complaints under the Disability Discrimination Act*
 - ◇ *Complaints under the Racial Discrimination Act*
 - ◇ *Complaints under the Age Discrimination Act*
 - ◇ *Know your rights: human rights and the Human Rights and Equal Opportunity Commission Act*
 - ◇ *Complaints about discrimination in employment under the HREOCA*
 - ◇ *Reporting process for complaints about human rights breaches*
 - ◇ *The HREOCA reporting process for complaints about discrimination in employment or occupation*

- A range of useful human rights education resources published online including:
 - ◇ *Bringing them home: Learning about the Separation of Aboriginal and Torres Strait Islander Children from their Families*
 - ◇ *Face the Facts: Questions and Answers about Refugees, Migrants and Indigenous Peoples*
 - ◇ *Celebrate Human Rights Day – 10 December*
- Online publication of a range of HREOC reports and publications including:
 - ◇ *Social Justice Report 2003*
 - ◇ *Native Title Report 2003*
 - ◇ *Federal Discrimination Law 2004*
 - ◇ *Change and Continuity: Review of the Federal Unlawful Discrimination Jurisdiction*
 - ◇ *Dispute resolution in the changing shadow of the law: a study of parties' views on the conciliation process in federal anti-discrimination law*
- Publication of a range of speeches and other presentations by the HREOC President and Commissioners
- Publication of a range of submissions made by the HREOC President and Commissioners
- A range of updates and improvement to the structure and navigation of the site have been made in response to feedback received from users via HREOC's 2003 Website Users Survey, which received approximately 500 responses.



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. There are currently more than **21 161** subscribers across 10 different lists, which is a 50% increase from the number of subscribers last year:

Mailing list	Number of subscribers
Complaints and Legal Information	1 867
Disability Rights Update	1 891
Human Rights Awards Alert	1 510
Human Rights Education	4 198
Human Rights	2 215
Indigenous Issues	1 781
Media Mailing List	696
Priority Mailing List	2 171
Race Discrimination	1 609
Sex Discrimination	2 223
<i>Total subscribers</i>	<i>21 161</i>

Further information about HREOC's electronic mailing list service is available at: www.humanrights.gov.au/mailing_lists.

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 **4 392 429 page views** on the server during 2003–04. This equates to approximately **39 531 861 hits** on the site in total.

A summary of statistical information is provided below:

Section	Home/Index page views	Section page views
<i>HREOC Homepage</i> www.humanrights.gov.au	293 342	n/a
<i>Aboriginal and Torres Strait Islander Social Justice</i> www.humanrights.gov.au/social_justice	76 626	426 997
<i>Complaints Information</i> www.humanrights.gov.au/complaints_information	24 658	94 816
<i>Disability Rights Homepage</i> www.humanrights.gov.au/disability_rights	57 869	586 687
<i>Human Rights Homepage</i> www.humanrights.gov.au/human_rights	45 406	585 067
<i>Legal Info Homepage</i> www.humanrights.gov.au/legal	19 518	105 675
<i>Racial Discrimination Homepage</i> www.humanrights.gov.au/racial_discrimination	52 119	329 039
<i>Sex Discrimination Homepage</i> www.humanrights.gov.au/sex_discrimination	79 549	360 447
<i>Information for Employers Homepage</i> www.humanrights.gov.au/info_for_employers	19 951	59 661
<i>Publications Homepage</i> www.humanrights.gov.au/publications	19 120	25 644
<i>Media Releases Index</i> www.humanrights.gov.au/media_releases	24 768	371 059
<i>Job Vacancies Homepage</i> www.humanrights.gov.au/jobs	30 166	39 780
<i>Human Rights Education Resources</i>	n/a	466 499

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.

Human rights education for teachers and students

The Commission's formal education strategy is aimed at teachers and school students and is conducted by way of workshops and online web materials and activities. The human rights education materials are developed in conjunction with experience curriculum developers to provide teachers with a range of teaching materials which are linked to the curricula of each state and territory education system. In this way teachers can use the materials in the context of the particular subject area they are required to teach. Teaching strategies, activities and links to useful resources are all supplied as part of the resources.

The information about the materials is then disseminated directly to teachers by way of e-mail list serve messages. Some 4 000 teachers subscribe to the Commission's electronic mailing list. Direct and continuing contact with teachers to assist and help them link the material directly to curricula, which vary from state to state, are crucial aspects of the strategy.

From 1998 to 2000, the Commission conducted a series of *Youth Challenge Human Rights Human Values* one-day workshops all over Australia. These workshops brought together thousands of young Australians, human rights leaders and community representatives to explore human rights principles and practices and how they impact on social change and upon their own lives and the lives of others in the community. The issues covered included race, sex and disability discrimination in schools and in the wider community.

The workshops were for secondary school students and teachers and were supported by education materials which were curriculum-linked and distributed to all Secondary Schools in Australia. These materials were then converted into the online education modules under the banner of *Youth Challenge*.

On-line human rights education modules

In 2001, the Commission developed and published the first online human rights education program for teachers of primary and secondary students by way of human rights education modules for teachers. The program incorporated the *Human Rights Human Values* workshop materials and renamed the online modules *Youth Challenge*.

The program focuses on the learning needs of all students and includes materials about international instruments and domestic laws, which are presented in a user friendly and relevant manner for students.

This teaching approach is cross-curricular, which means teachers can tailor the education materials to a variety of subjects. The materials produced are relevant to all aspects of learning, including numeracy and visual literacy.

The modules are skills-oriented and provide materials which allow the students to go through the decision-making processes and come to their own conclusions about human rights and discrimination issues. They allow students, regardless of their learning styles/abilities, to participate.

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. Unit 1: Human Rights in the Classroom.
2. Unit 2: Doug and Disability Discrimination.
3. Unit 3: 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.

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.

56 028 users accessed *Youth Challenge* during the last financial year.

Youth Challenge Program

Youth Challenge workshops with a focus on sexual harassment in schools recommenced in September 2003 and continued till May 2004. They were accompanied by curriculum linked education materials and videos, and held in Western Australia, South Australia, Queensland, New South Wales, Victoria, Northern Territory and ACT.

Every Secondary School in Australia received a 12-page article '*Tackling Sexual Harassment in Schools*' education resource by way of *Studies Magazine* during August 2003. *Studies* is a privately produced education resource produced by Ryebuck Media who are consultants for the Commission in the presentation of the *Youth Challenge* workshops.



Ten workshops were conducted all over Australia, 643 students, and 96 teachers from 50 schools attended the workshops. Evaluations from the workshops show that **50% of students** and teachers judged the program **as excellent: 40%** judged it as **very good: 5.5% as good** with less than **1% judging** it as poor.

Tackling Sexual Harassment in Schools materials are being converted into online teachers resources and will become Unit 4 of an updated *Youth Challenge* program to be released in September 2004.

Information for Teachers website

In May 2002, the Commission launched an *Information for Teachers* portal. *Youth Challenge* materials are included as part of this portal. The section is regularly updated to provide teachers with the most recent quality materials. The aim is to directly assist teachers design their lessons across many subjects. For instance, the subject matter may be used to stimulate a current affairs debate, or as subject for a drama, English or a history lesson.

This section has proved very popular with teachers with **147 931** users accessing the section during 2003–04.

The portal is the on-line framework for the Commission human rights education program. It contains:

1. Education Modules

- *Youth Challenge*: Teaching Human Rights and Responsibilities.
- *Bringing them home*: Learning about the Separation of Aboriginal and Torres Strait Islander Children From Their Families.
- *Face the Facts*: Questions and Answers about Refugees, Migrants and Indigenous Peoples.
- *Celebrate Human Rights Day*: Activities for Human Rights Day, 10 December.
- *Paid Maternity Leave*: Activities on Gender and the Workplace.
- *Follow the Rabbit Proof Fence*: Activities linking the film to the National Inquiry.
- *Children in Immigration Detention*: Learning about the National Inquiry into Children in Immigration Detention.

2. Curriculum links documents for each of the education modules which links with the States and Territories educational curricula.

3. National and International human rights education resource collection.

4. HR Education Mailing List: an electronic mailing list with monthly updates.

***Bringing them home* – Learning about the Separation of Aboriginal and Torres Strait Islander Children from their Families**

This module which is based on the findings and recommendations contained in Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families was launched on 10 December 2004. It provides a history of the forcible separation of Indigenous children from their families and other policies and laws which have impacted on the lives of Indigenous Australians. It also provides a well researched update on how governments and the community have responded to the report's recommendation since it was released in 1997. The resources are for both Junior (Yrs 6–8) and Senior (Yrs 9–11) students.



The aim of the module is to present reliable information and resources for young people so that they may ask questions, analyze, debate and finally draw their own conclusions. There is a major focus on literacy and comprehension skills. This is an interactive resource which has been designed using cutting-edge technologies (including Flash) and is available online or on CD-Rom.

10 000 *Bringing them home* postcards (with order details on the reverse side) were distributed to all schools, national, state, higher education and community libraries and 3 000 copies of the CD-Rom were distributed following the receipt of orders.

From December 2003 to June 2004, **91 341** users have accessed this module.

Feedback from Education Departments

- **Department of Education, Science and Training in Queensland** promoted the *Bringing them home* education module to teachers of Aboriginal and Australian studies throughout the state.
- **Board of Studies, NSW** have included links to the *Bringing them home* education module in their History Curriculum Frameworks (Years 7–10).
- **South Australian Catholic Education Office** are distributing copies of the *Bringing them home* CD-Rom to all Catholic schools in their state.

Additionally, professional organisations including the **Australian Association for the Teaching of English** (particularly the ACT branch – ACTATE); the **Victorian Association of Social Studies Teachers** and the **Australian Literacy Educators Association** have been active in promoting the resource to their members.

***Facts the Facts* education module**

This education module was released July 2003 to accompany the updated version of *Face the Facts*. The activities in this module link to a range of key learning areas in relation to the prevailing myths concerning immigration, refugees and asylum seekers and Indigenous peoples.



The resource is for junior and senior high school students across all states and territories. Teaching notes, students activities and worksheets will be provided, plus a range of recommended resources for further reading.

66 151 users have accessed the *Face the Facts* module to June 30 2004.

Electronic mailing list

The Commission send each month to over **4 000** self-subscribed educators a monthly update:

- A link to the most recent set of human rights education activities.
- Reviews and links to human rights education resources.
- Reviews of particular sections of the commission's website which are useful for educators.
- A list of upcoming human rights education events.

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.

***Information for Students* web pages**

This section of the Commission's website developed in 1998–99 (and will be updated during 2004) was designed to inform students about human rights and provides links to other websites for students. The web usage statistics for this section shows **45 073** people accessed this section during 2003–04.

A further section for Tertiary students called *'Human Rights Explained'* was published on the web in 1998 and remains one of the most accessed sections of the HREOC website, with **42 471** page views in 2003–04. This will also be updated during 2004–05.

Commission publications

In addition to all Commission publications being made available on the Commission's website, around **89 000** publications were dispatched in hard copy format during 2003–04.

The most popular publications were *Face the Facts: Some Questions and Answers about Immigration, Refugees and Indigenous Affairs*, *Know your rights under the DDA* brochure, *A last resort? Summary Guide to the National Inquiry into Children in Immigration Detention* and *Sexual Harassment: Knowing your Rights* brochure.



A list of publications released during 2003–04 can be found at: Appendix 2 of this Report.

2003 Human Rights Medal and Awards

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

The 2003 Human Rights Medal and Awards presentation ceremony was held on 10 December 2003 at a luncheon at the *Sheraton on the Park* Hotel in Sydney. The Human Rights Day address was delivered by HREOC President, the Hon. John von Doussa QC, Julie McCrossin was the MC.



The Commission is very grateful for the services of the judging panels who give their time and expertise on an honorary basis. The 2003 judges were: Steve Ahern, Jack Beetson, Justice Catherine Branson, Nicholas Cowdery QC, Andrea Durbach, Cath Dwyer, Alastair Feehan, Greg Heesom, Professor Marilyn Lake, Debbie Lee, Stephen Long, Justice Ruth McColl, Peter Mares, Rachel Morris, Andy Nehl, Sandra Phillips, Michael Raper, Michael Simpson, Tony Stephens, Chris Uhlmann and Hewitt Whymann.

Information on the 2003 winners can be found below and on the Commission's website at: www.humanrights.gov.au/hr_awards/2003.html.

Human Rights Medal

Winner: Marion Lê



Refugee and asylum seeker advocate Marion Lê has worked consistently and effectively in promoting human rights for over three decades. President of the Indo-China Refugees Association for over 10 years, Ms Lê visits the refugee camps of Thailand and Malaysia and Australian detention centres, working to promote long-term durable solutions to the problems of the dispossessed of famine and war.

Her work has resulted in the successful settlement of hundreds of refugees and migrants into the Australian community. As a teacher of 30 years experience Ms Lê was responsible for introducing programs into schools that raise issues of multiculturalism, human rights and social justice.

The judges were impressed by her outstanding contribution to the advancement of human rights in Australia. They said 'She has given so much of herself in a voluntary capacity to individuals and families, and has applied the lessons of those experiences to seek broader systemic solutions in policy and legislation. She has provided help to many and acted as an example to many more; she has not only spoken out but she has acted, consistently and courageously, to make human rights a reality in the lives of so many.'

Law Award – sponsored by the Law Council of Australia

Winner: Justice Edward Mullighan

Since the early nineties, Justice Mullighan, a Senior Judge of the Supreme Court of South Australia, has been actively promoting cultural awareness amongst the judiciary and magistracy in South Australia and has supported innovation in the sentencing of Aboriginal defendants. He has chaired the cultural awareness committee of the court since 1995. This committee has managed seminars, and community justice workshops through which cultural awareness within the judiciary is promoted.

In 1997, he instigated a Law and Justice Conference which was hosted by the traditional communities of the Anangu Pitantjatjara Yankunyatara (APY) Lands, bringing together Aboriginal law men and a group of judges and magistrates. He has advocated for Aboriginal court interpreters and has promoted models of restorative and community justice.

Justice Mullighan has been active in nominating Aboriginal Justices of the Peace and has examined traditional Aboriginal ways of dealing with offending behaviours. He has championed Aboriginal Reconciliation among his peers and within the general South Australian community.

Community Award

Winner: Asylum Seeker Resource Centre

Australia's largest asylum seeker aid, health and advocacy organisation, the Asylum Seeker Resource Centre, was chosen for the 2003 Community Award due to the breadth and volume of their work and the day-to-day practical assistance provided to asylum seekers. They are a registered charity with no government funding. The service has three paid staff and over 250 volunteers that work in partnership with asylum seekers.

Since opening in June 2001, they have assisted more than 2000 asylum seekers from over 80 countries and have provided a welfare and advocacy service valued at approximately \$10 million. They opened Victoria's first health service for asylum seekers and provided medical care to about 200 asylum seekers who have no Medicare. In addition, the Centre provided direct financial aid of over \$100,000 to asylum seekers, as well as food parcels. They also established Victoria's first employment service for asylum seekers, as well as a range of other services including home tutoring and playgroups.

Arts Non-Fiction Award

Winner: *Dark Victory*, David Marr and Marian Wilkinson

Dark Victory, by David Marr and Marian Wilkinson, drew attention to the political motivations – and the human cost – of the Tampa crisis and the 'children overboard' affair, which generated so much coverage in the lead-up to the last federal election.

With *Dark Victory*, Marr and Wilkinson sought to dig behind the headlines and worked with tenacity to uncover 'new and impressive research, covering all aspects of the events, by interviewing the people involved and gaining access to FOI documents'. In doing so they also 'displayed a genuine humanity and compassion to the people at the centre of these events – the asylum seekers.' According to the judges, *Dark Victory* was "a phenomenal achievement and a genuine page-turner".

Television Award

Winner: *About Woomera*, *Four Corners*, ABC Television – Debbie Whitmont and Jo Puccini

About Woomera has been widely commended as a ground-breaking investigation of conditions inside the Woomera Detention Centre. The program was the product of more than a hundred interviews with staff, detainees and bureaucrats over the past two years.

Judges described the program as 'outstanding' and 'touching', as it took an issue in our society, researched and investigated it in a unique way, which encouraged

Chapter 2: Human rights education and promotion

public debate. It dominated talkback radio and editorials throughout the country – causing changes in community attitudes. Its contents were used in evidence in the first successful application to the Family Court for the release of five children from detention.

Radio Award

Winner: *The Place You Cannot Imagine: A Family and Detention in Australia*, Radio Eye, ABC Radio National – Lea Redfern and Phillip Ulman

The Place You Cannot Imagine: A Family and Detention in Australia is an evocative and hauntingly produced piece of radio. It follows the story of Gyzele Osmani, an Albanian woman who fled Kosovo in 1999 with her husband and five young children.

They came to Australia but were placed in Port Hedland Detention Centre after refusing to return to East Kosovo, which they believed was still unsafe for them.

According to the judges, it is a humanising story that “avoids the trap of stereotyping by examining the life of this one woman and her family”. It is the story of a mother watching her children grow up behind bars, with little control over their education, safety and health care. The judges were impressed not only with the themes in the story, but also by the quality of the radio craft which was displayed in telling that story.

Print Media Award

Winner: Series of articles on the sex trafficking trade in Australia – Natalie O’Brien and Elisabeth Wynhausen, *The Australian*

A series of articles on the sex trafficking trade in Australia by Natalie O’Brien and Elisabeth Wynhausen from *The Australian* newspaper was described by the judges as “a standout winner”. It began with the inquest into the death of a young Thai woman inside Sydney’s Villawood Detention Centre. Her case prompted a series of news reports by O’Brien and Wynhausen which aimed to reveal the extent and nature of sex slavery in Australia; expose the lack of official action over sex slave traffickers; and, in the process, to highlight the gross human rights abuses suffered by the trafficked women and girls.

The O’Brien/Wynhausen disclosures soon revealed that the Thai woman was one of many trafficked into Australia every year for the sex industry. They wrote more than 35 stories on sex trafficking issues over six months in *The Australian* from March to September 2003. The judges chose this entry for “the writers’ tenacity, for staying with it when all others had given up . . . and above all for the result . . . it placed increased pressure on the government and led to a change in laws”.



Chapter 3: ***Monitoring human rights***

Along with its human rights education and promotion function, the Commission undertakes a monitoring role in relation to human rights standards. This monitoring role ranges across the work of the individual Commissioners who examine and report issues of race, sex and disability discrimination and human rights, to the assessment of legislative proposals and presentation of submissions through the Parliamentary Committee process.

These submissions are also used by lawyers as resource material; politicians and advocacy groups who can use them in the political process and in public debate; and students and other individuals who have an interest in human rights issues.

A range of submissions made by the Commission during 2003–04 are summarised below:

Australian Law Reform Commission Inquiry – *Keeping Secrets: The Protection of Classified and Security Sensitive Information*

In April 2003, the Attorney-General asked the Australian Law Reform Commission (ALRC) to inquire into and report on measures to protect classified and security sensitive information in the course of investigations and legal proceedings in Australia. The ALRC was asked to consider whether existing mechanisms adequately protect classified and security sensitive information and whether there is a need for further regulatory or non-regulatory measures in this area.

The ALRC is required to ensure that the laws, proposals and recommendations it reviews or considers are, as far as practicable, consistent with the *International Covenant on Civil and Political Rights* (under section 24(1) of the *Australian Law Reform Commission Act 1996* (Cth)). The Commission provided the following submissions to the ALRC inquiry, including commentary on and jurisprudence in relation to the most relevant articles of the *International Covenant on Civil and Political Rights* to assist the ALRC in its consideration of the issues.

Chapter 3: Monitoring human rights

- In September 2003, the Commission provided a submission on the ALRC's Background Paper, Protecting Classified and Security Sensitive Information which is available at:
www.humanrights.gov.au/legal/submissions/law-reform.htm.
- In March 2004, the Commission provided a submission on the ALRC's Discussion Paper, Protecting Classified and Security Sensitive Information which is available at:
www.humanrights.gov.au/legal/submissions/law-reform_letter.html.

The Commission submitted that any modification to the ordinary criminal and civil law procedure must conform to the human rights principles set out in the *International Covenant on Civil and Political Rights*, especially article 14 which relates to the right to a fair hearing.

On 27 May 2004, shortly before the ALRC was to provide its final report to the Attorney-General, called *Keeping Secrets: The Protection of Classified and Security Sensitive Information*, the government introduced into Parliament the National Security Information (Criminal Procedures) Bill 2004 and National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004, relating to the protection of classified information in criminal trials. As at the end of the financial year, the Bills had been referred to the Senate Legal and Constitutional Legislation Committee for inquiry and report.

The Commission provided a written submission to that Committee, which raised issues similar to those raised in the submissions to the ALRC. That submission is available on the Commission's website at:
www.humanrights.gov.au/legal/submissions/national_security.html

Anti-Terrorism Bill (No. 2) 2004

The Anti-Terrorism Bill (No. 2) 2004 seeks to amend the *Criminal Code Act 1995* (Cth), the *Transfer of Prisoners Act 1983* (Cth) and the *Administrative Decisions (Judicial Review) Act 1977* (Cth). As at the end of the financial year, the Bill had been referred to Senate Legal and Constitutional Legislation Committee for inquiry and report. The Commission prepared a submission to that inquiry. That submission is available on the Commission's website at:
www.humanrights.gov.au/legal/submissions/terrorism.html

The Bill seeks to introduce a new offence into the *Criminal Code Act 1995* (Cth) of intentionally associating with a person who is a member, or who promotes or directs the activities, of a listed terrorist organisation in circumstances where the association provides support to the organisation. The person must know that the organisation is a terrorist organisation and must intend that the support 'assist' the organisation to expand or to continue to exist. There are a number of exemptions to the offence including; if the association is with a 'close family member' and relates to a matter of family or domestic concern; or if the association is for

the purpose of providing certain legal advice or representation. In addition, the offence does not apply to the extent that it would infringe any constitutional doctrine of implied freedom of political communication.

In its submission to the Senate Committee the Commission expressed concern in relation to the width of the proposed offence of 'association' and the lack of precision in certain of its terms. The essence of the Commission's concern was with the width of the term 'assist' and the range of activities that may fall within it. The Commission submitted to the Senate Committee that in order to conform to the principle of proportionality, the term must be defined in order to identify the nature of the risk that the offence is intended to address. The Commission submitted that the term could be defined by reference to specific examples, as has been done in the United States of America. Finally, the Commission submitted that its concerns in relation to proportionality were not allayed by the proposed exemptions and that the exemptions as presently drafted did not contain adequate carve outs for lawyers, journalists and family members.

The Commission also raised issues regarding the Bill's proposal to introduce a new Part IV into the *Transfer of Prisoners Act 1983* (Cth) to allow the Attorney-General to make orders relating to the transfer of prisoners ('security transfer orders') between states and territories in the interests of national security. The Commission's principal concern in relation to that issue was that security transfer orders create the possibility for delay in bringing a remand prisoner to trial and accordingly, the possibility for prolonged pre-trial detention, which may contravene article 9 of the *International Covenant on Civil and Political Rights*.

Submission to the House of Representatives' Standing Committee on Family and Community Affairs' inquiry into child custody arrangements in the event of family separation

The Sex Discrimination Unit, with the assistance of the Legal Unit, prepared a submission, on behalf of the Commission, for the House of Representatives' Standing Committee on Family and Community Affairs' inquiry into child custody arrangements in the event of family separation. The submission was lodged with the committee on 21 August 2003. The Commissioner appeared before the committee on 26 October 2003 at a public hearing in Wyong, NSW, to further assist the committee in its enquiries.

The Commission's submission and the Commissioner's oral presentation received some media attention around this time. The Committee released its report on 29 December 2003 and formally tabled the report in Parliament on 10 February 2004.

Migration Litigation Review

In 2003, the Commission was invited to make submissions in relation to the Migration Litigation Review ('the Review'), being conducted by Ms Hilary Penfold QC, First Parliamentary Counsel, which was conducted under terms of reference issued by the Attorney-General on 27 October 2003. The Commission prepared a written submission which is available on its website at: www.humanrights.gov.au/legal/submissions/migration.html

In summary, the Commission submitted that there are a number of human rights issues which are particularly relevant to the more efficient management and disposition of migration cases. The Commission's primary concern was that efficient management and disposition did not come at the cost of the fundamental rights of people involved in migration litigation. The Commission's submission set out some of the concerns that arise from a human rights perspective which should, in the Commission's view, be given careful consideration in determining what, if any, changes to the current system may be appropriate.

Migration Amendment (Judicial Review) Bill 2004

The stated aim of the Migration Amendment (Judicial Review) Bill 2004 is to 'restore the original intention' of a number of procedural requirements, notably time limits for the commencement of applications, contained in the Migration Act. These had been rendered largely ineffective by the decision of the High Court in *Plaintiff S157/2002 v Commonwealth of Australia* (2003) 211 CLR 476 which had held that the time limits could only apply to lawful decisions where there was no excess of jurisdiction – requiring a determination by a court of the lawfulness of the decision even for applications brought 'out of time'.

The intended effect of the Bill is to impose a 28-day time limit upon applications for judicial review, with discretion to grant an extension for a further 56 days where the court considers it to be in the interests of the administration of justice. The Bill also provides the time limit for the High Court is to commence from the date of *deemed*, rather than *actual* notification.

The Bill was referred to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 15 June 2004. The Commission made written and oral submissions to the Committee, arguing that the imposition of strict procedural requirements, such as absolute time limits (84 days under the Bill), in cases involving refugee claims creates an unacceptable risk of 'refoulement' (returning a person to a country where they face persecution) and may therefore lead to a breach of human rights.

The Commission advocated an overriding discretion for a court to allow an application to be brought out of time where the interests of justice required such an extension of time, considering: the extent of the delay in bringing the application; the reason(s) for the delay in bringing the application; the prospects of success of the application; and any other relevant circumstance.

The Committee recommended that the Bill proceed subject to an amendment specifying that the time limit for applications to the High Court commence only upon *actual* rather than *deemed* notification of the relevant decision. This recommended change was said to take into account concerns with the Constitutional validity of the provisions in their original form.

Senate Select Committee on Ministerial Discretion in Migration Matters

The Commission lodged a submission to the Senate Select Committee on Ministerial Discretion in Migration Matters.

The primary message of the Commission's submission was that Ministerial discretion under section 417 of the Migration Act is insufficient to protect people who are seeking protection from refoulement under the *International Convention on Civil and Political Rights (ICCPR)*, *Convention on the Rights of the Child (CRC)* and the *Convention Against Torture (CAT)*.

The present system of protecting against refoulement is directed almost wholly at protecting those who fall within the Refugees Convention's definition of a 'refugee'. Under this system, the Ministerial discretion is the final safety net for those who believe that they are refugees but have not been recognised as such by the Refugee Review Tribunal. The Commission believes that this safety net should remain.

However, there are people who may not be refugees but must still be protected from refoulement because they face a real risk of fundamental human rights violations on return. For those people, the section 417 Ministerial discretion is the first and only protection. In the Commission's view, the protection against refoulement in the ICCPR, CRC and CAT is not a matter that can be satisfied by Ministerial discretion under section 417.

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In other work relating to Parliamentary Committees, the Commission made a submission to the Joint Standing Committee on Treaties in its inquiry into the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Optional Protocol)*. In that inquiry, the Committee considered whether Australia should sign and ratify the Optional Protocol.

The Optional Protocol aims to establish a system of regular visits by national and international bodies to places where people are deprived of their liberty, in order to better protect those people against torture and other cruel, inhuman or degrading treatment or punishment.

If ratified, the Optional Protocol would require Australia to:

- allow regular visits to places of detention by a new international monitoring committee, and
- create or designate a domestic body or bodies with powers to conduct similar visits and examine the treatment of Australian detainees in the context of Australia's obligations under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

The Commission made written and oral submissions to the Committee, arguing that the additional monitoring mechanisms provided for in the Optional Protocol would complement and reinforce the domestic and international mechanisms currently available to people in detention within Australia. It also suggested that the regular review of conditions and treatment of those people would ensure that broader systemic issues relating to their detention could be drawn to the attention of the Australian government at an early stage. That may result in less complaints being made to the Commission or the United Nations Committee Against Torture by such people.

A copy of the Commission's submission is available on the Commission's website at: www.humanrights.gov.au/legal/submissions/jscot.html.

The Committee tabled its report on 24 March 2004. The majority of the Committee concluded that there is no immediate need for Australia to ratify the Optional Protocol. To date there has been no Government response to that report.

Sex Discrimination Amendment (Teaching Profession) Bill 2004

The Sex Discrimination Amendment (Teaching Profession) Bill 2004 (Cth) would insert a permanent exemption into the *Sex Discrimination Act 1984* (Cth) (SDA) allowing persons to offer sex-specific scholarships to students enrolled in a teaching course, for the purposes of redressing the gender imbalance in the teaching profession. The Bill is said to be aimed at encouraging more males into the teaching profession.

The Bill was referred to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 11 May 2004. The Commission made a submission to that inquiry, arguing that the Bill would be unlikely to result in an increase in the number of male teachers, was inconsistent with objects and purposes of the SDA and put Australia at risk of breaching its international obligations assumed under the *Convention on the Elimination of All Forms of Discrimination Against Women*. A copy of the Commission's submission is available on the Commission's website at: www.humanrights.gov.au/legal/submissions/teaching_prof.html

A majority of the Committee recommended that the Bill proceed, subject to it being evaluated and reviewed after two years, to determine its effectiveness in encouraging more males into the teaching profession. The Committee also

encouraged the Government to implement additional broader strategies and programs in order to address the complex reasons underlying the lack of males in the teaching profession.

The Bill remains before the Senate.

The Age Discrimination Act 2004 (Cth)

The Commission was involved in the consultation process in the development of the *Age Discrimination Act 2004 (Cth)*, participating in all meetings of the Core Consultative Group and working parties. The Commission also made a submission to the Senate Legal and Constitutional Legislation Committee's inquiry into the provisions of the Age Discrimination Bill 2003, which is available on the Commission's website at:
www.humanrights.gov.au/legal/submissions/age_discrimination.html

While the Act is a welcome tool for the enforcement of the human rights for those who may suffer discrimination on the basis of their age, the Commission expressed some concerns during the consultative process and to the Senate Legal and Constitutional Legislation Committee. In particular, the Commission was concerned by the breadth of the exemptions and exceptions in the Act and the fact that establishing that discrimination has taken place is likely to be more difficult than under other federal discrimination legislation by reason of the inclusion of a 'dominant reason' test.

Civil Aviation Amendment (Relationship with Anti-Discrimination Legislation) Bill 2004

The Commission made a submission in May 2004 to the Senate Legal and Constitutional Affairs Committee Inquiry on the *Civil Aviation Amendment (Relationship with Anti-Discrimination Legislation) Bill 2004*.

The Bill amends the *Civil Aviation Act 1988* to empower the Governor-General to make regulations that are inconsistent with current Commonwealth anti-discrimination laws if the inconsistency is necessary for aviation safety.

The submission raised some concerns regarding the effectiveness and appropriateness of this Bill as a means for achieving the objective of providing certainty in the relationship between civil aviation safety regulation and the Sex Discrimination Act and Disability Discrimination Act.

Disability Discrimination Amendment Bill 2003

The Senate referred the provisions of the *Disability Discrimination Amendment Bill 2003* to the Senate Legal and Constitutional Affairs Committee for Inquiry and report. The amendments remove the prohibition on disability discrimination on the ground of a person's addiction to a prohibited drug. The provisions would not apply to people who are receiving treatment for their addiction.

The Senate Legal and Constitutional Affairs Committee Report on the *Disability Discrimination Amendment Bill 2003* endorsed a number of the practical concerns which the Commission raised regarding this Bill as a means of achieving the objective of ensuring that employers and others are able to respond appropriately to issues of use of, or intoxication by, substances.



Chapter 4: **Complaint Handling** **Section**

Overview

The Complaint Handling Section (CHS) is responsible, through the President, for investigating and conciliating complaints lodged under federal anti-discrimination and human rights law. The CHS also delivers a Complaint Information Service. Accordingly, the CHS plays a key role in fulfilling the Commission's objective of delivering an Australian society in which human rights are protected.

Each year around 9 000 – 10 000 people from all over Australia contact the Commission's Complaint Information Service either by telephone, TTY, post, e-mail or in-person to obtain information about the law the Commission administers and the complaint process. As many enquirers are unsure which organisation can best assist them, the work of Complaint Information Service staff frequently involves providing contact details for organisations that can more appropriately deal with the enquirer's concerns. If the enquirer's concern is one that the Commission can deal with, the enquirer is provided with information on how to lodge a complaint, and is either provided with the necessary forms or directed to the Commission's website and 'on-line' complaint lodgement facility.

Once a complaint has been formally accepted by the Commission, the goal of the CHS is to manage the complaint in a timely and unbiased manner. The CHS aims to allocate complaints to an officer for action within one month of receipt. While allocation to an officer may take a little longer than this at times, cases that need priority handling are dealt with straight away. Teams of Investigation/Conciliation Officers manage complaints on behalf of the President. The management of complaints may involve requesting information and responses to complaints, taking statements, undertaking site inspections, reviewing employment and medical records, facilitating settlement negotiations and conducting conciliation conferences in various locations, including regional and remote areas of Australia. If a complaint can be resolved through conciliation the matter is closed. Many complaints are dealt

Chapter 4: Complaint Handling Section

with in this way as parties recognise the benefits of a process where they have direct input into how the matter is resolved without having to resort to more formal court proceedings.

Where a complaint of unlawful race, sex, disability or age discrimination is unable to be resolved through a conciliation process or where the President is of the view that the complaint is, for example, lacking in substance or better dealt with by another organisation, the complaint will be terminated. Both parties to a complaint are advised in writing of the President's decision regarding a complaint. After a complaint is terminated, the complainant may decide to pursue the matter before the Federal Court of Australia or the Federal Magistrates Court.

Complaints that allege a breach of human rights or discrimination under the *Human Rights and Equal Opportunity Commission Act 1986* cannot be taken to court. Complaints under this Act which have not been declined and are unable to be resolved through conciliation may be subject to a report to the Attorney-General and subsequent tabling in Parliament.

In 2003–04:

- 1 113 complaints were received
- 1 229 complaints were finalised
- 38 percent of finalised complaints were conciliated
- 85 percent of complaints were finalised within 12 months of lodgement
- 9 669 telephone/post/e-mail/TTY/in-person enquiries were received through the Complaint Information Service

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

Access to complaint services

The CHS aims to facilitate broad community access to its information and services. In meeting this challenge the CHS provides the following:

- The Complaint Infoline 1300 656 419 (local call charge) is open Monday–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. Enquirers can also e-mail complaintsinfo@humanrights.gov.au
- CHS 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. The webpage 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. The CHS webpage received **94 816** page views during this reporting year.

- On-line complaint form. This service, which allows complaints to be lodged electronically, continues to be well utilised.
- Concise Complaint Guide. This can be accessed on the CHS webpage and downloaded in 14 community languages.
- Interpreter and Translation services. In the past reporting year the section utilised a range of interpretation and translation services. The main language groups assisted in 2003–04 were Farsi/Dari, Vietnamese and Arabic.
- Access working group. During this reporting year the CHS access working group provided training to Commission staff and staff of other anti-discrimination Commissions on service provision for complainants with an intellectual disability. The group also developed a plain English information sheet which explains the process by which complainants can lodge an application with the Federal Court or Federal Magistrates Court. This information sheet can also be downloaded from the Commission's webpage at:
www.humanrights.gov.au/complaints_information/guides/court.html
- The Commission has formal arrangements with the Victorian Equal Opportunity Commission, the Queensland Anti-Discrimination Commission, the South Australian Equal Opportunity Commission, the Northern Territory Anti-Discrimination Commission and the Western Australia Equal Opportunity Commission, whereby CHS staff utilise facilities at these agencies for conciliation conferences, community education or training and display of CHS publications. The Commission also has informal arrangements with the Tasmanian Anti-Discrimination Commission and the Australian Capital Territory Human Rights Office.
- Conciliation circuits. Conciliation officers travel throughout Australia to conduct face-to-face conciliation conferences. Along with the conferences conducted in the greater Sydney area in this reporting year, CHS officers conducted 37 conferences in regional NSW (including Coffs Harbour, Wagga Wagga, Tamworth and Bourke); 77 in Victoria (including Melbourne Geelong, Bendigo and Benalla); 54 in South Australia (Adelaide and Port Augusta); 33 in Queensland (including Brisbane, Cairns, Hervey Bay, Toowoomba and Gin Gin); 18 in Western Australia (Perth and Newman); 11 in the Australian Capital Territory; nine in the Northern Territory (Darwin, Alice Springs and Katherine) and one in Tasmania.

Election of jurisdiction

In the majority of cases complainants have a choice to lodge complaints under either state or federal anti-discrimination law. The Commission has produced an information sheet about this process which is available on the Commission's website at: www.humanrights.gov.au/complaints_information/guides/jurisdiction.html

Key performance indicators and goals

- Timeliness – the section's stated performance measure is for 80 percent of complaints to be finalised within 12 months of date of receipt. In 2003–04, the CHS finalised 85 percent of matters 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 11.
- Conciliation rate – the section's stated performance measure is for 30 percent of finalised complaints to be conciliated. In 2003–04, the section achieved this goal with a 38 percent conciliation rate.
- Customer satisfaction survey – the section's stated performance measure is for 80 percent of parties to be satisfied with the complaint handling process. Data for the past year indicates that 89 percent of parties were satisfied with the service they received and 57 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

Since 1997, the CHS has sought feedback on the complaint process from people lodging complaints (complainants) and people responding to complaints (respondents). This feedback is obtained by means of a Customer Satisfaction Survey which is predominately undertaken by telephone interview. Survey results for the period 1 July 2003 to 30 June 2004 indicate that:

- Eighty seven (87) percent of complainants and 93 percent of respondents felt that staff explained things in a way that was easy for them to understand.
- Eighty eight (88) percent of complainants and 95 percent of respondents felt that forms and correspondence from the Commission were easy to understand.
- Sixty five (65) percent of complainants and 81 percent of respondents felt that the Commission dealt with the complaint in a timely manner.
- Eighty three (83) percent of complainants and 93 percent of respondents described staff as unbiased.

In comparison with the last reporting year, there have been improved satisfaction ratings from complainants and respondents on the majority of the above measures.

Service Charter

The CHS'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.

In the 2003–04 reporting year, the Commission received three complaints about its services through this 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.

Education and Promotion

The CHS also contributes to the Commission's function of promoting an understanding and acceptance of human rights. The CHS undertakes this through the activities outlined below.

Community education

In this reporting year, around 120 organisations throughout all states and territories attended information sessions on the law and the complaint handling process. The CHS Indigenous Information/Liaison Officer also met with around 90 different people/organisations during this year.

The organisations visited by CHS staff included: community legal centres, Aboriginal legal centres, multicultural organisations, universities, disability groups, professional associations and unions. The regions covered included: Lismore, Bourke, Armidale and Liverpool in New South Wales; Melbourne, Ballarat, Bendigo and Geelong in Victoria; Hobart and Launceston in Tasmania; Brisbane, Inala and Southport in Queensland; Perth, Geraldton, Newman, and Fremantle in Western Australia; Darwin and Katherine in the Northern Territory, and Adelaide, Mount Gambier and Port Augusta in South Australia.

Video/DVD on the conciliation process

During this reporting year, the CHS finalised a joint project with Job Watch Incorporated Victoria to develop a video/DVD on the Commission's conciliation process. The video/DVD entitled '*Pathways to Resolution*' was produced by a professional production company with the input of CHS staff and staff of complainant and respondent advocacy groups, Job Watch Incorporated and Employers First. This audio-visual resource provides information for the general public and for complainants, respondents and advocates who may be involved



Chapter 4: Complaint Handling Section

in the complaint process. The video/DVD includes an explanation of what types of matters may come to the Commission, the process by which complaints will proceed to conciliation and the steps that may be taken if a complaint cannot be resolved through conciliation. With reference to an example case study, the video provides parties with an overview of a conciliation conference, outlines steps to take in preparation for conciliation, and demonstrates positive approaches to discussing issues and negotiating resolution outcomes.

The video/DVD was launched by the President in Sydney in March 2004. The President also undertook subsequent launches in Adelaide in conjunction with the South Australian Equal Opportunity Commission, and in Perth in conjunction with the Western Australia Equal Opportunity Commission. The Sex Discrimination Commissioner undertook a launch in Melbourne in conjunction with JobWatch Incorporated.

Captioned and uncaptioned versions of the video/DVD are available from the Commission, and a number have been distributed to legal and advocacy agencies and government departments throughout Australia. The video/DVD is provided on loan to complainants, respondents and advocates who are currently involved in complaints before the Commission. Sections of the video/DVD can also be viewed on the Commission's webpage at www.humanrights.gov.au/pathways_to_resolution/index.html

Training

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 and the CHS also provides training to other organisations.

In February 2004, a statutory conciliation course was run in Sydney for Commission staff and staff of anti-discrimination agencies in New South Wales, South Australia, the Australian Capital Territory, Queensland, the Northern Territory and staff of the Office of the Federal Privacy Commissioner. In this reporting year, variations of the Commission's standard courses were also run for staff of a large independent complaint agency and a private education authority.

The Commission has, for the third year, worked in partnership with the Australian Public Service Commission to provide a two-day investigation training course for federal public servants. This 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. In the past year, six such courses have been delivered in various locations around Australia, including Canberra, Melbourne, Brisbane and Adelaide. An in-house course was also conducted in Sydney for staff of a large Commonwealth Government department.

Research and policy

The Commission's Complaint Procedures Manual was revised and updated during 2003. The revised version was published in January 2004.

During 2003–04, senior CHS staff members contributed to presentations at the Community Legal Centres' National Conference in Hobart. CHS staff also presented papers at the National Anti-Discrimination/Equal Opportunity Commissions' Complaint Handlers/Legal Officers Conference in Melbourne, the Certified Practising Accountants' Employment Symposiums in Sydney, Melbourne and Brisbane, and the National Mediation Conference in Darwin. A collection of some of these papers are found on the Commission's website at www.humanrights.gov.au/complaints_information/papers.html

In this reporting year, five CHS officers continued study towards Certificate IV accreditation in Assessment and Workplace Training. Staff of the CHS also attended various seminars and training courses relating to their work. These included training in Auslan, 'Industrial Relations and the Law' seminars conducted by the University of Sydney, Australian Government Solicitor Law Group Seminars, the Community Legal Centres' National Conference, the National Anti-Discrimination/Equal Opportunity Commissions' Complaint Handlers/Legal Officers Conference, and the National Mediation Conference.

International activities

In this reporting year, the Commission's CHS was awarded a tender by the Asia Pacific Forum of National Human Rights Institutions to provide investigation training for staff of the Sri Lankan Human Rights Commission. This project involved the development and presentation of a five-day training course in human rights investigation which took place in Colombo from 8–12 November 2003. Thirty-four staff from central and regional human rights offices in Sri Lanka attended the course, which was conducted in English with simultaneous translation into Sinhalese and Tamil.

In November 2003, a senior CHS staff member attended the 'Roundtable on National Institutions and the Administration of Justice' in Copenhagen to participate in discussions about best practice in the investigation and resolution of complaints, complaint recording and reporting.

In February 2004, the Director of the CHS provided a briefing on best practice in complaint handling and measuring performance to senior executives as part of the 8th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions held in Kathmandu, Nepal.

During this reporting year, CHS staff also participated in providing information about the Commission's complaint handling work to visiting delegations from New Zealand, Mongolia, Iran, China, Japan and Vietnam. These delegations included representatives from human rights institutions, parliamentary and government institutions and non-government organisations.

Conciliation case studies¹

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.

In this reporting year, the Commission received 159 complaints under the Racial Discrimination Act. The majority of these complaints related to employment, the provision of goods and services or racial hatred. The CHS finalised 185 complaints under this Act and 24 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Racial Discrimination Act are provided later in this chapter.

Alleged racial hatred in employment

The complainant, who is Aboriginal, claimed that while he was visiting a local Police Station as part of his work role, he was offended and humiliated when he overheard police officers making negatives remarks about Aboriginal people. Specifically, the complainant claimed that during a 10-minute period, one officer made the remark “f . . . Abo” at least “ten to fifteen times”.

The police station confirmed that it had undertaken an investigation which supported the complainants allegations and recommended disciplinary action be taken against the officer who made the remarks. The officer concerned concurred that he made the alleged comments, but claimed that they were not directed towards the complainant but made with reference to certain Aboriginal young people who had stolen property from his car a few weeks earlier.

The complaint was resolved at a conciliation conference on the basis of a personal apology from the officer concerned and an ex-gratia payment of \$2 000 and a statement of regret provided by the department.

Complaint of racial hatred at local club

The complainant, who is of Spanish origin, alleged that he was subjected to offensive comments based on his race when he attended a local club. Specifically, the complainant claimed that when speaking in Spanish with a family member the respondent called him a “wog” told him to speak English and said “Go back to your country”.

¹ It is noted that complaints are generally resolved at conciliation on the basis of ‘no admission of liability’ by the respondent.

The respondent claimed that he did not recollect the incident as he had been drinking on the day in question. He said that he may or may not have made the alleged comments.

The complaint was resolved by the complainant accepting an apology from the respondent.

Complaint of discrimination on the grounds of race and religion

The complainant claimed that he was discriminated against in his employment with a large manufacturing company because of his Jewish origin and religious beliefs. In particular, he claimed that while other casual employees were made permanent and new employees were employed, his appointment as a permanent employee was delayed for several months. He also claimed that his computer username was changed from his surname to *'Hitler's failure'*, and following this incident his wage payments were late and/or incorrect.

The company concurred that the computer username incident took place but denied that the complainant was treated less favourably by the company because of his race and/or religious beliefs. The company advised that the computer incident was investigated but the responsible person could not be identified and the company had apologised to the complainant regarding this incident. The company submitted that the disputes concerning the complainant's employment status and wages were resolved prior to the complaint being lodged with the Commission.

The complaint was resolved through a conciliation process. The employment relationship had broken down and the complaint was resolved on the basis of the complainant accepting an ex-gratia payment of \$12 500 and payment of accrued annual leave entitlements.

Allegations of racial hatred in employment

The complainant, who is of Aboriginal descent, claimed that during her employment in an administrative position with a large transport company she was subjected to acts of racial hatred by unidentified staff. Specifically, the complainant claimed that someone left written messages on her desk saying *'G'lly Wog leave work early'* and *'Black bitch'*. The complainant resigned from her employment following the alleged incident.

The company stated that an investigation was conducted into the complainant's allegations but the responsible staff member(s) could not be identified.

The complaint was resolved through a conciliation process with the complainant accepting an ex-gratia payment of \$3 000 and the company's commitment to revise its harassment policy within six months and introduce cross-cultural training within 12 months.

Complaint of sex and race discrimination in employment

The complainant, who is of Bosnian descent, was employed by a large private company as an engineer. She alleged that she was harassed and ostracised by staff, yelled at and belittled and eventually dismissed from employment. She claimed that she was removed from a project and told *"it is work for a man not a woman"* and was paid less than a man for doing the same work. She claimed that comments were made to her such as *"Do not be scared, he is not Milosevic"* and you *"must behave politely in the country where there exists a much higher level of culture than in Bloody Bosnia"*. The complainant also alleged that she was told she did not have anything to contribute to a project because she was from *"these Eastern countries"*.

The respondent company denied that the complainant was discriminated against because she was female and claimed that the complainant did not have the relevant supervisory skills for the position. The respondent stated that the complainant was not subjected to harassment on the basis of her race and denied that the alleged comments relating to the complainant's ethnic background were made. The respondent also advised that it had comprehensive affirmative action and anti-discrimination policies and was committed to diversity in the workplace. The respondent claimed that the complainant ceased work to travel overseas.

The matter was resolved through a conciliation process, with the respondent company agreeing to pay the complainant the sum of \$20 000 compensation in full and final settlement of the complaint.

Complaint of racial hatred in employment

The complainant, who is of Indian descent, is employed as a carer at a Community Aged Care Centre. The complainant claimed that a resident of the centre subjected her to racial abuse on several occasions, including in the presence of other staff members, calling her a *"black bitch"*, a *"f... bitch"* and suggesting that she return to India. The complainant stated that she was offended, insulted, humiliated and intimidated because of these comments about her racial background.

The respondent acknowledged that his comments were offensive and hurtful to the complainant and he apologised for his behaviour. He claimed that when the comments were made he was experiencing personal difficulties and problems with other residents and staff.

The complainant accepted a written apology from the respondent to resolve her complaint.

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.

In this reporting year, the Commission received 353 complaints under the Sex Discrimination Act. The large majority of complaints related to employment. Twenty-eight percent of the complaints alleged pregnancy discrimination and a further 28 percent alleged sexual harassment. The Commission finalised 382 complaints under this Act and 47 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Sex Discrimination Act are provided later in this chapter.

Complaint of discrimination on the grounds of sex and pregnancy in employment

The complainant was employed as a solicitor with a large human resources and recruitment firm. The complainant claimed that while she was on 12 months maternity leave her position was permanently filled and the position she was given on her return to work was not commensurate in status to the one she had held prior to taking maternity leave. In particular, the complainant alleged that on returning to work she was not able to resume her former management responsibilities, was not provided with secretarial support and was refused access to her office, files, work material and contact with former colleagues. The complainant claimed that her employer relocated her to another office without good reason and at this office she was not provided with equipment or an appropriate work space. The complainant lodged a complaint with the Commission and did not return to work.

The respondent company claimed that while the complainant was on maternity leave a radical downsizing of the company took place, including a restructure of the legal department. The company denied that the complainant's position was filled permanently and advised that solicitors were employed on a contract basis to fill the complainant's position. The company denied that the complainant was treated less favourably because of her pregnancy and associated maternity leave.

The complaint was resolved through conciliation with the respondent agreeing to pay the complainant \$61 000 inclusive of general damages and legal costs.

Alleged sexual harassment in employment

The complainant, who was employed as a bar attendant in a local club alleged sexually harassment by a co-worker. In particular, she alleged that the employee talked incessantly about his penis, simulated masturbation, held his genitals and asked the complainant questions of a sexual nature. The complainant stated that she complained to the Chief Executive Officer of the company about the co-worker's behaviour but no appropriate action was taken to address her concerns. The complainant chose not to return to employment after the alleged events and was considered by the employer to have abandoned her employment.

At a conciliation conference held by the Commission, the individual respondent admitted liability and apologised to the complainant both verbally and in writing. The complaint was resolved on the basis of these apologies and an agreement by the company to pay the complainant \$23 000 and undertake sexual harassment training for staff.

Complaint of sex discrimination in employment with educational institution

The complainant alleged that she was discriminated against on the basis of her sex and victimized during her employment at the respondent educational institution where he worked as a lecturer. The complainant alleged that her supervisor had made negative remarks about the ability of women to work in the profession and written a report which negated her work and the work of other women in the field. The complainant claimed that her tenure confirmation was postponed, that she was set unachievable research targets, had a higher than average teaching load and was given less space, funds and technical support than male members of staff. Her allegations also included that she was not selected for promotion despite meeting the requisite qualifications and level of performance and was not offered acting higher duties. The complainant stated that as a result of an internal complaint she was finally given a promotion but the action taken by the institution did not address the stress and lost opportunities she had suffered.

The complainant's supervisor denied making the alleged comments and said that he had only made suggestions about how the complainant could strengthen her case for tenure. The respondent institution claimed that the complainant's tenure was postponed because her application was premature. The institution confirmed that the complainant had a relatively high teaching load but stated that this due to the demand for staff with particular expertise. The institution also claimed that the complainant was provided with the same opportunities for space, funds and technical support as everyone else. The institution advised that the complainant was not offered acting higher duties because there were other staff who were more senior at the time and that she was not initially offered a promotion because she had not reached the requisite targets. The institution stated that an internal review of the promotion decision found that while there was no collective bias by the selection committee, there may have been an apprehension of bias by the complainant's supervisor, who was also a member of the committee.

The complaint was resolved through a conciliation process. The terms of resolution included an apology to the complainant and payment of \$22 500 in general damages plus legal costs.

Complaint of pregnancy discrimination in employment

The complainant was employed in a training role with a large communications company. The complainant alleged that while she was on maternity leave her position was filled on a permanent basis and there was no comparable role for her to return to at the end of her leave. The complainant also alleged that she requested to return to work on a part-time basis but that this was refused without discussion. The complainant claimed that the company's payroll office advised her that she had abandoned her employment as she had not lodged an application form for her maternity leave. The complainant subsequently resigned from her employment.

The respondent claimed that the complainant's role was not permanently filled while she was on maternity leave but a more senior person, who had been made redundant from another section of the respondent organisation, was temporarily placed in the role. The respondent stated that it was still in the process of assessing redeployment options for the complainant when the complaint of pregnancy discrimination was lodged with the Commission. The company claimed that while there was scope for employees returning from maternity leave to undertake part-time work, no part-time opportunities were available in the area where the complainant worked. The respondent conceded that its payroll office had mistakenly advised the complainant that it was of the view that she had abandoned her employment as her maternity leave application form had been misplaced.

The matter was resolved through conciliation with the complainant agreeing to withdraw her complaint in return for payment of \$6 000.

Alleged pregnancy discrimination in the provision of goods and services

The complainant stated that when she was 14 weeks pregnant, she applied to participate in an outdoor adventure program and advised the associated company that she was medically fit to do so. The complainant claimed that she was told she could not participate in the program as it was the company's policy to exclude pregnant women. The complainant alleged that this approach was unfair as it did not allow for consideration of individual circumstances.

Upon receipt of the complaint, the company engaged two medical experts to provide advice regarding amendments to their policy to allow pregnant women to participate in the adventure program. On the basis of this advice, the company drafted a document outlining the changes it planned to make to allow pregnant women to participate on certain conditions. This document was provided to the complainant and discussed at length at a conciliation conference convened by the Commission. The parties agreed on changes to the policy and a time frame for their implementation.

Chapter 4: Complaint Handling Section

Alleged sexual harassment in employment

The complainant, who was employed by a large Commonwealth Government agency, alleged sexual harassment by her manager. The complainant also alleged that the department was vicariously liable for the actions of the manager. The complainant alleged that her manager told her that she was very attractive, asked her out on a few occasions and often acted inappropriately toward her. She also claimed that he told sexually explicit jokes, discussed sex shows that he said he frequented and had sexually explicit photos in the workplace. The complainant resigned from her position and claimed that when her personal belongings were returned to her the package contained sexually explicit photos belonging to the individual respondent.

The government agency claimed that the complainant had not advised anyone of her allegations at the time or when she left the agency and therefore it had been unable to deal with the allegations. The agency also claimed that it had comprehensive policies about sexual harassment and staff were trained in these policies during their initial induction. While the individual respondent denied the allegations, he conceded that the photos in the package sent to the complainant belonged to him.

The matter was resolved through a conciliation process. The complainant agreed to withdraw her complaint in return for payment of \$45 000 compensation, a statement of service from the agency and a work reference from the individual respondent.

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 that they are an associate of a person with a disability and it is unlawful to harass a person because of their disability.

In this reporting year, the Commission received 483 complaints under the Disability Discrimination Act. The majority of these complaints concerned employment and the provision of goods, services and facilities. The Commission finalised 491 complaints under this Act and 43 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Disability Discrimination Act are provided later in this chapter.

Allegation of discrimination in employment because of medical condition

The complainant advised that she had been employed by the respondent manufacturing company for three years when she took seven weeks leave to undergo a hysterectomy and recover from surgery. The complainant claimed that the week before she was due to return to work she was advised that her position had been made redundant. She claimed that it was not a genuine redundancy and that no other employee had been made redundant. The complainant noted that there were several casual employees who should have been the first to be terminated if there was any downturn in business. The complainant alleged that her employment was terminated because she had taken time off work for medical reasons.

The respondent denied discriminating against the complainant on the ground of disability. The respondent agreed that no other person had been made redundant, but stated that one person who had left voluntarily had not been replaced. The respondent stated that the complainant was selected for redundancy because business had declined in the section in which she worked and not in other sections.

To settle the complaint the respondent agreed to pay the complainant \$8 000 and to provide her with a written apology and a statement of service. The respondent also agreed to provide staff training on anti-discrimination issues.

Complaint regarding access to fun park

The complainant complained on behalf of her daughter who has a physical disability and uses a wheelchair. The complainant claimed that when her daughter attended the fun park as part of an excursion, she was refused access to rides because she needed assistance to get on and off the rides.

The respondent company claimed that the complainant's daughter was refused access to two rides as she was unable to enter and exit the rides without

Chapter 4: Complaint Handling Section

assistance and that this action was consistent with relevant safety requirements. The respondent stated that since being advised of the complaint it had reviewed its rides and adjusted the physical requirements to allow people with disabilities to be assisted to enter and exit a number of rides.

The complaint was resolved through a conciliation process. The complainant agreed to withdraw the complaint and the respondent company agreed to pay the complainant's daughter \$5 000 general damages and offer a disability organisation 50 free tickets each year for the next three years. The respondent company also agreed that within the next 12 months, it would implement an escort program which would allow people with disabilities to be offered selected seating at shows and therefore avoid waiting for long periods in queues.

Allegation of discrimination on the ground of visual disability in employment

The complainant has a minor visual disability. She claimed that she was interviewed for a position with the respondent government agency and employment was conditional upon her completing a successful pre-employment medical assessment. The complainant claimed that her completed medical assessment form contained the notation "*further assessment recommended*", but this was not followed through. The complainant alleged that the examining medical officer advised the employer that her visual disability precluded her from being employed.

After receipt of the letter of inquiry from the Commission, the respondent company arranged for a detailed assessment of the complainant's visual capabilities with reference to the specific duties of this position she was interviewed for.

The complaint was resolved at a subsequent conciliation conference. The complaint was offered, and accepted, employment with the respondent company. The company also agreed to pay the complainant \$20 850, which was calculated on the basis of economic loss equivalent to what the complainant would have earned had she been employed at the time of her application and compensation for stress and anxiety.

Complaint regarding provision of cinema services for people with hearing impairments

The complainants who have hearing impairments, alleged that they were denied equal access to services and facilities provided by the respondent cinema. The complainants claimed that the respondent cinema did not have hearing augmentation systems for hearing impaired persons and therefore they could not hear the sound track of films shown in the cinema.

After considering the complaint, the respondent cinema company agreed to install infra red hearing aid systems in all its cinemas. The company also agreed to maintain the systems, install signage and train staff in the operation of the systems. The complainants visited the cinema after the hearing augmentation system was installed and were happy to withdraw their complaint on the basis of the action taken by the company.

Complaint of discrimination against child with Autism Spectrum Disorder

The complaint was made by parents on behalf of their son who has Autism Spectrum Disorder and other severe learning difficulties. The parents claimed that the government primary school their son attended was unwilling to act upon the requests of other professionals involved in their son's welfare and that his teacher failed to understand autism. The parents alleged that the school blocked their son's progress, made derogatory comments about him and did not fully carry out the requirements of his Individual Education Plan.

The respondent school claimed that the Principal had meet numerous times with the complainants and that they were often reacting to a version of what their son thought had happened at school. The respondent claimed it provided reasonable accommodation for the complainants' son, which included participation in a social skills group, development of a special speech program and provision of extra support from an aid who worked in his classroom.

The complaint was resolved through a conciliation process. The parents agreed to withdraw the complaint on the basis that the school would provide them with a statement of regret and \$500 in acknowledgement of the difficulties they experienced during the previous school year. It was also agreed that if the complainants' son is assessed as requiring ongoing integration support he will receive this and the school will be provided with \$2 000 for speech therapy for him for the next two and a half years.

Allegation of discrimination in employment because of psychiatric illness

The complainant states that he has a psychiatric illness, schizophrenia, and that when his disability had stabilised and he was fit for work, he applied through an employment agency for casual work at a local factory. The complainant claimed that he disclosed his disability at the job interview and was advised that he would not be employed because others with psychiatric illnesses who had been referred by the employment agency 'had not worked out'.

The employment agency denied that the complainant had been refused employment on the basis of his disability. The agency stated that the complainant was unsuccessful because he had no recent work references and the referees he had provided could not be contacted. The agency claimed that the complainant was advised that he would need to provide medical evidence that he was fit to work in the particular work environment.

The complaint was resolved on the basis of the respondent employment agency agreeing to reconsider additional information provided by the complainant, including references from recent work experience programs and support services and current medical evidence as to his fitness for work. The complainant was eventually offered employment.

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:

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

Under the Act the President can also inquire into and endeavour to conciliate complaints of discrimination in employment on specific grounds. These grounds include 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 undertake further inquiry. If the President is satisfied that the subject matter of the complaint constitutes discrimination in employment or is a breach of a human right, the President must report the findings to the Attorney-General for tabling in Parliament. The Commission's Legal Services assists the President in this part of the process. Further details of this process are provided in the Legal Section report in Chapter 5.

In this reporting year, the Commission received 118 complaints under the Human Rights and Equal Opportunity Commission Act. The majority of these complaints concerned alleged breaches of the *International Covenant on Civil and Political Rights* and discrimination in employment based on criminal record or age or trade union activity. The Commission finalised 171 complaints under this Act. Twenty-one percent of these finalised complaints were conciliated and nine percent were referred for reporting. Detailed statistics regarding complaints under the Human Rights and Equal Opportunity Commission Act are provided later in this chapter.

Complaint of religious discrimination in employment

The complainant claimed that he was being discriminated against on the basis of his religious belief in his employment as a driver with a large private transport company. The complainant advised that he attends church twice on Sundays, once in the morning and once in the afternoon, and according to his religious beliefs, cannot work on Sundays. He said that he had been with the company for more than 20 years and his religious beliefs had been respected in that he had not been required to work on Sundays. He claimed, however, that after a recent change in management there had been several occasions when he had been rostered to work on Sundays. The complainant said that he offered to work on Sundays until 6am and from 6pm onwards, however this offer was not accepted by the company.

Upon being notified of the complaint, the company arranged to discuss the matter privately with the complainant and a workable solution was reached whereby the complainant did not have to work on Sundays.

Alleged discrimination in employment on the ground of age

The complainant applied for a place in a graduate program offered by a large private company. The complainant was unsuccessful in his application and the reason cited was that the company was not considering applications from mature applicants.

In their response to the Commission's inquiries, the company confirmed that age was a factor in the decision not to assess the complainant's application. The company claimed that being under 23 years of age was an inherent requirement given that applicants they would need to interact with other graduates of a similar age. The respondents advised that this particular graduate program was the only one within the company where age was a relevant factor.

The complaint was resolved through a conciliation process. The complainant agreed to withdraw his complaint and the company agreed to pay the complainant an amount of \$4 000 in general damages.

Complaint of discrimination in employment because of criminal record

The complainant was employed by a local government organisation as a field officer. He claimed that he disclosed that he had a previous conviction for assault when he applied for the position. He alleged that four weeks after commencing employment he was dismissed because of his criminal record.

The respondent organisation claimed that the complainant had a previous conviction for indecent language and this conviction had not been disclosed. The organisation agreed that the complainant's criminal record was the reason for his dismissal, but claimed that as the complainant's criminal record was relevant to the inherent requirements of the position, the decision to terminate his employment was not discriminatory.

Chapter 4: Complaint Handling Section

The complaint was resolved through a conciliation process, with the respondent organisation agreeing to pay the complainant six weeks salary and provide a statement of regret.

Complaint by federal prisoner

The complainant is a federal prisoner of Hindu faith. The complainant claimed that he was not given proper food in accordance with his faith.

This complaint was dealt with through an early conciliation process which involved the Commission contacting the prison regarding the issues raised in the complaint and the prison agreeing to inquire into the matter and ensure that the complainant's concerns were addressed.

The complainant subsequently informed the Commission that the prison had taken action to ensure that he was provided with food in accordance with his religious beliefs.

Alleged discrimination in employment because of trade union activity

The complainant was employed as a Customer Services Officer with a large private transport company and was the trade union delegate in her workplace. The complainant claimed that in her role as union delegate she raised a number of concerns with management about occupational health and safety and staff entitlements. The complainant alleged that she expressed an interest in a number of promotional opportunities but was overlooked because of her trade union activity. The complainant advised that she had raised her concerns about this with a senior manager but was told that she *"was always involved in trouble and was now a troublemaker"*.

The respondent company denied that the complainant was overlooked for promotions because of her trade union activity and the senior manager denied that the alleged comment was made to the complainant. The company claimed that the complainant was not offered a promotion because her work performance had steadily declined. The company also stated that the complainant was not getting along with staff members and had recently been counselled about her continued late arrival at work.

The complaint was resolved through a conciliation process. The complainant indicated that she wanted to resign and would be prepared to withdraw her complaint if she received her long service leave entitlements. The company agreed to provide the complainant with the entitlements that she had accrued to date.

Complaint of sexual harassment and discrimination on the ground of sexual preference

The complainant alleged that during his six years of employment as a sales representative with a building supply company he was sexually harassed and discriminated against on the basis of his sexual preference. The complainant alleged that other employees grabbed his penis and placed a poster on the staff notice board which characterised him as 'Mr HIV'. He also alleged that he was paged over the intercom system as "Mr Gay" and he claimed that his sexuality became a topic of daily discussion. The complainant advised that he resigned because of the harassment he experienced.

The respondent company denied that the complainant was sexually harassed or discriminated against because of his sexual preference. The company concurred that an offensive poster was placed on the staff notice board, but advised that this was removed and staff were counselled about such behaviour.

A conciliation conference was held and the parties reached an agreement to resolve the complaint. The terms of resolution involved the complainant agreeing to withdraw the complaint and the respondent agreeing to provide the complainant with an ex-gratia payment of \$6 000, a statement of service and a statement of regret.

Age Discrimination Act

The *Age Discrimination Act 2004* came into effect on 23 June 2004. Under this Act it is unlawful to discriminate against a person on the ground of their age or age group in many areas of public life including employment, provision of goods services and facilities, education, accommodation, access to premises and the administration of Commonwealth laws and programs. The procedures for handling complaints lodged under this Act are the same as the procedures for handling complaints of unlawful racial, sex and disability discrimination.

In this reporting period, the Commission received only one complaint under this Act. Accordingly, no statistics or conciliation information is included in this report. Full reporting of complaints under this Act will be included in the 2004–05 Annual Report.

Complaint handling statistics

Preliminary comments

The following statistical data provides information on enquiries handled by the Commission this reporting year, 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 across reporting years, that there may be variations in the way the data is counted and collected. Some additional information explaining the Commission's approach to statistical reporting is footnoted. Further clarification about complaint statistics can be obtained by contacting the CHS.

Summary

The overall number of complaints received and finalised in 2003–04 is slightly lower than the numbers received and finalised in the previous reporting year.

In 2003–04, 43 percent of complaints were lodged under the Disability Discrimination Act, 32 percent under the Sex Discrimination Act, 14 percent under the Racial Discrimination Act and 11 percent under the Human Rights and Equal Opportunity Commission Act.

There has been a decrease (13%) in the number of complaints received under the Racial Discrimination Act in 2003–04. As in the previous reporting year, employment and the provision of goods and services remain the main areas of complaint.

In comparison with the previous reporting year, there has also been a decrease (7%) in the number of complaints lodged under the Sex Discrimination Act. As in previous reporting years, sexual harassment (28%) and pregnancy discrimination (28%) are the main grounds of complaint and the vast majority of complaints relate to alleged discrimination in the area of employment (88%).

The number of complaints received under the Disability Discrimination Act in 2003–04 is consistent with figures for the previous reporting year. Once again, the main areas of complaint are employment (54%) and the provision of goods, services and facilities.

Complaints under Human Rights and Equal Opportunity Commission Act have decreased by 35 percent compared to the previous year. The overall decrease in complaints under this Act over the past three years can, in part, be attributed to the associated decrease in complaints received about conditions and treatment in immigration detention, which is reflective of the decreased number of detainees in Australia during the past reporting year. As noted previously, this decrease in

complaints may also be the result of complaints of discrimination on the grounds of sexual preference, religion and trade union activity being taken under state or territory legislation where enforceable remedies are available.

Of all the complaints finalised in this reporting year, 38 percent were conciliated. Over the past two reporting years there has been an eight percent increase in the conciliation rate. There was also a further slight increase in the conciliation success rate this year with 65 percent of matters where conciliation was attempted being successfully resolved. In this reporting year, complaints under the Sex Discrimination Act had the highest conciliation rate (47%) and a high conciliation success rate (64%). Complaints under the Disability Discrimination Act had a conciliation rate of 43 percent and shared the highest conciliation success rate (70%). Complaints under the Racial Discrimination Act had a conciliation rate of 24 percent which is a nine percent increase in comparison with the previous year. There was also a 10 percent increase in the conciliation success rate for these complaints (51%). In this reporting year, 21 percent of complaints lodged under the HREOCA were successfully resolved which is an 11 percent increase in contrast with 2002–03 figures. There was also an increase in the conciliation success rate for HREOCA matters with 70 percent of matters where conciliation was attempted being resolved. HREOCA complaints that relate to alleged breaches of human rights by the Commonwealth generally have a low conciliation rate (seven percent in this reporting year) as they often concern broad policy issues which are difficult to resolve at the individual complainant level. However, HREOCA complaints regarding employment under the International Labour Organisations Convention (ILO111) have a much higher conciliation rate (29 percent in this reporting year).

Information on the geographical location, sex and ethnicity of complainants is provided in Tables 6, 8, 9 and 10 below. Demographic data voluntarily provided by complainants at the commencement of the complaint process² provides additional information on complainants. This data, which is similar in many aspects to data obtained over the last few reporting years, indicates that many complainants (32%) knew about the Commission prior to lodging their complaint and the main source of information for others was legal centres/private solicitors and family/friends. The majority of complainants (67%) indicated that their main source of income at the time of the alleged act was from full, part-time or casual employment. Approximately 48 percent of complainants advised at the beginning of the complaint process that they were represented³. The main forms of representation were privately funded solicitors (44%), representation by a friend, family member or support person (16%) and representation by a community legal centre (15%). Self reported data on representation over the past two years points to an increased level of complainant representation by private solicitors.

² 73% of complainants returned the Intake Form in this reporting year.

³ Representation status may change during the complaint process.

Chapter 4: Complaint Handling Section

Data collected on respondent organisation categories indicates that in the last reporting year approximately 45 percent of complaints were against private enterprise, 15 percent against Commonwealth departments/statutory authorities and eight percent against State departments /statutory authorities. The next main respondent organisation categories were educational institutions (five percent), trade unions (two percent) clubs and incorporated associations (two percent) and local government (two percent).

Complaint Information Service

<i>Enquiry type</i>	<i>Total</i>
Telephone	8 518
TTY	14
E-mail	435
In person	104
Written	598
Total	9 669

Complaint Handling Section webpage page views	94 816
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<i>Issue</i>	<i>Total</i>
Race	791
Race – racial hatred	390
Sex – direct	567
Sexual harassment	702
Sex – marital status, family responsibilities, parental status, breast feeding	253
Sex – pregnancy	513
Sexual preference, transgender, homosexuality, lawful sexual activity	184
Disability – impairment	1 522
Disability – HIV/AIDS/Hepatitis	32
Disability – workers compensation	209
Disability – mental health	381

Disability – intellectual/learning disability	83
Disability – maltreatment/negligence	36
Disability – physical feature	49
Age – too young	61
Age – too old	242
Age – compulsory retirement	7
Criminal record/conviction	221
Political opinion	22
Religion/religious organisations	175
Employment – personality conflicts/favouritism	284
Employment – union/industrial activity	125
Employment – unfair dismissal/other industrial issues	653
Employment – workplace bullying	749
Human rights – children	143
Human rights – civil, political, economic, social	332
Immigration – detention centres	41
Immigration – visas	112
Prisons/prisoners	91
Police	122
Court – family court	152
Court – other law matters	167
Privacy – data protection	102
Neighbourhood disputes	88
Advertising	39
Local government – administration	87
State government – administration	283
Federal government – administration	284
Other	691
Total*	10 985

* One enquiry may have multiple issues.

Chapter 4: Complaint Handling Section

<i>State of origin</i>	<i>Total</i>	<i>Percentage</i>
New South Wales	4 306	44
Victoria	1 698	18
South Australia	516	5
Western Australia	486	5
Queensland	1 642	17
Australian Capital Territory	184	2
Tasmania	138	1
Northern Territory	151	2
Unknown/overseas	548	6
Total	9 669	100

Complaints Overview

	<i>2001–02</i>	<i>2002–03</i>	<i>2003–04</i>
Received	1 271	1 236	1 113
Finalised	1 298	1 308	1 229

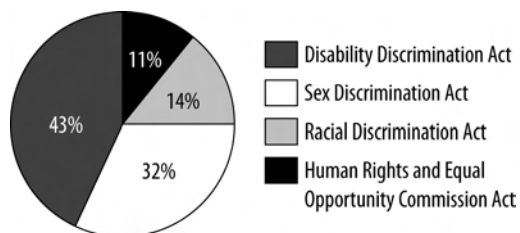
	<i>2001–02 (percent)</i>	<i>2002–03 (percent)</i>	<i>2003–04 (percent)</i>
Terminated/declined	55	56	51
Conciliated	30	32	38
Withdrawn	14	11	10
Reported (HREOCA only)	1	1	1

<i>State of origin</i>	<i>Total</i>	<i>Percentage (%)</i>
New South Wales	489	44
Victoria	216	19
South Australia	124	11
Western Australia	82	7
Queensland	133	12
Australian Capital Territory	35	3
Tasmania	11	1
Northern Territory	17	2
Unknown/overseas	6	1
Total	1 113	100

<i>Act</i>	<i>Received</i>	<i>Finalised</i>
Racial Discrimination Act (RDA)	159	185
Sex Discrimination Act (SDA)	353	382
Disability Discrimination Act (DDA)	483	491
Human Rights and Equal Opportunity Commission Act (HREOCA)	118	171
Total	1 113	1 229

* The Age Discrimination Act 2004 (Cth) came into force on 23 June 2004. As only one complaint was received under this Act during the 2003–04 reporting year, no figures on complaints under this Act are included in this report.

Chart 1: Complaints received by Act



Chapter 4: Complaint Handling Section

	<i>RDA</i>	<i>SDA</i>	<i>DDA</i>	<i>HREOCA</i>	<i>Total</i>
Individual male	97	47	257	87	488
Individual female	54	305	221	22	602
Joint/multiple	4	1	4	5	14
On others behalf	1	–	1	4	6
Organisation	3	–	–	–	3
Total	159	353	483	118	1 113

	<i>RDA (%)</i>	<i>SDA (%)</i>	<i>DDA (%)</i>	<i>HREOCA (%)</i>	<i>Total (%)</i>
Born in Australia	32	73	69	39	63
Born outside of Australia	64	10	14	44	22
Unknown	4	17	17	17	15

	<i>RDA (%)</i>	<i>SDA (%)</i>	<i>DDA (%)</i>	<i>HREOCA (%)</i>	<i>Total (%)</i>
Aboriginal	31	2	2	2	6
Torres Strait Islander	1	–	–	–	–
None of the above	68	98	98	98	94

	<i>RDA (%)</i>	<i>SDA (%)</i>	<i>DDA (%)</i>	<i>HREOCA (%)</i>	<i>Cumulative Total</i>
0 – 3 months	17	19	16	22	18
3 – 6 months	36	31	26	22	46
6 – 9 months	18	25	28	19	70
9 – 12 months	11	14	17	13	85
More than 12 months	11	9	11	9	95
More than 18 months	4	1	1	3	97
More than 24 months	3	1	1	12	100

Racial Discrimination Act

	<i>Total</i>
Received	159
Finalised	185

**Includes complaints lodged under the racial hatred provisions.*

<i>Racial Discrimination Act</i>	<i>Total</i>	<i>Percentages (%)</i>
Association	6	2
Colour	31	10
National origin/extraction	26	8
Ethnic origin	85	27
Descent	4	1
Race	116	36
Victimisation	3	1
Racial hatred	45	14
Aids, permits or instructs	3	1
Total*	319	100

** One complaint may have multiple grounds.*

Chapter 4: Complaint Handling Section

Table 14: Racial Discrimination Act – complaints received by area		
<i>Racial Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Rights to equality before the law	6	2
Access to places and facilities	11	4
Land, housing, other accommodation	7	2
Provision of goods and services	64	20
Right to join trade unions	–	–
Employment	133	42
Advertisements	–	–
Education	3	1
Incitement to unlawful acts	1	–
Other – section 9	33	10
Racial hatred	61	19
Total*	319	100

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

Table 15: Racial hatred complaints received by sub-area		
<i>Racial Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Media	12	39
Disputes between neighbours	5	16
Personal conflict	1	3
Employment	1	3
Racist propaganda	1	3
Entertainment	2	6.5
Sport	–	–
Public debate	2	6.5
Other*	7	23
Total**	31	100

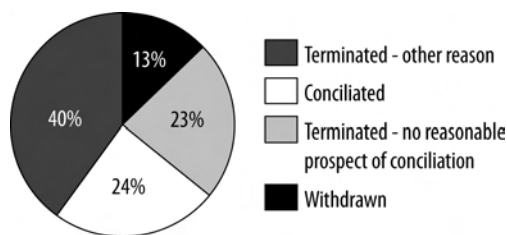
* This category includes complaints in the area of education, provision of goods and services and comments made by people in the street and in passing vehicles.

** Only one sub-area is recorded for each racial hatred complaint received.

Table 16: Racial Discrimination Act – outcomes of finalised complaints	
<i>Racial Discrimination Act</i>	<i>Total</i>
Terminated	111
At complainants request – s.46PE	1
Not unlawful	2
More than 12 months old	5
Trivial, vexatious, frivolous, misconceived, lacking in substance	57
Adequately dealt with already	5
More appropriate remedy available	–
Subject matter of public importance	–
No reasonable prospect of conciliation	41
Withdrawn	22
Withdrawn, does not wish to pursue, advised the Commission	20
Withdrawn, does not wish to pursue, settled outside the Commission	2
Conciliated	42
Administrative closure*	10
Total	185

*Not an aggrieved party, state complaint previously lodged.

Chart 2: Racial Discrimination Act – outcomes of finalised complaints



Sex Discrimination Act

Table 17: Sex Discrimination Act – complaints received and finalised	
<i>Sex Discrimination Act</i>	<i>Total</i>
Received	353
Finalised	382

Table 18: Sex Discrimination Act – complaints received by ground		
<i>Sex Discrimination Act</i>	<i>Total</i>	<i>Percentages (%)</i>
Sex discrimination	216	34
Marital status	28	5
Pregnancy	177	28
Sexual harassment	179	28
Parental status/ family responsibility	14	2
Victimisation	19	3
Total*	633	100

*One complaint may have multiple grounds.

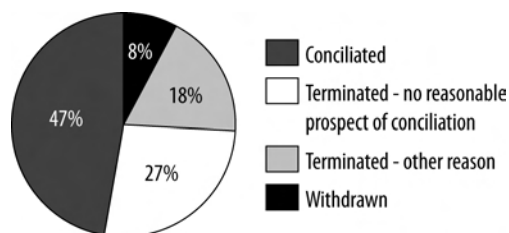
Table 19: Sex Discrimination Act – complaints received by area		
<i>Sex Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Employment	556	88
Goods, services and facilities	41	6
Land	–	–
Accommodation	1	–
Superannuation, insurance	4	1
Education	8	1
Clubs	5	1
Administration of Commonwealth laws and programs	17	3
Application forms etc	–	–
Trade unions, accrediting bodies	1	–
Total*	633	100%

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

Table 20: Sex Discrimination Act – outcomes of finalised complaints	
<i>Sex Discrimination Act</i>	<i>Total</i>
Terminated	163
At complainants request – s.46PE	–
Not unlawful	7
More than 12 months old	11
Trivial, vexatious, frivolous, misconceived, lacking in substance	43
Adequately dealt with already	2
More appropriate remedy available	2
Subject matter of public importance	–
No reasonable prospect of conciliation	98
Withdrawn	30
Withdrawn, does not wish to pursue, advised the Commission	27
Withdrawn, does not wish to pursue, settled outside the Commission	3
Conciliated	173
Administrative closure*	16
Total	382

*Not an aggrieved party, state complaint previously lodged.

Chart 3: Sex Discrimination Act – outcomes of finalised complaints



Disability Discrimination Act

Table 21: Disability Discrimination Act – complaints received and finalised	
<i>Disability Discrimination Act</i>	<i>Total</i>
Received	483
Finalised	491

Table 22: Nature of complainant's disability		
<i>Disability Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Physical disability	201	25
A mobility aid is used (e.g. walking frame or wheelchair)	81	10
Physical disfigurement	10	1
Presence in the body of organisms causing disease (HIV/AIDS)	10	1
Presence in the body of organisms causing disease (other)	14	2
Psychiatric disability	122	15
Neurological disability (e.g. epilepsy)	39	5
Intellectual disability	21	3
Learning disability	33	4
Sensory disability (hearing impaired)	38	5
Sensory disability (deaf)	36	4
Sensory disability (vision impaired)	31	4
Sensory disability (blind)	17	2
Work related injury	61	7
Medical condition (e.g. diabetes)	55	7
Other	38	5
Total*	807	100

* One complainant may have multiple disabilities.

<i>Disability Discrimination Act</i>	<i>Total</i>	<i>Percentages (%)</i>
Disability of person(s) aggrieved	845	93
Associate	21	2.5
Disability – person assisted by trained animal	8	1
Disability – accompanied by assistant	1	–
Harassment	20	2
Victimisation	3	0.5
Aids, permits or instructs	8	1
Total*	906	100

* One complainant may have multiple grounds.

<i>Disability Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Employment	484	54
Goods, services and facilities	227	25
Access to premises	35	4
Land	–	–
Accommodation	20	2
Incitement to unlawful acts or offences	2	–
Advertisements	–	–
Superannuation, insurance	15	2
Education	90	10
Clubs, incorporated associations	10	1
Administration of Commonwealth laws and programs	21	2
Sport	2	–
Application forms, requests for information	–	–
Trade unions, registered organisations	–	–
Total*	906	100%

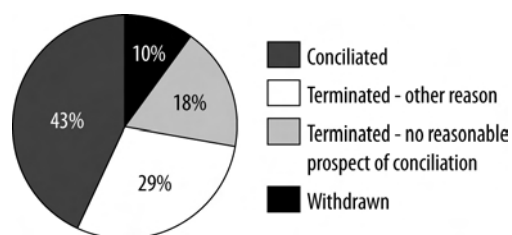
* An area is recorded for each ground, so one complaint may have multiple and different areas.

Chapter 4: Complaint Handling Section

Table 25: Disability Discrimination Act – outcomes of finalised complaints	
<i>Disability Discrimination Act</i>	<i>Total</i>
Terminated	227
At complainants request – s.46PE	2
Not unlawful	19
More than 12 months old	7
Trivial, vexatious, frivolous, misconceived, lacking in substance	99
Adequately dealt with already	7
More appropriate remedy available	7
Subject matter of public importance	–
No reasonable prospect of conciliation	86
Withdrawn	50
Withdrawn, does not wish to pursue, advised the Commission	45
Withdrawn, does not wish to pursue, settled outside the Commission	5
Conciliated	205
Administrative closure*	9
Total	491

*Not an aggrieved party, state complaint previously lodged.

Chart 4: Disability Discrimination Act – outcomes of finalised complaints



Human Rights and Equal Opportunity Commission Act

<i>Human Rights and Equal Opportunity Commission Act</i>	<i>Total</i>
Received	118
Finalised	171

<i>Human Rights and Equal Opportunity Commission Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Race (ILO 111)	–	–
Colour (ILO 111)	–	–
Sex (ILO 111)	–	–
Religion (ILO 111)	11	8
Political opinion (ILO 111)	2	2
National extraction (ILO 111)	–	–
Social origin (ILO 111)	–	–
Age (ILO 111)	18	14
Medical record (ILO 111)	–	–
Criminal record (ILO 111)	27	21
Impairment (including HIV/AIDS status) (ILO 111)	–	–
Marital status (ILO 111)	–	–
Disability (ILO 111)	–	–
Nationality (ILO 111)	–	–
Sexual preference (ILO 111)	9	7
Trade union activity (ILO 111)	17	13
International Covenant on Civil and Political Rights	37	29
Declaration on the Rights of the Child	–	–
Declaration on the Rights of Mentally Retarded Persons	–	–
Declaration on the Rights of Disabled Persons	–	–
Convention on the Rights of the Child	6	5
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	–	–
Not a ground within jurisdiction	1	1
Not a human right as defined by the Act	–	–
Total*	128	100

*One complaint may have multiple grounds.

Chapter 4: Complaint Handling Section

Table 28: HREOCA – complaints received by area		
<i>Human Rights and Equal Opportunity Commission Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Acts or practices of the Commonwealth	41	32
Employment	82	64
Not act or practice of the Commonwealth (not employment cases)	5	4
Total*	128	100

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

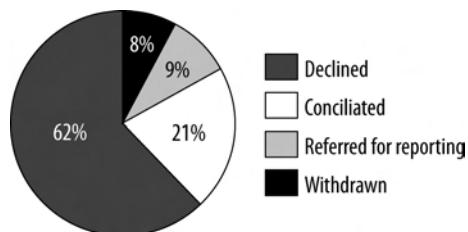
Table 29: HREOCA – non-employment complaints received by sub-area		
<i>Human Rights and Equal Opportunity Commission Act</i>	<i>Total</i>	<i>Percentage</i>
Prisons, prisoner	12	26
Religious institutions	–	–
Family court matters	–	–
Other law court matters	3	7
Immigration	22	48
Law enforcement agency	1	2
State agency	1	2
Other service provider (private sector)	1	2
Local government	–	–
Education systems	–	–
Welfare systems	2	4
Personal or neighbourhood conflict	–	–
Health system	–	–
Other	4	9
Total	46	100%

Table 30: HREOCA – Outcomes of finalised complaints	
<i>Human Rights and Equal Opportunity Commission Act</i>	<i>Total</i>
Declined	120
Does not constitute discrimination	15
Human rights breach, not inconsistent or contrary to any Human right	29
More than 12 months old	4
Trivial, vexatious, frivolous, misconceived, lacking in substance	44
Adequately dealt with already	5
More appropriate remedy available	9
Withdrawn, does not wish to pursue, advised the Commission	11
Withdrawn, does not wish to pursue, settled outside the Commission	3
Withdrawn or lost contact	–
Conciliated	35
Referred for reporting*	15
Administrative closure**	1
Total	171

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

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

Chart 5: Human Rights and Equal Opportunity Commission Act – outcomes of finalised complaints







Chapter 5: *Legal Services*

The primary responsibilities of the Legal Section are to assist the President or their delegate in the preparation of notices and reports under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth); to act as counsel or instructing solicitor for the Commission in interventions and *amicus curiae* matters; to assist the Commission in work arising from legislation or bills raising human rights issues and to monitor and promote awareness of developments in international and domestic human rights law, including discrimination jurisprudence in the Federal Court and Federal Magistrates Court.

Others responsibilities include acting 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); assisting the Commission to examine enactments or proposed enactments under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth); assisting the Commission to consider applications for exemptions under the *Sex Discrimination Act 1984* (Cth); responding to applications under the *Freedom of Information Act 1982* (Cth) on behalf of the Commission.

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

Where a complaint under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) alleging breaches of human rights or discrimination in employment is received, the Commission attempts to resolve the complaint through the process of conciliation. If the President has not declined the complaint and it is unable to be resolved through conciliation, and the President is satisfied after inquiry that there has been a breach of human rights or discrimination in employment has occurred, the President or their delegate shall report the matter to the Commonwealth Attorney-General. The President can also make recommendations to address any damage suffered by the complainant.

The Attorney-General is then required to present the report to Parliament within 15 sitting days of receipt of the report. The reporting process does not involve the President or delegate making findings that the respondent has acted unlawfully. The President or delegate only has the power to make recommendations in any reports to the Attorney, meaning that a successful complainant does not obtain a binding remedy.

Between 1 July 2003 and 30 June 2004, the following reports were tabled in Parliament by the Minister pursuant to this Commission function (the full reports are available at: www.humanrights.gov.au/legal/reports_hreoca.html):

HREOC Report No. 26

Report of an inquiry into a complaint by Mr Kenneth Douglas of age discrimination in the Australian Defence Force

Mr Douglas made a complaint to the Commission alleging discrimination in employment on the ground of age. Mr Douglas joined the Royal Australian Navy (RAN) of the Australian Defence Force (ADF) as a Petty Officer in 1997. In November 1998 Mr Douglas was recommended by his senior officer to appear before an Officer Selection Board (OSB) of the RAN, which would have provided Mr Douglas with an opportunity to be considered for promotion to an officer level as a Direct Entry Seaman. However, the ADF refused to allow him to appear before the November 1998 OSB. Mr Douglas alleged that the reason for the ADF's refusal was his age.

The ADF conceded that age had been one factor in his being denied the opportunity to appear before the November 1998 OSB, though it claimed that age had not been the only significant reason. In particular, the ADF alleged that Mr Douglas had not complied with the requirement that his performance be observed for a period of 3 months before being able to be nominated for commissioned rank. It also alleged that, because of the statutorily prescribed retirement age (55 years) and the fact that Mr Douglas was 49 years old, if he were promoted to Seaman Officer, he would not have been able to satisfy the required post qualification return of service period. The ADF alleged that the ability to satisfy this period was an inherent requirement of the job of a Seaman Officer.

The former President of the Commission found that the primary reason for the ADF's refusal to allow Mr Douglas to appear before the November 1998 OSB was his age. The other reason was the length of time that Mr Douglas had been observed so that his officer potential could be ascertained. However no findings were made in relation to whether the ability to satisfy the return of service period was an inherent requirement of the job of a Seaman Officer, or whether Mr Douglas would have been able to satisfy that requirement.

Consequently the former President found that the ADF had discriminated against Mr Douglas in his employment on the basis of his age by refusing to allow him to appear before the November 1998 OSB, and recommended that:

- the ADF pay the complainant the amount of \$15,000, being an amount for general damages and loss of opportunity; and
- the ADF provide Mr Douglas with a written apology.

The former President completed her inquiry on 10 February 2003 and provided the above findings and recommendations to the Commonwealth. The Commonwealth instituted proceedings under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) for a review of the former President's findings. The Commonwealth discontinued those proceedings on 2 September 2003. Consequently the President was able to report to the Attorney-General in relation to its inquiry in February 2004.

The report was tabled in the Federal Parliament by the federal Attorney-General on 30 March 2004. In that report, the President noted that the respondent had indicated that it was in the process of complying with the recommendation for the payment of compensation and drafting some form of written apology to Mr Douglas in the form of a letter of regret from the navy.

HREOC Report No. 27

Report of an inquiry into a complaint by Ms KJ concerning events at Woomera Immigration Reception and Processing Centre between 29–30 March 2002

This complaint arose out of the events of 29–30 March 2002 at the Woomera Immigration Reception and Processing Centre (WIRPC). During this time violent protests were staged by detainees within the WIRPC.

Ms KJ⁴ and her son MJ were detained in the WIRPC at that time. The focus of the inquiry was on two issues:

1. Claims made by Ms KJ that she and her son MJ were sprayed with tear gas by officers of Australasian Correctional Management (ACM); and
2. Claims that MJ was struck with a baton by an ACM officer.

The powers of the President were delegated to Mr Stephen Roder of Counsel for the purposes of conducting the inquiry.

The Delegate found that neither Ms KJ nor MJ were involved in acts of violence at the relevant times. However, they were present in the general area in which violent incidents were taking place.

⁴ The names of the complainant and her son were suppressed to protect their privacy and human rights.

The Delegate found that the MJ's rights were breached when he was struck with a baton by an unidentified ACM officer. This was found to be inhuman and degrading treatment and was found not to have respected MJ's humanity or inherent dignity. Accordingly, it was inconsistent with and contrary to article 37(a) and (c) of the CRC and articles 7 and 10 of the ICCPR.

The use of tear gas by ACM officers was found, in the particular circumstances of its use, not to constitute a breach of the MJ's human rights. Significantly, the Delegate found that MJ was not 'targeted' with tear gas and it was used by ACM officers in response to a direct threat to their physical safety by other detainees.

The Delegate recommended an apology be issued by the Department on behalf of the Commonwealth. The Department has issued an apology, without prejudice or admission of liability, to Ms KJ.

The Delegate also recommended that ACM conduct a full investigation of the matter. ACM responded that in their view it was appropriate that the matter be referred back to the Australian Federal Police for further investigation and such referral was made.

The report was tabled in the Federal Parliament by the federal Attorney-General on 3 March 2004.

Interventions

The Commission has a statutory function of intervening, with the leave of the Court, in proceedings that involve issues of age, race, sex, marital status, pregnancy and disability discrimination, human rights issues and equal opportunity in employment.

The Commission's intervention functions are contained in:

- section 53(1)(g) of the *Age Discrimination Act 2004* (Cth);
- section 67(1)(l) of the *Disability Discrimination Act 1992* (Cth);
- sections 11(1)(o) and 31(j) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth);
- section 20(1)(e) of the *Racial Discrimination Act 1975* (Cth); and
- section 48(1)(gb) of the *Sex Discrimination Act 1984* (Cth).

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 at: www.humanrights.gov.au/legal/intervention_info.html

In exercising those functions, the Commission is seeking to develop Australian law (generally over the long term) such that it is more consistent with human rights standards. The intervention functions also serve an important educative purpose, which the Commission seeks to further enhance by placing all its submissions on its website.

Leave granted to intervene in the financial year

During 2003–04, the Commission was granted leave to intervene in five matters. Summaries of those matters appear below. In selecting those matters, the Commission sought to make strategic use of its intervention powers to augment its ongoing work on human rights issues in areas including immigration detention, discrimination, children’s rights and transgender identity.

Al Kateb v DIMIA and Ors (A253 of 2003); MIMIA v Al Khafaji (A254 of 2003); Behrooz and Ors v DIMIA and Ors (A255 of 2003)

In November 2003, the Commission was granted leave to intervene in these three matters which were heard together in the High Court. All three related to the limits on the powers to detain people under the *Migration Act 1958* (Cth).

Two of these matters, *Al Khafaji* and *Al Kateb*, involved people who were refused protection visas by delegates of the Minister for Immigration and Multicultural and Indigenous Affairs; unsuccessfully sought review of those decisions before the Refugee Review Tribunal; and then wrote to the Minister asking to be removed from Australia.

In both cases, at first instance the Federal Court found that their removal was not “reasonably practicable”, as at that time there was no real prospect of those people being removed from Australia in the reasonably foreseeable future. The High Court considered whether ongoing detention is permissible in those circumstances.

The third matter, *Behrooz*, raises the issue of whether the conditions of immigration detention can render it unlawful. This issue arose following the escape of a number of people from Woomera Immigration Reception and Processing Centre who have since been the subject of criminal charges.

In its written submissions, the Commission submitted that to continue to detain a person where there is no likelihood that they will be removed in the reasonably foreseeable future, or where conditions of detention fall beneath certain basic standards, involves breaches of fundamental rights recognised by international and Australian domestic law, including the *Constitution*.

In exercising its intervention function in these matters, the Commission sought to build on its earlier work on the human rights issues arising from detention without reasonably foreseeable end, which includes:

- the Commission's report entitled *Those who've come across the seas*;
- HREOC Report number 13 into the indefinite detention of a number of people subject to criminal deportation orders; and
- the intervention matters of *MIMIA v Al Masri* (discussed below and in the Commission's last annual report) and *Luu v MIMIA* (discussed in the Commission's last three annual reports).

The Commission's submission and supplementary submission are available at:
www.humanrights.gov.au/legal/intervention/khafaji.htm and
www.humanrights.gov.au/legal/intervention/khafaji_supp.htm

The High Court handed down its decisions in all three matters on 6 August 2004. In short, the Court found in favour of the Department or Minister in each matter. The Commission will report on those decisions in more detail in its 2004–05 Annual Report. In the interim, summaries have been included in the August 2004 edition of the Legal Bulletin (available on the Commission's website at www.humanrights.gov.au/legal/bulletin.html).

Re Manager of Baxter Immigration Detention and Processing Centre and Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Sakhi (M276 of 2003)

In February 2004, the High Court granted the Commission leave to intervene in proceedings brought by four children of the Sakhi family, seeking a writ of habeas corpus and prohibition to secure their release from immigration detention. The children, originally from Afghanistan, were detained with their parents at the Baxter Immigration Detention Centre, pursuant to section 196 of the *Migration Act 1958* (Cth). Their application alleged that section 196 was invalid to the extent that it allowed the Government to detain children beyond the limited period of time permissible under the Constitution.

The Commission's submissions are available at:
www.humanrights.gov.au/legal/intervention/sakhi.html

Developing its submissions in *Al Khafaji*, *Al Kateb* and *Behrooz* (see above), the Commission submitted that the *Constitution* only permits the government to detain individuals for as long as is reasonably necessary. In the case of children, detention beyond what is required for initial assessment after arrival and for the purpose of arranging deportation cannot be considered to be reasonably necessary. This is because children will suffer significantly greater detrimental effects as a result of being detained and because children pose a low flight risk and security risk. To the extent that section 196 authorises the detention of children beyond initial assessment and arrangements for deportation, it is constitutionally invalid.

The High Court reserved its decision.

RE ALEX: Hormonal treatment for Gender Identity Disorder

In January 2004, the Commission was granted leave by the Chief Justice of the Family Court to intervene in this matter. The proceedings involved an application by a child welfare authority for medical treatment for a young person for whom they are the guardian. The young person's real name was the subject of a suppression order made by the Court and the Chief Justice's decision uses the pseudonym "Alex" to preserve anonymity.

Alex is 13 years old and has gender dysphoria (gender identity disorder). Alex has from the age of 5 identified as a boy. Alex also has depression, which is linked to his gender dysphoria. A special representative was appointed for him.

The Commission's intervention in this matter developed some of the work undertaken in the Commission's previous interventions in the Family Court, such as:

- the "Kevin and Jennifer" case, in respect of transgender marriage (*Attorney-General for the Commonwealth & "Kevin & Jennifer" & Human Rights and Equal Opportunity Commission* [2003] FamCA 94);
- cases regarding consent to surgical treatment by children and consent to medical treatment on behalf of a child ; and
- a number of proceedings in respect of sterilisation of young women with disabilities.

Details of these previous interventions are available at:
www.humanrights.gov.au/legal/intervention_info.html

In *Re Alex*, the Commission made submissions in respect of the legal competency of a child to consent to medical treatment, and the relevant human rights principles in the *Convention on the Rights of the Child*, including the right to express a transgender identity (referring also to State anti-discrimination law and Australian case law), and the right of a child to express their wishes and right to be heard.

The Commission's submissions are available at:
www.humanrights.gov.au/legal/intervention/alex.html

Judgement was handed down in April 2004. In summary, the Court gave permission for Alex to initially receive the contraceptive pill. The Court also authorised his treating doctors, in consultation with Alex, to administer further treatment, a hormonal combination involving testosterone, around Alex's 16th birthday. The Court's orders also permitted Alex to enrol at high school under a male name, and gave permission to change the name recorded on his birth certificate. A more detailed summary of the Court's decision appears in the April/May 2004 edition of the Commission's Legal Bulletin (see further below), available on the Commission's website at:

www.humanrights.gov.au/legal/bulletins/volume_8.htm

Family Provisions Test Case (C2003/4198 and others)

In September 2003, the Commission was granted leave to intervene in the Family Provisions Test Case in the Australian Industrial Relations Commission (AIRC). Those proceedings consist of a number of applications to vary Federal awards to provide workers with more flexibility to balance their work and family responsibilities. The matter is listed for hearing in September and October 2004. The Commission has filed submissions on preliminary issues and an outline of contentions, and proposes to file final written submissions later this year.

This continues the Commission's earlier work as an intervener in the AIRC, which has included the 1990 Parental Leave Test Case, which established the standard clause for maternity, paternity and adoption leave for awards, and *Gunn and Taylor (Aust) Pty Ltd v AMWU* [PR918573] 4 June 2002, regarding equal work for equal value and the adequacy of alternative remedies.

The Commission considers that the AIRC's jurisdiction under the *Workplace Relations Act 1996* (Cth) complements, but is different to, protections provided for under federal discrimination law. In broad terms, federal discrimination law provides individual complaint based remedies for past acts of discrimination, while the AIRC is empowered to adopt a more systemic approach. The Commission considers that both sets of protections are important. Hence, in addition to the Commission's role in these AIRC proceedings, the Sex Discrimination Commissioner is making submissions on the protections conferred by the *Sex Discrimination Act 1984* (Cth) in the area of work and family in the amicus matter of *Howe v Qantas* (see below).

Catholic Education Office v Clarke (N1693 of 2003)

In May 2004, the Full Federal Court (Sackville, Tamberlin and Stone JJ) granted the Commission leave to intervene in this matter which concerned indirect discrimination under section 6 of the *Disability Discrimination Act 1992* (Cth). Mackillop College and the Catholic Education Office appealed against the finding that they had indirectly discriminated against a profoundly deaf student by making him an offer of enrolment that required him to participate in and receive classroom instruction without the assistance of an Auslan (Australian Sign Language) interpreter.

The Commission's submissions are available at:
www.humanrights.gov.au/legal/intervention/ceo_clark.html

The Commission's submissions focussed on the proper approach to the test for indirect discrimination. In particular, the submission addresses the issue of 'reasonableness' under section 6(b) of the *Disability Discrimination Act 1992* (Cth) and the role of international human rights standards in determining what is 'reasonable'.

The intervention adds to the Commission's earlier work on the application of the *Disability Discrimination Act 1992* (Cth) in the area of education, including in the matter of *Purvis* (discussed below) which dealt with the direct discrimination provisions.

The Full Court dismissed the appeal in a decision handed down on 6 August 2004. The Commission will report on that decision in more detail in its 2004–05 Annual Report. In the interim, a summary has been included in the August 2004 edition of the Legal Bulletin (available on the Commission's website at www.humanrights.gov.au/legal/bulletin.html).

Matters in which the Commission intervened during the period 1 July 2002 and 30 June 2003 and were finalised during the period 1 July 2003 and 30 June 2004

At the time of the Commission's 2002–03 Annual Report, there were two intervention matters which were yet to be finalised as one or more of the parties were seeking special leave to appeal to the High Court. Those matters have now been finalised in the manner discussed below.

NAAV v Minister for Immigration and Multicultural Affairs and NABE v Minister for Immigration and Multicultural Affairs

A summary of the Commission's involvement in these matters before the Full Federal Court in 2002–03 is in last year's Annual Report at: www.humanrights.gov.au/annrep02_03/chap3.html

Subsequent to the decisions of the Full Federal Court, the High Court handed down its decision in *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476. In that case, the High Court adopted a different approach to the interpretation of the key provision of the Migration Act (section 474) to that which had been applied by Full Federal Court in these matters.

As noted in the Commission's 2002–03 Annual Report, both *NAAV* and *NABE* sought special leave to appeal to the High Court from the decision of the Full Federal Court. The Commission decided not to be involved in the special leave applications as the human rights issues raised before the Full Court of the Federal Court were no longer of central relevance.

The appeal in *NAAV* was conceded by the Minister and the matter was remitted to the Refugee Review Tribunal to be determined according to law (*NAAV v MIMIA* [2003] HCATrans 356 (12 September 2003)). The appeal in *NABE* was contested, but the High Court granted leave to appeal, allowed the appeal and remitted the matter to the Full Court of the Federal Court for reconsideration in light of the decision in *S157/2002* (*NABE v MIMIA* [2003] HCATrans 364 (12 September 2003)).

Minister for Immigration and Multicultural and Indigenous Affairs v Al Masri (A206 of 2003)

A summary of the Commission's involvement in this matter in 2002–03 is in last year's Annual Report at: www.humanrights.gov.au/annrep02_03/chap3.html.

These proceedings concerned the lawfulness of the ongoing detention of Mr Al Masri who had asked the Minister to remove him from Australia following the refusal of his protection visa application. Officers of the Minister's department attempted to give effect to that request, but were unsuccessful.

The Federal Court and on appeal the Full Federal Court found that Mr Al Masri had been unlawfully detained for part of the period of his detention as his removal was not 'reasonably practicable', there being no real prospect of Mr Al Masri being removed from Australia in the reasonably foreseeable future.

As noted in the Commission's 2002–03 Annual Report, the Minister sought special leave to appeal to the High Court from the decision of the Full Federal Court. On 14 August 2003 the High Court rejected the Minister's application for special leave to appeal (HCATrans 305). However, as noted above, the High Court considered similar issues in the matters of *Al Khafaji* and *Al Kateb*.

Amicus curiae

Section 46PV of the Human Rights and Equal Opportunity Commission Act 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 Court, seek to appear as *amicus curiae* (or friend of the Court) in the hearings of complaints that have been terminated by the President.

Guidelines for the exercise of this function are publicly available on the Commission's website at: www.humanrights.gov.au/legal/amicus_info.html

As with the Commission's intervention functions, the Commissioners attempt to enhance the educative role of their *amicus* functions by placing all submissions on the Commission's website.

During 2003–04, Commissioners were granted leave to appear as *amicus curiae* in four matters. Summaries of those matters appear below. Also set out below is the summary of a matter in which the acting Disability Discrimination Commissioner was granted leave to appear as *amicus* in 2002–03 and the decision is yet to be handed down (*Access for All Alliance (Hervey Bay) v Hervey Bay City Council*).

Howe v Qantas Airways Limited

Ms Howe commenced proceedings in the Federal Magistrates Court of Australia in Sydney, alleging that she had been unlawfully discriminated against on the basis of her sex, pregnancy and family responsibilities in the course of her employment with Qantas Airways Limited ('Qantas'). Ms Howe was employed by Qantas in the position of Customer Service Manager ('CSM') Long Haul. The discrimination was said to have arisen by reason of, inter alia:

- the allocation of certain ground duties to Ms Howe after she became pregnant, but prior to the taking of maternity leave, and the refusal to pay Ms Howe her base salary as a CSM during the periods in which she was transferred to ground duties; and
- the requirement to work full-time and without flexibility in order to maintain her position as CSM upon her return from maternity leave.

Qantas denied the allegations of discrimination and submitted, inter alia, that any act done was in compliance with the relevant award or enterprise agreement and section 40(1)(f) of the *Sex Discrimination Act 1984* (Cth) operated as a complete defence.

The Sex Discrimination Commissioner limited her role as *amicus curiae* to issues that arose concerning:

- the proper construction of section 40 of the *Sex Discrimination Act 1984* (Cth), particularly in the context of awards and certified agreements; and
- the indirect sex discrimination claim brought by Ms Howe in respect of the requirement to work full-time and without flexibility in order to maintain her position as CSM upon her return from maternity leave (sections 5(2) and 7B of the *Sex Discrimination Act 1984* (Cth)).

The Sex Discrimination Commissioner sought and was granted leave to file supplementary submissions in relation to the issues raised during the hearing (held in April 2004). A further hearing has been listed for 17 August 2004 to allow the parties and the Sex Discrimination Commissioner the opportunity to make oral submissions in relation to the matters raised in the written submissions.

Jacomb v The Australian Municipal Administrative Clerical and Services Union (V477 of 2003)

This is an important matter, as it is the first time the special measures provision in section 7D of the *Sex Discrimination Act 1984* (Cth) has directly arisen for consideration by a Court. That section provides that a person does not discriminate against another person by taking 'special measures' for the purpose of achieving substantive equality between certain classes of people including, relevantly, men and women.

Mr Jacomb alleged that he had been unlawfully discriminated against on the basis of his sex by the Australian Municipal Administrative Clerical and Services Union (the 'Union'). The discrimination was said to have arisen by reason of the recently certified rules of the Union which provided that particular elected positions in the Branch Executive were available only to women. Mr Jacomb claimed that there was no substantive inequality in the Union that needed to be addressed by way of affirmative action policies, and the relevant provisions in the Rules meant that a disproportionate number of women (compared to the numbers of women who were members of the Union) were on the Branch Executive. The Union defended the proceedings on the basis that those parts of the Rules referred to by Mr Jacomb were special measures within the meaning of section 7D of the *Sex Discrimination Act 1984* (Cth) and, as such, were not discriminatory.

The matter was listed for hearing before Crennan J in the Federal Court of Australia in Victoria on 8 April 2004. The Sex Discrimination Commissioner was granted leave to appear as *amicus curiae* in the proceedings. The Sex Discrimination Commissioner filed detailed written submissions and Counsel appeared on behalf of the Sex Discrimination Commissioner at the hearing, making brief oral submissions. The Commissioner's submissions are available at: www.humanrights.gov.au/legal/amicus/jacomb.html

Those submissions went principally to the interpretation of section 7D and the test that should be applied in determining whether a measure was a special measure within the meaning of that section. The submissions also dealt with the legislative history of sections 7D and 33 of the *Sex Discrimination Act 1984* (Cth). Section 33 was an earlier, somewhat similar provision, which was effectively superseded by section 7D in 1995.

Crennan J has reserved her decision.

***Kelly Country v Beers* (DZ5 of 2003)**

This matter before the Federal Magistrates Court in Darwin concerned allegations of racial vilification in the respondent's comedy performances. The Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner was granted leave to appear as *amicus curiae*. The parties were unrepresented.

The applicant claimed that the performances of the respondent (who performs stand-up comedy under the stage name "King Billy Cokebottle") racially vilify Indigenous people and contravene section 18C of the *Racial Discrimination Act 1975* (Cth). The applicant alleged that "the respondent portrays aboriginal persons as rude, stupid, unable to pronounce longer words...dirty, ill educated, always drunk (or at least always drinking), and always swearing".

The Commissioner filed written submissions and made brief oral submissions in respect of the interpretation of section 18D(a) of the *Racial Discrimination Act 1975* (Cth), which creates an exemption to the provisions of section 18C. The Commission did not seek to make submissions on the manner in which the case should be determined. The Commission's submissions are available at: www.humanrights.gov.au/legal/amicus/kelly_country.html

Brown FM dismissed the complaint, finding that the applicant had not made out the elements of section 18C and that the exemption under section 18D(a) applied. A more detailed summary of his Honour's decision may be found in the supplement to the Commission's publication *Federal Discrimination Law 2004* (see below) which is available on the Commission's website at: www.humanrights.gov.au/legal/fed_discrimination_law_04/index.htm

Thorn v Woolworths Pty Ltd & Cat & Dog Management Board of South Australia

Mr Thorn made an application to the Federal Magistrates Court alleging disability discrimination against Woolworths in the provision of goods, services and facilities and access to premises by refusing to allow him to enter its stores when accompanied by his dog. Mr Thorn alleged that his dog was trained to alleviate the effects of his disability (epilepsy), and was thus an assistance animal within the meaning of section 9 of the *Disability Discrimination Act 1992* (Cth). The Acting Disability Discrimination Commissioner has raised a number of issues regarding that provision in a discussion paper available at: www.humanrights.gov.au/disability_rights/inquiries/animal03/report.htm

In response Woolworths claimed that the Dog & Cat Management Board of South Australia had advised them that under the *Dog and Cat Management Board Act 1995* (SA) and the *Australian Food and Hygiene Regulations 1990* (SA), only guide dogs were entitled to access the premises of food retailers such as Woolworths. Hence Woolworths claimed that it would be in breach of South Australian law if it were to allow Mr Thorn to enter the store with the dog.

Mr Thorn further alleged that the Cat & Dog Management Board of South Australia had discriminated against him by refusing to recognise his dog as an assistance animal.

Federal Magistrate Mead granted leave to the Acting Disability Discrimination Commissioner to appear as *amicus curiae* on 31 July 2003. On 1 September 2003 the Acting Disability Discrimination Commissioner made written submissions regarding the application of section 109 of the *Constitution*. However Mr Thorn settled his claim with Woolworths in September 2003, and consequently discontinued proceedings against Woolworths.

Access for All Alliance (Hervey Bay) v Hervey Bay City Council

As noted above, the Acting Disability Discrimination Commissioner is awaiting a decision in this matter in which he was granted leave in the 2002–03 financial year. A summary of the Commissioner's involvement in this matter in 2002–03 is in last year's Annual Report.

The case concerns allegations of disability discrimination by the respondent Council in the provisions of services. Central to the application is the claim that certain Council facilities are inaccessible to people with mobility disabilities.

The Acting Disability Discrimination Commissioner made submissions on the correct approach to key issues under the *Disability Discrimination Act 1992* (Cth) including the interpretation of 'reasonableness' in the context of allegations of indirect discrimination and the concept of 'unjustifiable hardship'.

Human Rights Education and Promotion

As noted above, the Commission considers the intervention and amicus functions contribute to the Commission's human rights education work by demonstrating how human rights principles may be applied to resolve factual and legal issues before domestic courts.

The Legal Section is also involved in other aspects of the Commission's human rights education and promotion work, particularly those projects involving a focus upon domestic and international law. Two of the Legal Section's more significant human rights education projects for 2003–04 are described below.

Federal Discrimination Law 2004

The publication '*Federal Discrimination Law 2004*' provides an overview of key issues in federal discrimination law. It examines:

- The jurisprudence that has been developed by courts and tribunals in unlawful discrimination matters brought under the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth) and the *Disability Discrimination Act 1992* (Cth);
- The manner in which interlocutory applications, procedural and evidentiary matters and awards of costs have been dealt with in the Federal Court and Federal Magistrates Court since the function of hearing federal unlawful discrimination matters was transferred from the Commission to those courts on 13 April 2000; and

- The principles which have been applied to damages awards in cases where breaches of the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth) and the *Disability Discrimination Act 1992* (Cth) have been found and gives an overview of damages awards made since the transfer of the hearing function.

The publication is one of the few addressing this interesting and complex area.

The Commission's earlier publication, *Change and Continuity: Review of the Federal Unlawful Discrimination Jurisdiction, September 2000 – September 2002* ('*Change and Continuity*') provided a review of the first two years of the federal unlawful discrimination jurisdiction following its transfer from the Commission to the Federal Court and the Federal Magistrates Court. That publication can be downloaded from the Commission's website at:

www.humanrights.gov.au/legal/fed_discrimination_law_04/index.htm

Federal Discrimination Law 2004 builds on and updates the material presented in *Change and Continuity*, but also takes a broader focus and is not limited to a comparative discussion of the periods before and after the transfer of the jurisdiction to the Federal Court and Federal Magistrates Court.

During 2003–04, the President and members of the Legal section gave seminars around Australia to promote and distribute the publication. Further seminars are to take place during the remainder of 2004.

Legal Bulletin and associated seminars

The Legal Section has also continued to publish its quarterly *Legal Bulletin*, providing an update on domestic and international human rights law. The *Legal Bulletin* is published on the Commission's website and links sent on the legal section's email list (see www.humanrights.gov.au/legal/mailling.html to subscribe).

In connection with each new edition of the Legal Bulletin, the Legal Section has organised a seminar on a topic of current interest in domestic or international human rights law. The Seminars and speakers for 2003–04 were as follows:

- July 2003 – discussion of the decision of the Full Federal Court in *Minister for Immigration and Multicultural and Indigenous Affairs v Al Masri* (2003) 126 FCR 54, presented by the Deputy Director of the Legal Section.
- September 2003 – discussion of the decision in *Mayer v Australian Nuclear Science and Technology Organisation* (2003) FMCA 209 and other relevant Federal discrimination cases dealing with the *Sex Discrimination Act 1984* (Cth), family responsibilities and maternity leave, presented by Mr Simeon Beckett of the New South Wales Bar;

- December 2003 – discussion of the decision of the United Nations Human Rights Committee in *Young v Australia* No. 941/2000, U.N. Doc. CCPR/C/78/D/941/2000 and the associated procedural issues, presented by Ms Michelle Hannon, pro-bono solicitor at Gilbert and Tobin.
- March 2004 – presentation on the decision of the High Court in *S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 78 ALJ 180, presented by Sarah Pritchard of the New South Wales Bar and Ms Jenni Millbank, Senior Lecturer at Sydney University Law School.
- May 2004 – overview of the *Human Rights Act 2004* (ACT), presented by Ms Kate Eastman of the New South Wales Bar.

Review of administrative decisions made by the Commission

The Commission is often a party to proceedings in courts or tribunals involving judicial review or merits review of the Commission’s administrative decisions. Members of the Commission and Commission officers are also sometimes party to such proceedings. The Commission, Commission member or Commission officer is named as a respondent in those matters.

Judicial review

Judicial review of Commission decisions generally involves an application to the Federal Court or the Federal Magistrates Court pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

In accordance with established legal principle, the Commission (as decision maker) usually submits to the jurisdiction of the Court in these matters, leaving the substantive parties (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, the Commission does not submit, but even then limits its role to assisting the Court rather than adopting a contentious or adversarial approach.

The numbers of applications made under *Administrative Decisions (Judicial Review) Act 1977* (Cth) for the years 2001–04 are shown in the table below.

<i>Year</i>	<i>2001–02</i>	<i>2002–03</i>	<i>2003–04</i>
<i>Total</i>	4	7	3

Alexander Purvis (on behalf of Daniel Hoggan) v State of New South Wales (Department of Education) and Human Rights and Equal Opportunity Commission (2003) 78 ALJR 1

This matter was discussed in the Commission's Annual Report last year. As there noted, this was a case under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) where the Commission played an active part in the proceedings.

Daniel Hoggan suffered a severe brain injury when about seven months old which resulted in him suffering from severe behavioral problems and other disabilities. He attended Year 7 of South Grafton High School from April 1997 until he was excluded in December 1997. On 13 November 2000, Hearing Commissioner Innes, in response to a complaint lodged with the Commission on Daniel Hoggan's behalf, found that the Department of Education had directly discriminated against him on the basis of his disability by excluding him from school, and by certain other acts and omissions in connection with its management of him while attending the school.

The Department sought review of the Commission's decision in the Federal Court. On 29 August 2001, Emmet J held that the Commission had erred in law and set the decision aside. An appeal by Mr Purvis to the Full Federal Court was dismissed on 24 April 2002.

The High Court granted Mr Purvis special leave to appeal. The Commission which played no active role in the earlier proceedings made oral and written submissions to the court. Those submissions can be found at:

www.humanrights.gov.au/legal/purvis.htm and
www.humanrights.gov.au/legal/purvis_additional.html

On 11 November 2003, the court delivered its decision. By a majority (Gleeson CJ, Gummow, Hayne, Callinan and Heydon JJ) the court dismissed the appeal with costs. McHugh and Kirby JJ would have allowed the appeal.

A key issue before the court concerned the application of section 5(1) of the *Disability Discrimination Act 1992*. That section, which contains the definition of direct discrimination, requires a comparison between the treatment accorded to the aggrieved person by the alleged discriminator and the treatment it accorded, or that it would accord, to a person without the disability in circumstances that are the same or not materially different. The majority of the court (Gleeson CJ, Gummow, Hayne, Callinan and Heydon JJ) agreed with the approach taken by the Federal Court at first instance and on appeal that the comparison should be between the treatment accorded by the school to Daniel Hoggan and the treatment that would have been accorded to a student who was not disabled but who had acted as Daniel Hoggan had acted. The majority held that as the Hearing Commissioner had not applied section 5(1) in this way the appeal had to be dismissed. McHugh and Kirby JJ, in dissent, and in accordance with the submission of the Commission, agreed with the approach taken by the Hearing Commissioner.

Another significant issue for consideration by the court concerned the definition of disability in section 4(g) of the Act. The definition provides that 'disability' means 'a disorder ... that results in disturbed behaviour'. The court (with the exception of Callinan J who did not see a need to reach a conclusion on this issue) disagreed with the approach taken by the Federal Court at first instance and on appeal, and found that the behavioural manifestation of an underlying disorder is itself a disability for the purposes of the Act. Thus, in Daniel Hoggan's case the disturbed behaviour that resulted from his disorder was an aspect of his disability. The view of the court was in accordance with the submission of the Commission.

Merits review

Some decisions of the Commission or Commission staff (acting under instruments of delegation) are subject to merits review by the Administrative Appeals Tribunal. Those include decisions made under the *Freedom of Information Act 1982* (Cth) and decisions on applications for temporary exemptions under section 44 of the *Sex Discrimination Act 1984* (Cth) and section 55 of the *Disability Discrimination Act 1992* (Cth).

A significant case involving merits review of a temporary exemption decision that the Commission has been involved in during 2003–04 was the matter of *Catholic Education Office (Diocese of Sydney) v Human Rights and Equal Opportunity Commission*.

In that matter, the Catholic Education Office (CEO) applied to the Administrative Appeals Tribunal for review of a decision of the Commission of 27 February 2003, where the Commission declined to grant to the CEO a temporary exemption pursuant to section 44 of the *Sex Discrimination Act 1984* (Cth). The exemption application related to a proposal by the CEO to offer primary teacher training scholarships to male students only. The CEO stated that the aim of the proposed scholarship scheme was to increase the number of male primary school teachers so that boys have male role models. The CEO also suggested that having access to male role models will help improve the 'substantive equality of boys and girls' in primary schools. The Commission declined to grant a temporary exemption in relation to the relevant provisions of the SDA on the basis that the CEO had failed to demonstrate that the exemption sought was "reasonable".

The CEO's application was withdrawn on 19 March 2004. Also on 19 March 2004, the Commission granted the CEO an exemption to offer 24 scholarships of equal value, of which 12 would be offered to males and 12 offered to female HSC students who enrol in Primary Teacher Training at university. The exemption is subject to a number of conditions.

Those proceedings raised issues which also arose in relation to the Sex Discrimination Amendment (Teaching Profession) Bill 2004 (see above).

International Work

Meeting of the Commission on Human Rights

In April 2004, the Acting Director of the Legal Section assisted the President at the 60th session of the United Nations Commission on Human Rights (and the associated meeting of the International Co-ordinating Committee of Human Rights Institutions). The Commission meets each March/April for six weeks in Geneva. The President was given the opportunity to address the Commission for a short period of time.

Asia-Pacific Forum: 8th Annual Meeting

A senior legal officer attended the 8th Annual Meeting of the Asia-Pacific Forum (APF) in Kathmandu, Nepal from 16–18 February 2004. The officer provided assistance in the form of research, advice and drafting to the APF's Advisory Council of Jurists in its considerations of a reference on the Rule of Law in Countering Terrorism. The Advisory Council of Jurists conducted their deliberations and prepared a draft report on the reference over two days before presenting the draft report to the Meeting on the third and final day.

Placement from the South Korean Human Rights Commission

A legal/policy officer employed by the South Korean Human Rights Commission spent two weeks with the Legal Section during December 2003. The objects achieved during that placement included providing an overview of the Legal Section's practice and internal procedures and providing practical experience in the day to day work of the section.



Chapter 6: *Aboriginal and Torres Strait Islander Social Justice*

Statement from the Commissioner

As we look back on events of the past year, it is clear that we have reached a critical moment in the relationship between Indigenous peoples and the Australian Government. Indigenous people face an unprecedented level of uncertainty as to the nature of this relationship.

As of 1 July 2004, processes are in place to dismantle the national elected representative Indigenous structure and to mainstream all programs and service delivery to Indigenous peoples. This has been accompanied by proposals for changing the nature of funding of some key areas of service delivery to Indigenous peoples from a preferred supplier model to a tendering/contract basis, as well as moving increasingly towards a whole-of-government approach to service delivery across departments and between levels of government.

The consequences of these developments will not be known for some time as we await decisions from the Parliament in relation to the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) as well as the bedding down of new administrative arrangements to implement the proposed directions of the government. The majority of the changes will occur by administrative action and will take place with very little public scrutiny or input from Indigenous peoples.

Developments over the coming year have the potential to challenge the fundamental principles that have underpinned the relationship of Indigenous peoples and governments in recent years. There is much at stake for Indigenous peoples.



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

Chapter 6: Aboriginal and Torres Strait Islander Social Justice

A significant focus of the activities of my office over the past year have been directed to engaging with this mood for change in Indigenous affairs by firstly identifying an agenda for reform, and secondly by engaging in discussions about proposed changes in policy approaches to ensure that the human rights implications of these are understood.

A key feature of this work has been examining the inter-related issues of the nature of Indigenous peoples' participation in the decision-making processes of government that affect them, and the adequacy of processes and mechanisms for ensuring government accountability. I have considered these issues through: comments and submissions on the ATSIC Review process and responding to government announcements of new administrative arrangements for ATSIC; through my annual review of developments on social justice and native title; participation in forums on capacity development; and by commenting on proposed new service delivery arrangements for the delivery of legal services to Indigenous peoples. The details of the findings on these issues are explained throughout this chapter of the report.

As the *Social Justice Report 2003* clearly demonstrates, the current service delivery model of government is not working. There has been only limited improvement in the livelihood of Indigenous peoples over the past five years, and policies and programs have reinforced Indigenous dependency on government services rather than promoted sustainable solutions. The *Native Title Report 2003* also illustrates the lack of coordination and consistency in approach, with native title seated outside the broader framework of Indigenous policy making as if it has no contribution to make to the economic and social development of Indigenous communities. Both reports clearly state that this situation is unacceptable and has to change.

There needs to be reform at the governmental, organisational and community levels simultaneously if there is to be any transformation in the relationship of Indigenous peoples to government(s). The focus needs to be broader than improved efficiency of Indigenous organisations. No amount of change at one level of the system will result in sustainable improvements for Indigenous peoples if it is not accompanied by reform at the other levels.

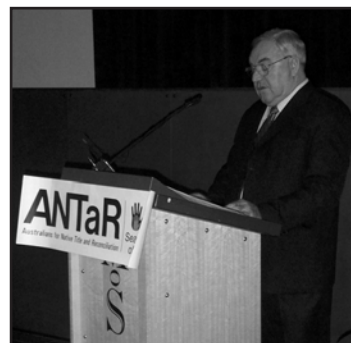
A key challenge is reforming the role of Indigenous community and representative structures so that there is an appropriate cultural match between Indigenous organisational structures and their constituents – Indigenous peoples at the local level. National Indigenous organisations also need to be strengthened so that they are equipped to exercise a more pivotal role in policy making at all levels of government – particularly through strengthening their ability to monitor the performance of government.

The abolition of ATSIC does not, in my view, meet this need and may be contrary to Australia's human rights obligations. This is particularly so given that there is no intention to replace ATSIC with an elected, representative body, but instead with an appointed government council.

At the same time, there is a clear need for improved processes for government accountability. There have been significant achievements through the processes of the Council of Australian Governments over the past year – although we have not yet reached the stage where material improvements for Indigenous peoples have resulted. Despite these preliminary achievements, processes have not reached a sufficient level of accountability.

In launching the *Social Justice Report 2003* I stated that:

Personally, I am sick of hearing from the government about how they spend record amounts of money on Indigenous affairs. I don't want to hear it anymore though. I want to hear about what they are achieving with that money. And I want to know when they envisage it will be that Indigenous people will have equal life chances to other Australians and when the time will come that there will be no need for such record expenditure.



I don't expect that the situation that Indigenous people face will be able to change in the short term, but I do expect governments to have an action plan for achieving equality of opportunity. Action plans should set out what is an acceptable rate of progress towards addressing Indigenous disadvantage within a short, medium and long-term context, and an evaluation of issues relating to the prioritisation, resourcing and re-engineering of programs and services that will need to take place to achieve this. And I also expect that governments will have in place processes for negotiating with Indigenous peoples about setting the key priorities as well as building the capacity of communities to be self-reliant.

These concerns, and the proposals made in the *Social Justice Report* and *Native Title Report* to address them, remain key challenges to be addressed by governments as we enter a period of uncertainty for Indigenous peoples.

A further feature of the work of my office in the past year has been on building the capacity of Indigenous peoples on human rights issues. My work on native title issues has focused on building human rights principles into negotiating frameworks for native title – through greater acceptance with mining and resource companies, and through building links to economic and social development of Indigenous communities.

More generally on social justice issues, I entered into a partnership with ATSIC to conduct community-based activities about awareness of human rights. A significant feature of this work has related to promoting discussion in Australia on the Draft Declaration on the Rights of Indigenous Peoples. The Australian Government plays a significant and not always productive role in international negotiations on this proposed instrument. It does not, however, engage with



Chapter 6: Aboriginal and Torres Strait Islander Social Justice

Indigenous communities in Australia about its approach. As consideration of this draft Declaration reaches a critical point over the coming year, my office has encouraged a more wide-ranging dialogue on this issue in Australia. There have been some encouraging signs about the willingness of government for such a dialogue – although it must be noted that this takes place against a backdrop in which the government has not addressed any concerns raised by Indigenous peoples about its position in international forums. Many challenges remain for Indigenous peoples in Australia in this regard.

In raising these challenges, I also note the broad support provided for the role and work of the Social Justice Commissioner through the consideration of legislative amendments to the Commission's structure and through the report of the Senate Inquiry into progress towards reconciliation. These clearly identify and support the ongoing need for this office as an independent monitoring agency on the human rights of Indigenous peoples.

Commissioner Jonas' term as Commissioner expired on 10 July 2004.



Monitoring and Reporting

Social Justice Report 2003

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

The *Social Justice Report 2003* is the fifth by Commissioner Jonas. It was transmitted to the Attorney-General on 30 January 2004, and tabled in Parliament on 10 March 2004.

The report outlines an agenda for change for Indigenous policy. It looks back over the past five years to see whether government policy and program delivery are improving the situation of Indigenous peoples' lives in a sustainable way, or whether in fact they are inhibiting such improvement. It then identifies ways forward to improve Indigenous policy making and delivery of services.

The report provides an overview of key developments in relation to Indigenous well-being and socio-economic status based on recent data. It examines recent progress in relation to accountability of governments; participation of Indigenous peoples; moving beyond welfare dependency; and reconciliation. It also examines government performance in relation to two deeply problematic issues – petrol sniffing and family violence in Indigenous communities.

The report identifies a number of recent positive developments in implementing the commitments to reconciliation made by the Council of Australian Governments (COAG), such as: through the finalisation and release of the first report of national indicators for overcoming Indigenous disadvantage; the conduct of the COAG whole-of-government community trials; as well as recent initiatives in all states and territories regarding family violence issues.

It finds that processes for moving towards such change are still in the preliminary stages and results are yet to be achieved. It argues that the way in which the government deals with issues such as: the reform of the Aboriginal and Torres Strait Islander Commission, support for capacity development in Indigenous communities, and corporate governance reform of Indigenous organisations, will be critical in turning talk into results for Indigenous peoples.

The report notes that these developments are also accompanied by some blunt realities about the rate of progress currently being achieved. It provides a detailed overview of the socio-economic status of Indigenous people in Australia, with an emphasis on change over the past five and 10 years, the inequality gap between



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Indigenous and non-Indigenous Australians, and comparisons to Indigenous peoples in other countries.

The report expresses deep concern that the situation Indigenous peoples face is likely to worsen substantially over the next decade. A consequence of the growth in the Indigenous population is that it will become increasingly difficult to prevent the current inequality from deteriorating even further.

It also considers progress by governments in addressing pressing, intransigent issues such as petrol sniffing and family violence, and finds that there is insufficient focus at the national level on issues related to petrol sniffing, with no long-term strategies. It expresses particular concern at the bureaucratic inertia in dealing with longstanding petrol sniffing issues on the Anangu Pitjantjatjara Lands (AP) of South Australia. Progress in addressing this issue, including through responding to the findings and recommendations of the South Australian Coroner, is unacceptably slow. Concerns are also expressed at the lack of access to justice for Indigenous women and the limited availability of legal services for them.

The report makes clear that a continuation of the current approach to Indigenous policy will not result in sustainable, long-term improvements for Indigenous peoples. It identifies key issues in an agenda for change, including:

- addressing the lack of sufficient government accountability to Indigenous peoples for government policies through the introduction of rigorous performance monitoring and benchmarking processes;
- strengthening ATSIC at the national, state and regional level, so they provide a representative voice to Indigenous peoples in policy making processes;
- increasing the focus on whole-of-government approaches, with a particular emphasis on progress in the COAG whole-of-government community trials;
- providing a realistic assessment of the ongoing shortfall of funding for service delivery and infrastructure provision to Indigenous communities, and a targeted plan 'to address inequality within available resources and within people's lifetimes'; and
- integrating capacity development approaches for Indigenous communities into all government processes, including through COAG making a long-term commitment to appropriate funding and processes.

Accordingly, the report contains 12 recommendations directed to COAG and the federal Government relating to:

- data collection issues to support COAG's national report on overcoming Indigenous disadvantage (recommendation 1);
- the status of COAG's ministerial action plans for addressing Indigenous disadvantage (recommendations 2–5);

- the progress of the COAG whole-of-government community trials (recommendations 6–9); and
- Capacity building and governance reform (recommendations 10–12).

The report, an executive summary and media pack can be accessed from the Commission's website at:
www.humanrights.gov.au/social_justice/sjreport03/index.html.

Native Title Report 2003

Under section 209 of the *Native Title Act 1993* (Cth), the Commissioner is required annually to submit a report to the Attorney-General 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.

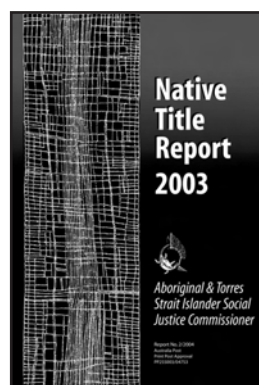
The *Native Title Report 2003* is the fifth by Commissioner Jonas, and was transmitted to the Attorney-General on 30 January 2004 and tabled in Parliament on 10 March 2004.

The report evaluates native title as a framework for economic and social development for traditional owner groups. The report recognises that while the legal framework for native title restricts its capacity to improve economic and social conditions for Indigenous people, native title agreement-making provides an invaluable opportunity for states and territories to take a broader policy approach. The approach advocated in the report is developed in four chapters which deal with the following topics:

- native title and international standards on development and sustainability;
- native title policies and practices of governments throughout Australia;
- evaluating native title policies as a framework for economic and social development; and
- comparative study of legal and policy frameworks in Canada and the United States of America.

Chapter one of the report provides a framework for sustainable economic and social development for Indigenous people based on the right to development defined in the *Declaration on the Right to Development* and the international discourse on sustainable development.

Applying these approaches to native title agreement-making, the chapter asks: 'What would a government and a native title claimant group discuss if the agreed aim of the native title process was the realisation of the group's right to sustainable



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development?’ It also asks: ‘How would native title negotiations and agreement-making be structured so as to achieve this agreed goal?’ A central element of the response to these questions is directed to ways in which the capacity of the claimant group can be developed to take control of the development process. The purpose of this approach is to enable traditional owner groups who aspire to achieve sustainable development to determine the process for themselves. This requires that the group establish its own objectives and strategies for achieving them. The government’s role in this process is to facilitate the group to achieve its development goals through a partnership approach.

Chapters two and three of the report examine native title policies at the state and federal levels, and the capacity of these policies to contribute to Indigenous peoples’ sustainable development. A common theme of state native title policies as they currently exist is a willingness to negotiate rather than litigate. A preference for negotiation over litigation provides an invaluable opportunity for governments and traditional owner groups to ensure that native title determinations respond as far as possible to the development needs of the native title claimant group, rather than just the demands of the legal system.

However, unclear in most native title policies are the objectives of the negotiation process. This gap in states’ native title policies means that native title negotiations have no consistent goals, but change depending on the circumstances of the case. It also means that there has been little policy development around defining the elements of a native title agreement that would best contribute to the sustainable development of the traditional owner group.

Little or no use is made of policy frameworks that have already been developed outside of the native title area to address economic development in Indigenous communities. The failure to co-ordinate the goals of native title negotiations with the states’ strategies to address the economic and social development of Indigenous people generally not only isolates the native title process from broader policy objectives, it limits the capacity of those broader policies to achieve their objective of addressing the economic and social conditions of Indigenous peoples’ lives. By disregarding native title, the policy fails to understand the importance of filtering development through the cultural values and structures of the group, which is the subject of this policy. In addition, the recognition of the distinct identity of Indigenous people and the cultural, economic and political values that characterise this identity are essential to the economic and social development agenda of Indigenous people.

Despite native title providing an ideal opportunity to foster sustainable development for Indigenous people, native title negotiations are constrained by the legal tests on which the recognition of native title depends. Within the legal framework, the scope and content of native title agreements are directed to addressing the legal issues that define the claim, rather than contributing to the development goals of the group.

Chapter four of the report raises the question of how native title, land rights, and agreement-making with Indigenous peoples are being handled at a juridical and policy level in other comparable common law countries. The basis for drawing a comparison between Australian, American and Canadian approaches is their respective capacity to address the economic and social development of Indigenous people.

Native title in Australia provides an important frame of reference by which economic and social development can transform the conditions of Indigenous peoples' lives. Yet its capacity to contribute to this process has been hampered, first by the legal system that operates to restrict rather than maximise these outcomes, and second by the failure of government to build a relationship with traditional owner groups in which economic and social development is the shared goal.

The full report, an executive summary and a media pack can be accessed from the Commission's website at:
www.humanrights.gov.au/social_justice/ntreport_03/index.html.

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 1986* (Cth) to promote discussion and awareness of human rights in relation to Aboriginal persons and Torres Strait Islanders.

Proposed tendering of Aboriginal and Torres Strait Islander Legal Services

In March 2004, the federal Government proposed reforms to 'mainstream' the delivery of legal services to Indigenous people. The reforms were set out in the *Exposure Draft Purchasing Arrangements, Legal Services Contract 2005 – 2007 for Legal Aid Services for Indigenous Australians* (Exposure Draft), including the revised *Policy Directions for the Delivery of Legal Aid Services to Indigenous Australians* (Policy Directions). The reforms were developed by the Aboriginal and Torres Strait Islander Services (ATSIS) and were intended to enable generalist legal services to tender for funding previously provided to Aboriginal and Torres Strait Islander Legal Services.

The Commissioner made a submission to ATSIS on 7 May 2004 expressing concern at a number of proposals contained within the Exposure Draft and Policy Directions. The concerns related broadly to two issues:

First, that certain provisions of the Exposure Draft and Policy Directions may breach the prohibition of racial discrimination in the Racial Discrimination Act. The Policy

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Directions provide that, *inter alia*, people who are charged with minor offences, such as traffic offences or public drunkenness, may be refused legal assistance by providers funded under the new tendering arrangements. In addition, under the Policy Directions people who have previously been charged (though not necessarily convicted) with violent offences may also be refused legal assistance by the funded service provider.

If the criteria discussed above are imposed by the Commonwealth on both Indigenous and non-Indigenous people this may still give rise to a breach of the indirect discrimination provisions contained in section 9(1A) of the Racial Discrimination Act.

Many Indigenous people may not be able to practically and effectively comply with such a requirement, and the imposition of this requirement may interfere with the rights of Indigenous people to a fair trial and access to legal advice and assistance.

The second concern expressed by the Commissioner was that the tendering process does not address longstanding difficulties in the provision of legal services to Indigenous peoples, and that aspects of the tendering process may in fact further disadvantage Indigenous peoples in the provision of legal services. In particular, the Commissioner expressed concern that the tender documents do not sufficiently prioritise addressing the crisis of contact of Indigenous peoples with criminal justice systems. Legal services for Indigenous peoples are under-funded, and the tender documents place restrictions on service delivery that mitigate against effective and proactive service delivery. The lack of focus and funding for prevention and education within the tender process is of particular concern.

The Commissioner's comments on the tender process are available online at: www.humanrights.gov.au/social_justice/submissions.html.

Joint Public Accounts Committee Inquiry into Indigenous Law and Justice

The Commissioner made a submission to the Joint Public Accounts Committee of the federal Parliament to their Inquiry into Indigenous law and Justice in May 2004. The Commission appeared at a public hearing of the Committee on 8 June 2004.

The submission addressed concerns about the proposed tendering out of Aboriginal and Torres Strait Islander Legal Services, as well as the provision of legal services to Indigenous women. It also provided information about the National Indigenous Legal Advocacy Courses.

For information on the National Indigenous Legal Advocacy Courses see the Commission's website at: www.humanrights.gov.au/social_justice/nilac/index.html

Aboriginal and Torres Strait Islander Commission

The Commissioner has made numerous comments and submissions about the future of the Aboriginal and Torres Strait Islander Commission (ATSIC) during the reporting year.

In August 2003, the Commissioner made a submission to the ATSIC Review Team in response to their discussion paper. The submission emphasised the need to strengthen ATSIC at national, state and regional levels, and recommended mechanisms for improving the performance monitoring and evaluation role of ATSIC. The submission is available online at:

www.humanrights.gov.au/social_justice/submissions.html#atsic.

The *Social Justice Report 2003* then contained analysis of the ATSIC Review's Final Report and outlined proposals for ATSIC reform based on this. The Commissioner made further comments following the announcement by the federal Government of the abolition of ATSIC. These comments are available online at:

www.humanrights.gov.au/media_releases/2004/28_04.htm

The recognition of Aboriginal Customary Law

For the second year in a row, the Commissioner co-hosted a workshop with the International Law Association (Australian Branch). The workshop, which took place on 20 November 2003, discussed international law issues relating to the recognition of Aboriginal Customary Law. The Commissioner and HREOC President spoke, along with Megan Davis of the University of NSW and Margaret Brewster of the International Law Association. The workshop was attended by approximately 85 people.

The papers of the workshop are available on the Commission's website at:

www.humanrights.gov.au/speeches/social_justice/recognition_customary_law.html

Inquiry into Capacity Building in Indigenous Communities

The Commissioner's office attended a roundtable meeting on 13 February 2004, organised by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs for their Inquiry into Capacity Building and Indigenous Communities. The Commissioner had earlier made a submission to the Inquiry and appeared before the Committee at a public hearing earlier in 2003. The Commissioner's submission is available online at:

www.aph.gov.au/house/committee/atsia/indigenouscommunities/subslist.htm

Inquiry into the Capacity of Native Title Representative Bodies

On 29 June 2004, the Commissioner made a submission to the Parliamentary Joint Commission on Native Title and the Aboriginal and Torres Strait Islander Land Fund on the Capacity of Native Title Representative Bodies.

The Commissioner submitted that the degree to which Indigenous people participate in and derive benefits from, the native title process is, to a significant extent, determined by the capacity of native title representative bodies (NTRBs or representative bodies) to represent their clients' interests in the native title process. The allocation of funds by the federal Government to NTRBs has a direct impact on whether NTRBs can effectively carry out this task. The inadequate funding of representative bodies has had the cumulative effect of undermining NTRBs capacity to protect Indigenous interests in the native title process. Accordingly, it has diminished the extent to which Indigenous people can enjoy their land and culture, and the social, economic and political structures built upon them, diminishing Indigenous people's enjoyment of their human rights.

The Commissioner's submission is available online at:
www.aph.gov.au/senate/committee/ntlf_ctte/rep_bodies/submissions/sub15.pdf.

Technical workshop on the Draft Declaration on the Rights of Indigenous Peoples

The Commission and Aboriginal and Torres Strait Islander Services (ATSIS) co-hosted a technical workshop on the Draft Declaration on the Rights of Indigenous Peoples (DDRIP) from 29–31 March 2004.

The purpose of the technical workshop was to consider the international law implications of the proposals currently before the working group, as well as possible ways forward in negotiations on the DDRIP. The workshop was convened over three days to consider the following issues:

- recent developments and proposed changes to text of the Draft Declaration;
- consideration of the debate in the 2003 session on the Norwegian proposal for articles of the Draft Declaration relating to self-determination; and
- the Australian and Canadian joint text proposed in the 2003 meeting, and other alternative language, relating to the land, territories and resource provisions of the DDRIP.

Participants in the workshop expressed concern at the lack of progress in the negotiations on the DDRIP, and at the realisation that the DDRIP would not be finalised within the timeframe of the International Decade of the World's Indigenous People (which ends in December 2004).

The workshop report noted a range of concerns relating to the position of the Australian Government in the negotiations of the Draft Declaration, including:

- that a major impediment to the adoption by the UN of a Declaration on the Rights of Indigenous Peoples is a tendency of a small group of States, including Australia, to propose text which restricts the Declaration to conform with existing domestic laws and policies;
- that the Australian Government is seeking to impose its domestic policy on other States in denying the application to Indigenous peoples of the right of all peoples to self-determination, in a manner which is inconsistent with existing international law;
- that proposals submitted at the 2003 session of the Draft Declaration working group by Australia and Canada on the lands, territories and natural resources provisions of the Declaration seek to elevate to the status of international standards inadequate domestic laws and policies. Such laws and policies have been found by UN human rights treaty bodies to be contrary to Australia's existing international human rights obligations;
- in Australia, consultation by the federal Government with Indigenous peoples and organisations in relation to the Declaration has been manifestly inadequate; and
- there has been little, if any, attempt by the Australian Government to listen or respond to the reasoned arguments put forward by Indigenous Australians in defence of critical provisions of the Declaration. There has been no apparent shift in any position articulated by Australia in the course of the sessions of the Inter-Sessional Working Group.

The workshop report has been disseminated among governments, Indigenous organisations (in Australia and internationally) and has been submitted to the United Nations as a background paper for the forthcoming session of the Working Group on the Draft Declaration in September 2004.

The Commissioner has received responses from several state and territory governments to the report of the workshop which have supported the need for consultations with Indigenous peoples about the Australian Government's proposals for the Draft Declaration.

The workshop report is available online at:
www.humanrights.gov.au/social_justice/technical/workshop.html.

Visit to Australia of Professor Erica-Irene Daes

Professor Dr Erica-Irene Daes visited Australia from 21 May – 6 June 2004 as a guest of the Commissioner and ATSIS. Professor Daes was the Chair of the Working Group on Indigenous Populations for 20 years from 1982, the principal drafter of the United Nations Draft Declaration on the Rights of Indigenous Peoples, and a Special Rapporteur and expert member of the Sub-Commission on the Protection and Promotion of Human Rights.

During her visit, Professor Daes met with Indigenous organisations, government departments, and other organisations in Sydney, Canberra, Melbourne, Adelaide and Cairns. She delivered three public lectures in Australia: Sydney, on intellectual property and globalisation issues; Melbourne (co-hosted with the Castan Centre for Human Rights at Monash University), on Indigenous participation in the United Nations; and Adelaide (at the National Native Title Conference), on the issue of permanent sovereignty over natural resources.

Professor Daes also conducted a seminar with ATSIS in Canberra and met with post-graduate students studying indigenous international legal issues at Monash University.

Information about Professor Daes and her visit, including speeches, are available on the Commission's website.

International activities

Section 46C(3) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) states that in the performance of the Commissioner's functions, the Social Justice Commissioner may consult with international organisations and agencies, particularly international Indigenous organisations.

In accordance with these provisions, the Commissioner attended the Commission on Human Rights Working Group on the Draft Declaration on the Rights of Indigenous Peoples in Geneva from 15–26 September 2003. In Geneva, the Commissioner also attended the Committee on the Rights of the Child's *General Day of Discussion on Indigenous Children* and made three submissions to the Committee, and also made interventions in working groups convened by the Committee. The submissions are available at:
www.humanrights.gov.au/social_justice/internat_develop.html.

The Committee has recently issued its recommendations from the day, which will inform the consideration of periodic reports by State Parties under the Convention as they relate to Indigenous children.

The Commissioner also attended a workshop in Madrid, Spain, from 12–14 November 2003, on Indigenous peoples and the administration of justice. The workshop was convened by the Office of the United Nations High Commissioner

for Human Rights to support the work of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People. 25 experts were convened in Madrid to discuss issues facing Indigenous people in the administration of justice, including best practice solutions and modes of recognition of Indigenous customary law systems.

The Commissioner provided three submissions in advance of the workshop and made a formal presentation on Indigenous women in corrections. The submissions are available at: 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* (Cth), 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 persons and Torres Strait Islanders.

Principles to promote economic and social development through native title

On 2 June 2004, the Commissioner released a discussion paper entitled '*Promoting Economic and Social Development through Native Title*'. The paper considers how the native title system might operate more effectively to assist traditional owner groups realise their goals for economic and social development. It relies on human rights principles to build a framework for economic and social development. Applying this framework to native title negotiations and agreement-making, the paper proposes five principles to redirect the focus of the parties towards the economic and social development goals of the traditional owner group. It is proposed that native title agreements aimed at economic and social development should:

- respond to the group's goals for economic and social development;
- provide for the development of the group's capacity to set, implement and achieve their development goals;
- utilize the existing assets and capacities of the group to the fullest extent possible;
- build relationships between stakeholders; and
- integrate activities at various levels to achieve the development goals of the group.

The Commissioner is seeking feedback on these principles and is consulting widely in order to further develop the draft principles.

Mining Certification Evaluation Project

The Commissioner is a member of a multi-stakeholder working group convened by the World Wildlife Fund Australia and CSIRO to research the feasibility of developing criteria for the independent auditing of mining sites based on sustainable development principles.

The working group, also comprising representatives of mining companies, consumer organisations, the Mineral Council, environmental and shareholder interests, finalized a draft of the evaluation criteria in December 2003. The criteria address the three pillars of sustainable development – economic responsibility, environmental responsibility and social responsibility.

The working group has retained an auditor to conduct a series of pilot projects on particular mine sites to test whether the criteria can be applied in the field. The draft criteria can be found at: www.minerals.csiro.au/sd/SD_MCEP.htm

National Indigenous Legal Advocacy Courses

On 30 June 2003, the Queensland Training Accreditation Council accredited the National Indigenous Legal Advocacy Courses until 29 June 2008. The courses are now available to be offered by registered training organisations in the vocational education sector (primarily TAFE and Aboriginal independent educators).

Registered training organisations need to obtain a licence from the Commission to offer the courses. A licensing process has been established to ensure that trainers meet the standards required in the course syllabus documents, and will require trainers to provide information to the Commission in order to undertake required evaluation and monitoring of the courses' operation.

Three training organisations have been licensed to deliver the courses to date, namely: the Tropical North Queensland Institute of TAFE; Tranby Aboriginal College; and the Institute for Aboriginal Development.

Information about the courses, including course overviews, licensing processes for intending training providers and a list of registered trainers is available online at: www.humanrights.gov.au/social_justice/nilac/.

Memorandum of Understanding with Aboriginal and Torres Strait Islander Services

The Commission entered into a Memorandum of Understanding with Aboriginal and Torres Strait Islander Services (ATSIS) for two collaborative projects to take place between March and June 2004, namely:

- a community workshop to be conducted in each state and territory on international developments in Indigenous rights; and

- a three-day technical workshop to evaluate progress on the Draft Declaration on the Rights of Indigenous Peoples (as discussed above).

The community workshops were intended to provide Indigenous communities, interested NGOs and academics, an overview of current developments in the international arena relating to Indigenous rights. The core of these workshops would be the role of and recent developments relating to:

- The United Nations Permanent Forum on Indigenous Issues;
- The UN Working Group on Indigenous Populations;
- The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people;
- The Commission on Human Rights Ad Hoc Open-Ended Working Group on the Draft Declaration on the Rights of Indigenous Peoples; and
- The International Decade of the World's Indigenous Peoples.

Workshops were held in Hobart (16 March), Melbourne (19 March), Brisbane (22 March), Adelaide (24 March), Darwin (21 April), Perth (19 April), Canberra (27 April), Sydney (29 April) and Thursday Island (16 June).

Speeches

Attached is a selection of speeches, seminars and presentations made by, or on behalf of, the Commissioner during 2003–04. Selected papers are available on the Commission's website at: www.humanrights.gov.au/speeches/social_justice/.

Beyond Apologies: What Now for the Stolen Generations speech at Our Future Generations, National Indigenous Child Welfare and Development Seminar, Melbourne, 24 July 2003.

Launch of the 3rd edition of the casebook *Indigenous Legal Issues – Commentary and Materials*, by Heather McRae, Garth Nettheim, Laura Beacroft and Luke McNamara, Avillion Hotel, Sydney, 21 August 2003.

Progress in the 12 years since the Royal Commission into Aboriginal Deaths in Custody speech at the National Indigenous People in Custody Conference, Adelaide Riviera Motel, Adelaide, 17 October 2003.

Recognising Aboriginal and Torres Strait Islander Customary Law: International and Domestic Implications speech at the Human Rights and Equal Opportunity Commission and the International Law Association (Australian Branch) seminar, Sydney, 20 November 2003.

Launch of the 2003 Social Justice and Native Title Reports, Museum of Sydney, 12 March 2004.



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Future Challenges for Reconciliation, speech at the Mosman Reconciliation Group, 15 March 2004.

An agenda for change, speech delivered by Darren Dick on behalf of Dr Jonas, Tandanya, Adelaide, 25 March 2004.

Commissioner Jonas and the Indigenous Law Centre co-hosted a presentation by Professor John Borrows from Canada on *Practical Recolonisation: Aboriginal/ Native Title in Australia and Canada*, Sydney, 1 May 2004.





Chapter 7: Disability Rights

Statement from the Commissioner

As in previous years, 2003–04 saw a mixture of significant achievements in some areas, steady but frustratingly slow progress in others, and sobering reminders of the continued unequal status of people with disabilities in Australian life.

The important and continuing role of the Disability Discrimination Act in providing a fairer go for Australians with disabilities was confirmed this year in a major review by the Productivity Commission of the Act, its effectiveness and its costs and benefits.

The review found that overall, the Act and the approaches taken by the Human Rights and Equal Opportunity Commission in administering it, have been reasonably effective in reducing discrimination.

This year demonstrates continued progress in a number of areas, through co-operative processes involving the Commission, other areas of government, and representatives of industry sectors and the disability community.

In particular, there has been progress towards the adoption of Disability Standards on access to premises and education. I welcomed the government's announcement in June of their intention to proceed with tabling Education Standards for approval together with amendments. These Standards do not provide prescriptive answers on every issue but by making the principles clearer, they should assist in continuing the process towards education systems which effectively include people with disabilities.

In the area of access to premises, we have continued to work intensively with the Australian Building Codes Board and industry, community and government representatives towards the development of Disability Standards. This would provide the community, industry,



Dr Sev Ozdowski, OAM
*Acting Disability
Discrimination Commissioner*



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local government and other parties with a clearer and more coherent set of rights and responsibilities. An accessible built environment will become increasingly important to all of us as the Australian population ages. At the time of writing, draft Standards on access to premises are undergoing the regulation impact statement process, which has the important purpose of ensuring that the final Standards adopted deliver the maximum benefit for the community, while also being flexible and realistic enough for industry to implement.

Adoption and implementation of Disability Standards on accessible public transport has been one of the major areas of achievement under the Disability Discrimination Act. The results of these Standards are increasingly being seen on the streets around Australia. However, it is unfortunate that reports on implementation which are being made to the Australian Transport Council, pursuant to agreements by Ministers at the time the Standards were introduced, are not yet being made publicly available. I hope that the governments concerned will soon resolve issues standing in the way of this important accountability measure.

Alongside areas of achievement, the Productivity Commission also emphasised how much further there is to go before the objectives of the legislation are achieved – this applies particularly in the employment area. The review found no significant improvement in the employment situation of people with disabilities since the Disability Discrimination Act was introduced. Indeed, there is evidence that in some areas (such as the level of representation of people with disabilities in the Australian Public Service) that the position continues to get worse.

The review of the Act recommended making clearer the duty to make reasonable adjustments to accommodate people with disabilities in employment and other areas. This recommendation has gained added importance in light of the High Court decision in *Purvis v NSW*, which I am concerned could be interpreted as not including any requirement of reasonable adjustment and as covering only a lack of formal equality. Such a restrictive approach would seriously reduce the effectiveness of the Act. I trust that a speedy and effective response to this and other issues raised in the review of the Act will be forthcoming.

The history of the Disability Discrimination Act so far also makes it clear that legislation alone is not enough. The Commission will consider whether a public inquiry in the employment area would assist in identifying and achieving further measures to improve equal opportunity for people with disabilities in practice.

There are other urgent and important issues affecting human rights and equal opportunity for people with disabilities in Australia. These include health and other services for people affected by mental illness (I participated in public consultations convened with the Mental Health Council of Australia in the first half of 2004–05) and issues of access to health services more generally for people with disabilities (I convened an initial forum in May 2004 and will follow up further in coming months).



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One important area of co-operative work this year has been in the development of a draft International Convention on Human Rights and Disability. The Commission has appreciated being included in the government delegation to several sessions of the United Nations Working Group considering this Convention. In March 2004, I convened two expert workshops to explore common ground between the government's objectives in pursuing reform of human rights treaty processes, and the objectives of all participants (including the disability sector) in achieving a Convention which adds value to existing instruments and mechanisms and advances the human rights of people with a disability. I believe we have been very successful in this respect. I look forward to continued opportunities to work with colleagues in government and the disability community in developing a Convention to promote more effective protection and enjoyment of human rights for all people with disabilities.



Education and Promotion

The Disability rights homepage continues to be an important source of information of Disability Rights policy and projects within the Commission. The site offers a range of resources and links on disability discrimination and other human rights and disability issues, including: information on rights and responsibilities under the Disability Discrimination Act; complaint outcomes; action plans; temporary exemptions; standards and guidelines; and links to related sites.

Public use of the disability rights area of the website continues to be strong, with 586 687 page views being recorded for disability rights web pages throughout the last financial year.

A range of publications are distributed in print and other formats on request, including: *Don't Judge What I Can Do By What You Think I Can't: Ten years of achievements using Australia's Disability Discrimination Act*, *Know your rights under the DDA*, *Complaints under the Disability Discrimination Act Information Sheet* and *Developing an Effective Action Plan Guide*.

A joint project with Marrickville Council (Sydney) on producing a guide for small business on improving access to goods and services was undertaken during the year and the guide '*Missed Business*' is due for release in the second half of 2004.

Research and policy

The Commission has contributed to the early stages of a review of the Commonwealth Disability Strategy which will be undertaken during 2004–05.

Access to electronic commerce

The Commission has been working with disability organisations and the Australian Bankers' Association to review the voluntary industry standards on electronic financial services accessibility. A review of the technical content of the standards was completed by the ABA and issues raised in a review by the Commission of the degree to which the standards have actually been implemented will be used in further discussions with individual financial service providers.

The Commission has provided assistance to a number of financial institutions throughout the year as they have worked to develop accessibility implementation plans in relation to electronic and other services.

Access to tertiary education materials

Co-operative work in this area continues to make progress. Commission staff met late in 2003 with the National Library of Australia to discuss options for establishing a repository of electronic texts to avoid the need for people with print disabilities and others involved such as educational institutions to negotiate on each occasion for access to books. Other work in this area has included development of information resources to assist educational institutions in meeting their responsibilities under copyright law and the DDA.

Health access

In response to issues raised by a number of disability representative organisations, the Commission convened a forum on access to health services for people with disabilities in May 2004. Issues discussed included: physical access to medical facilities; effective access to health information and treatment for people with intellectual disabilities; inclusion of women with disabilities in breast cancer screening programs; and access issues affecting people with vision or hearing impairments. The Commission will follow up issues from this forum during 2004–05.

Insurance

Work has commenced on revised guidelines on insurance under the DDA, taking into account developments since the Commission first issued guidelines in this area (including the recent Federal Court decision in *QBE v Bassanelli*). See the legal section of the report for more information (chapter 5).

Sterilisation

In June 2004, the Commission prepared a submission responding to an issues paper prepared on behalf of the Standing Committee of Attorney-General's Working Group on Non-therapeutic Sterilisation of Minors with Decision-Making Disability.

Telecommunications

Following the discussion paper on disability access issues in telecommunications which the Commission released in June 2003, a high level forum on telecommunications issues was convened in November 2003. Work is continuing on an action plan following this forum.

Cinema captioning

The open captioned cinema program has continued to provide access to a number of first release captioned films in capital cities throughout Australia. This voluntary program is now functioning efficiently and its Committee has looked at ways of extending the availability of the program and increasing cinema attendance.

Promotional material, including a short film advertisement, has been developed and approaches have been made to a number of other exhibitors to encourage them to join the program.

Discussions have also commenced with relevant bodies to identify opportunities to ensure a selection of Australian-produced films are captioned.

Work on improving the availability and participation in the program will continue throughout 2004–05.

Assistance animals

A discussion paper to progress consideration of possible needs for legislative or regulatory action to give better definition to rights and responsibilities in this area was submitted to the Attorney-General for consideration in November 2003. The Attorney-General has written to the Commission indicating his intention to consider the recommendations in this paper in the context of a broader response to legislative reform issues which may arise from the Productivity Commission Inquiry.

Legislative development

Disability Standards

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

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

The Commission has a function under the 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 through formal reporting.

Access to premises

The draft Standards were released for consultation in January 2004. Commissioner Ozdowski and staff participated in a series of public information sessions on the draft and the associated Regulation Impact Statement (RIS). Nearly 2000 people attended these sessions which were conducted in each capital city during February. Industry, government and community members of the Building Access Policy Committee (BAPC) made presentations to promote public input on the costs and benefits of adopting the draft. As at June 2004, the BAPC was about to commence an assessment of issues raised in submissions made during the public consultations.

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. In June 2004, the Attorney-General and the Minister for Education Science and Training announced that the draft standards would shortly be placed before the Parliament, together with amendments to the DDA confirming the validity of aspects of the Standards.

Employment

The development of Disability Standards on employment did not advance significantly during 2003–04, with efforts to develop Standards again being concentrated on the areas of access to premises and education.

Action Plans under the Disability Discrimination Act

Action Plans under the *Disability Discrimination Act 1992* provide an important mechanism for organisations to structure their own compliance efforts.

As at 30 June 2004, 320 plans were registered with the Commission (increased from 276 in June 2003), comprising: 38 business enterprises, 36 non-government organisations, 33 Commonwealth government, 41 state and territory government, 130 local government organisations and 42 education providers. The register of Action Plans, and those plans provided electronically (276 of the total), are available through the Commission's website.

This assists other organisations interested in developing their own plans and individuals interested in assessing the effectiveness and implementation of an organisation's Action Plan. A number of organisations have also submitted revised plans or implementation reports during 2003–04.

While the Commission has no role to play in endorsing Action Plans, considerable assistance was given to a number of organisations throughout the year who sought informal advice on strategies to develop effective plans.

Exemptions

Under section 55 of the DDA the Commission has the power to grant temporary exemption from provisions of the Act which make discrimination unlawful. The Commission's policy on exemption applications is available on the Commission's website at: www.humanrights.gov.au/disability_rights/exemptions/exemptions.html or on request.

The Commission considers that the temporary exemption mechanism is not a means to excuse non-compliance, but is an important means for managing the gradual transition from discriminatory and inaccessible systems and environments to inclusive, accessible non-discriminatory systems and environments. Exemption processes are open and transparent, with notice of inquiry, applications, submissions and decisions published online at the web address above.

Regional aircraft access

On 13 October 2003, AirNorth was granted a conditional exemption for two years regarding carriage of people with disabilities on smaller aircraft.

Building access

On 25 November 2003, the Northern Districts Model Engineering Society was granted a conditional exemption for two years regarding wheelchair access to an upper floor.

Bus service access

On 8 January 2004, Buchan Bus 'n Freight was granted a conditional exemption for two years regarding access to a bus service for passengers using wheelchairs.

Subscription television captioning

On 4 June 2004, subscription television broadcasters were granted a five-year exemption regarding levels of captioning provided that they implement proposals by them for commencement of, and staged increases in, captioning during the exemption period.

Speeches

A selection of public addresses made by the acting Disability Discrimination Commissioner during 2003–04 is listed below. Some speeches can be accessed on the Commission's website at:

www.humanrights.gov.au/disability_rights/speeches/speeches.html.

Speeches listed below were presented by Commissioner Ozdowski except where otherwise noted.

Mental Health Council of Australia Annual Board Dinner, Sydney, 17 June 2004.

Disability Action Plans: Employers Making a Difference, breakfast briefing, Sydney, 8 June 2004 (Michael Small, Senior Policy Officer).

Forum on health access for people with disabilities, opening address, Sydney, 28 May 2004.

Address to National Disability Advisory Council, Canberra, 21 May 2004.

Roundtable on information access for people with print disabilities, 16 May 2004 (Bruce Maguire, Policy Officer).

Opening of workshop on draft International Convention on Disability and Human Rights, Canberra, 25 March 2004.

Release of third progress report on South Australia's Promoting Independence Strategy, Adelaide, 3 December 2003.

Setting the Scene – HREOC Telecommunications Forum, Canberra, 28 November 2003.

National Mental Health Strategy – Future Challenges Meeting Broader Community Need: Mental Health Foundation of Australia Annual Conference, University of Melbourne, 27 November 2003 (John von Doussa QC, President).

Opening of Australian Electoral Commission Disability Access Workshop, Sydney, 14 November 2003.

Launch of Bus Industry Confederation Accessibility Guidelines, Canberra, 5 November 2003.

Copyright v Human Rights: Balancing the rights of authors and the interests of people with print disabilities, presentation to Australian Blindness Forum, 3 October 2003 (Graeme Innes, Deputy Disability Discrimination Commissioner).

Recognition Matters: Human rights and the rights of carers, Carers Australia National Conference, Canberra, 18 September 2003.



Chapter 7: Disability Rights

Opening the doors to employment of more people with a disability, ACROD Employment Forum, Sydney, 31 July 2003.

Local Government – gatekeepers to a more accessible community, National Local Government Community Services Conference – Just and Vibrant Communities, Townsville, 28 July 2003.



Chapter 8: *Human Rights*

Statement from the Commissioner

"A stand can be made against invasion by an army; no stand can be made against invasion by an idea". (Victor Hugo)

There is some evidence to suggest that within the Australian community, the idea that it is unacceptable for a government to maintain an immigration detention regime which provides for the long-term incarceration of children behind razor wire, is finally the prevailing view. The actions of the government in relaxing their hard line stance on immigration detention, as far as children are concerned, are possibly the most conclusive proof of this statement. Recent comments by the Leader of the Opposition that, if elected, a Labor Government would ensure that no children were kept in immigration detention also reinforces this perception.



Dr Sev Ozdowski, OAM
Human Rights Commissioner

As prominent Liberal backbencher Bruce Baird observed, in a recent newspaper article concerning the government's policy shift regarding TPV holders, as being prompted by: "a sea change in public opinion; like most things, the change occurs in the community and then it filters through to MPs".

Efforts by the current Minister for Immigration to release many children into the general community provide further evidence that public opinion from the 'post-Tampa period' to now, has undergone a significant shift. Other examples include:

- Sydney Morning Herald (SMH) polling 'post-Tampa' showed that 75 percent of those surveyed supported the government's actions;
- Current SMH polling shows that 70–75 percent believe that children should be released from immigration detention;
- The SMH poll of 19 January 2004 regarding support for mandatory immigration detention revealed that out of 6 355 votes, 35 percent support mandatory detention, 61 percent are opposed and four percent are undecided.

Like all complex social issues, there are a great number of factors contributing to this change. These range from the absence of significant numbers of new boat arrivals, to the increasing effectiveness and number of refugee advocacy groups. It is difficult to pinpoint one critical agent of change, nevertheless, I am confident that any future analysis will attribute a prominent role to the National Inquiry into Children in Immigration Detention. This observation is not prompted by any hubris on my part, but rather because it contains a vital clue as to what constitutes the most appropriate mix of ingredients for a well functioning civil society. But more on that later.

The official response from the federal Government to '*A last resort?*' *The Report of The National Inquiry into Children in Immigration Detention* focussed only on two themes: the report is backward looking and things are constantly improving; and DIMIA was denied 'complete procedural fairness'. It is worth noting, that in a report of this size (894 pages – 17 chapters) and complexity, the absence of any identified factual error demonstrates the attention to detail and care taken when compiling the report. Despite the official response, the tabling of the Report can reasonably be said to have accelerated the release of children and families from detention.

On 11 June 2004, the Prime Minister publicly declared: "It is the government's intention to dwindle the number of children in immigration detention to zero". While a small measure of satisfaction can be derived from this outcome, clearly the job remains essentially unfinished while the current legislative framework remains in place.

Finally, let me briefly return to my earlier point concerning the importance of this Inquiry process to the integrity of our civil society. I am convinced that Inquiries such as this are central to the ongoing task of human rights education in the broader community. When one considers the number of people exposed to the workings of the Inquiry in the two years of its information-gathering phase, the internet access to the transcripts of evidence, the media coverage and the public hearings – all of this represents a significant level of public discussion about human rights principles. In turn, this leads to an interest in, and understanding of, human rights issues that goes far beyond the immediate subject matter.

Since the release of the report, I have conducted public meetings detailing the Inquiry's findings in Brisbane, Sydney, Melbourne, Adelaide, Perth, Darwin, Alice Springs, Hobart and Launceston. All meetings attracted large audiences and significant media attention.

Combine this interest with the media coverage post-release, comments from parliamentarians and journal analysis, and you soon realise that the Inquiry process has enabled the Commission to reach out to a very broad cross-section of the general community indeed. Statistical evidence for this proposition is supported by the 64 126 page views that the '*A last resort?*' pages on the website received from 13 May to 30 June 2004.

The capacity of the Commission to successfully undertake such Inquiries has to be seen in the political and historical context of Australian civil society. The Commission's effectiveness and autonomy is immeasurably strengthened because it operates in a country which possesses a system of pluralistic governance and rule of law. Like most effective national human rights institutions it is sustained by the clear separation of powers and strong democratic traditions and processes – a civil society which emanates unity of voice through diversity of opinion.

Non-government organisations played a key role in the conduct of the Inquiry and their untiring efforts in the course of the Inquiry not only contributed to the outcome, but also ensured that we approached our task with great rigour and vitality.

It is for all these reasons that I am convinced that national human rights Inquiries perform a human rights function that goes far beyond the importance of the subject matter itself.

Research and Policy

***A last resort?* The report of the National Inquiry into Children in Immigration Detention**



The National Inquiry into Children in Immigration Detention was announced on 28 November 2001. Its primary purpose was to ascertain whether the immigration detention system as it applied to children and the laws, executive acts and practices giving effect to that policy, comply with Australia's obligations under the *UN Convention on the Rights of the Child*.

The Inquiry gathered evidence regarding the treatment of children in immigration detention centres for the period covering 1999 – 2002. The Inquiry heard from all relevant parties including: children and parents who were, or are in, immigration detention; the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and its detention centre staff; Australasian Correctional Management (ACM) and its detention centre staff; state child protection authorities; organisations providing services to current and former detainee children; professional organisations; non-government organisations and individuals.

The Inquiry collected evidence in a variety of different ways including: visits to all Australian detention centres; a public submission process (346 public submissions, 64 confidential submissions); public hearings (68 public sessions – 114 witnesses, 17 confidential sessions – 41 witnesses) and focus groups (29 groups). The Inquiry also obtained access to primary documents relating to the management of detention centres and the circumstances surrounding particular children and families who had been in detention for prolonged periods of time. DIMIA and ACM provided oral and written evidence and submissions. They had two opportunities to provide comments and submissions on the draft of the report and a third opportunity to provide information regarding actions taken in response to the Inquiry's findings and recommendations. The Inquiry carefully balanced and considered those comments and all other evidence when making its findings.

A report from the Inquiry titled '*A last resort?*' was tabled in federal Parliament on 13 May 2004.

Major findings

The Inquiry made the following major findings in relation to Australia's mandatory immigration detention system as it applied to children who arrived in Australia without a visa (unauthorised arrivals) over the period 1999–2002:

- Australia's immigration detention laws, as administered by the Commonwealth, and applied to unauthorised arrival children, create a detention system that is fundamentally inconsistent with the *Convention on the Rights of the Child* (CRC).

In particular, Australia's mandatory detention system fails to ensure that:

- detention is a measure of last resort, for the shortest appropriate period of time and subject to effective independent review (CRC, article 37(b), (d))
- the best interests of the child are a primary consideration in all actions concerning children (CRC, article 3(1))
- children are treated with humanity and respect for their inherent dignity (CRC, article 37(c))
- children seeking asylum receive appropriate assistance (CRC, article 22(1)) to enjoy, 'to the maximum extent possible' their right to development (CRC, article 6(2)) and their right to live in 'an environment which fosters the health, self-respect and dignity' of children in order to ensure recovery from past torture and trauma (CRC, article 39)
- children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth's failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents, amounted to cruel, inhumane and degrading treatment of those children in detention (CRC, article 37(a) – Chapter 9).

At various times between 1999 and 2002, children in immigration detention were not in a position to fully enjoy the following rights:

- the right to be protected from all forms of physical or mental violence (CRC, article 19(1) – Chapter 8)
- the right to enjoy the highest attainable standard of physical and mental health (CRC, article 24(1) – Chapters 9, 10)
- the right of children with disabilities to 'enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community' (CRC, article 23(1) – Chapter 11)
- the right to an appropriate education on the basis of equal opportunity (CRC, article 28(1) – Chapter 12)
- the right of unaccompanied children to receive special protection and assistance to ensure the enjoyment of all rights under the CRC (CRC, article 20(1) – Chapters 6, 7, 14).



Recommendations

The Inquiry made the following recommendations:

1. Children in immigration detention centres and residential housing projects, as at the date of the tabling of this report, should be released with their parents, as soon as possible, but no later than four weeks after tabling (June 10).

The Minister and the Department of Immigration and Multicultural and Indigenous Affairs (the Department) can effect this recommendation within the current legislative framework by one of the following methods:

- transfer into the community (home-based detention)
- the exercise of Ministerial discretion to grant humanitarian visas pursuant to section 417 of the *Migration Act 1958* (Cth) (the Migration Act)
- the grant of bridging visas (appropriate reporting conditions may be imposed).

If one or more parents are assessed to be a high security risk, the Department should seek the urgent advice of the relevant child protection authorities regarding the best interests of the child and implement that advice.

2. Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:
 - ◇ there should be a presumption against the detention of children for immigration purposes
 - ◇ a court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example for the purposes of health, identity or security checks)
 - ◇ there should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.

All courts and independent tribunals should be guided by the following principles:

- detention of children must be a measure of last resort and for the shortest appropriate period of time
- the best interests of the child must be a primary consideration
- the preservation of family unity
- special protection and assistance for unaccompanied children.

Bridging visa regulations for unauthorised arrivals should be amended so as to provide a readily available mechanism for the release of children and their parents.

3. An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.
4. Minimum standards of treatment for children in immigration detention should be codified in legislation.
5. There should be a review of the impact on children of legislation that creates 'excised offshore places' and the 'Pacific Solution'.

Education and Promotion

As indicated in the Human Rights Commissioner's opening statement concerning the Inquiry into Children in Immigration Detention, the Commission sees the inquiry process as an important educative tool in its own right. Evidence for this can be found in:

- the release of the report '*A last resort?*' in community guide format, CD-Rom, a variety of internet applications, as well as the traditional hard-copy book format
- the creation of an interactive internet-based teaching module for use by schools
- a series of Australia-wide community education forums featuring '*A last resort?*' Centres visited included Brisbane, Sydney, Melbourne, Adelaide, Perth, Darwin, Alice Springs, Hobart and Launceston
- several key-note addresses to professional bodies with special interests, such as mental health.



Legislative Development

Recommendation 2 of '*A last resort?*' stipulates: 'Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features.'

The report proceeds to outline in detail over 19 pages (pp860–879) how the parliament should amend the law to make our immigration regime CRC compliant. Clearly, should parliament decide to proceed down this path, more work will be required, but this material provides an excellent starting point.

In any event, parliament at the very least should enact legislation to codify the minimum standard of treatment of children in detention centres – an indication of the desirability of such a course and the nature of the change required is detailed from pages 877–880.

International Activities

In the year under review, the Human Rights Commissioner attended a number of key international human rights conferences. These included:

- **The 18th Biennial Conference of Lawasia 2003 held in Tokyo, 1–5 September 2003.** The Human Rights Commissioner was keynote speaker for the session on Human Rights Institutions in the Asia Pacific and Implementation of International Human Rights Conventions in National Courts.
- **The XII Workshop on regional cooperation for the promotion and protection of human rights in the Asia-Pacific region (Office of the UN High Commissioner for Human Rights) held in Doha, Qatar, 2–4 March 2004.** Prior to the workshop, on 1 March there was a meeting of National Human Rights Institutions (NHRIs) and non-government organisations (NGOs) to caucus on the issues of relevance to be discussed at the workshop. The Workshop was well attended with 36 countries from the Asia Pacific region (plus Palestine as an observer) participating. In addition, there were participating NHRIs, NGOs and UNHCHR (approx. 100 officials in total). The Human Rights Commissioner was elected Rapporteur for the session dealing with human rights education.

Speeches

A selection of public addresses made by the Human Rights Commissioner during 2003–04 is listed below. Some speeches can be accessed on the Commission's website at: www.humanrights.gov.au/speeches/human_rights/index.html

World Refugee Day speech at the Brisbane Rally, 19 June 2004 and the Canberra Rally, 20 June 2004.

Doctor of Social Science Honoris Causa Acceptance speech at the RMIT University Honorary Awards Conferring Ceremony, Melbourne, 7 May 2004.

Armenia to Rwanda – Genocide in the 20th Century – Has humanity learnt anything? speech at the Armenian Genocide Commemorative Lecture, NSW Parliament Theatre, 29 April 2004.

The local face of global justice policy lecture to the RMIT students of the Department of Justice and Youth Studies, Melbourne, 16 April 2004.

Twelfth Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region Working Group on Human Rights Education Report, Consultation of Non-Governmental Actors, Doha, Qatar, 1 March 2004.

The Importance of Australian Community in Protection of Human Rights during the War against Terrorism presentation to the Human Rights: New Paradigms and new Responsibilities Conference held at the University of Technology in Sydney, 5 December 2003.

Long-term immigration detention and mental health speech, Diversity in Health 2003, Sydney, October 2003.

Human Rights as a secular guide to community relations address, *Poverty & Power – What makes you rich, what makes you poor*, Mornington Peninsula Shire Conference, October 2003.

Immigration Detention – the Current Position speech, Monash Institute for the Study of Global Movements, Monash University, Clayton Campus, October 2003.

The Clash Of Civilisations – How The Contemporary International Environment Teaches Us To Better Manage Diversity In Australia speech at the Managing Diversity Conference, Melbourne, October 2003.

Long-term detention and mental health speech at the ANZAPPL Annual Congress, Fremantle, Western Australia, September 2003.

What makes a National Human Rights Institution Independent and why should we care? speech at the 18th Biennial Conference of Lawasia, Tokyo, Japan, September 2003.

Presentation to the Kyoto Bar Association speech at Kyoto Bar Association, Japan, September 2003.

The Relevance of Human Rights in Contemporary Australia speech at the Activating Human Rights and Diversity Conference, Byron Bay, July 2003.



Chapter 9: *Race Discrimination*

Statement from the Commissioner

Over the past year increasing trends of prejudice and harassment of particular groups in our community has continued to be an area of significant concern for me. As noted in the 2002–03 Annual Report, I launched the Ismağ project in March 2003 in response to increasing concerns expressed by Arab and Muslim organisations about the rise in anti-Arab and anti-Muslim prejudice in Australia.



*Dr William Jonas, AM
Acting Race Discrimination
Commissioner*

Between April and November 2003, over 1 400 people participated in 69 consultations around the country and told us of their experiences. We also commissioned researchers from the University of Western Sydney to survey and interview Arab and Muslim Australians in Sydney and Melbourne about their experiences. We consulted with a wide range of local, state and federal Government agencies and community groups to find out more about what was currently in place to address the concerns raised by members of the Arab and Muslim community. The information provided to the Commission as a result of these wide ranging consultations is contained in the Ismağ report which was launched in June 2004 and also in a CD audio report of the project available in English and Arabic.

A number of consistent themes arose during the consultations. These included feelings of fear, isolation and vulnerability by a significant number of Arab and Muslim Australians, and experiences of various forms of prejudice which increased after recent international, national and local events. Much of what we heard has led me to the view that in the current environment of fear and suspicion fostered by terrorism and the 'war on terror', our multicultural values of social equity and respect for diversity are at risk of diminishing. As one consultation participant cautioned:

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the Australia which was the kind of society everyone would want to live in is slipping away from us . . . The 'fair go' motto we always believed in has been replaced with the 'fear go' . . . When fear is embraced, we all cling to what we have and society is tilted in a direction where the majority rules without the slightest regard or respect for the rest of society.

We need to confront the fears and uncertainties that have become part of our everyday lives post-September 11 and guard against prejudice and intolerance, not just towards Arab and Muslim Australians, but also against other culturally and linguistically diverse communities. Increased hostility towards particular groups can impact on other vulnerable groups – attacking the very principle of respect for diversity has an alarming ripple effect.

The Ismaḡ project goes to the heart of a very important issue in Australia today – building strong, harmonious relationships between Australians of all racial and religious backgrounds. The past few years have been testing times in this respect and I hope that the Ismaḡ project is an important step in this process.

In mid 2003, I released an updated version of *Fact the Facts* which has been the Commission's mostly requested publication. *Facts the Facts* draws on information from as wide variety of sources to correct some common myths about immigrants, refugees and Indigenous people. To accompany the updated *Face the Facts*, Teaching Resources and Worksheets for use in Australian Classroom were published at the same time on the Commission's website.

Respect was the theme of another school-based activity that the Commission conducted in 2003–04, where we asked students to show us what they thought 'Respect' looks like in their school, their community, or their town. I was most impressed with the thoughtful and beautifully presented images that were received from all around Australia.

During 2003–04, we continued work on a number of other matters to promote an understanding and compliance with the Racial Discrimination Act including the public space project, which is considering how the management of urban areas may impact disproportionately on Indigenous people.

I exercised my function as *amicus curiae* in the case of *Kelly Country v Beers* [2004] FMCA 336 in which allegations of racial hatred were made against the respondent as a result of his public comedy performances. I provided written and oral submissions to the Federal Magistrates Court on certain provisions of the RDA, including the exemptions to the racial hatred provisions.

We have continued to liaise with government and non-government organisations on the issue of race hate on the internet and made a submission to Commercial Television Australia recommending that the *Commercial Television Industry Code of Practice* be amended so that it is consistent with the RDA.



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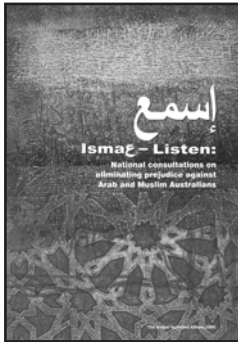
The spread of race hate and other sorts of prejudice via the internet is difficult to monitor and control. The Australian Broadcasting Authority administers a 'co-regulatory' scheme for internet content which aims to address community concerns about offensive and illegal material on the internet and relies on its members to develop and comply with Codes of Practice. It also relies on matters being brought to its attention, and that is where the community can be the watchdog and let the Commercial television and any other regulatory bodies know what is going on.

It is only by the community taking action that the spread of prejudice, discrimination and harassment can be halted. Each and every one of us has an important role to play in promoting equality in our own political, economic, social or cultural field.



Research and Policy

Ismaʿ – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians



As noted in the previous Annual Report, the Commissioner launched the Ismaʿ project in March 2003 in response to increasing concerns expressed by Arab and Muslim organisations about the rise in anti-Arab and anti-Muslim prejudice in Australia. These concerns were expressed against the backdrop of the September, 11, 2001 attacks in New York and the Bali bombings of October 2002, as well as national and local events such as the growing numbers of asylum seekers from the Middle-East and Muslim countries, and the trial, conviction and sentencing of gang rapists in Sydney in 2001–02.

While the number of formal complaints of racial discrimination and racial hatred received by the Commission in 2002 did not increase, the Commission heard mounting anecdotal evidence from a range of Arab and Muslim community members and organisations about a rise in anti-Arab and anti-Muslim prejudice in Australia. The Ismaʿ project was launched with a view to understanding and accounting for this discrepancy.

A group of experts and representatives formed the Ismaʿ project reference group who played a crucial role in the project providing the Commission with advice and feedback as well as contacts and referrals. The group comprised people from across Australia, including community and religious leaders, a youth representative, a state equal opportunity commissioner and representatives from the police, education and the media.

The aim of the Ismaʿ project was to explore whether Arab and Muslim Australians were experiencing discrimination and vilification post-September 11. If so, what was the nature of these experiences and what were their impacts? How were Arab and Muslim Australians responding to such experiences and why weren't they reporting them through official complaint channels?

The project involved three main components:

1. National consultations with Arab and Muslim Australians. Over 1,400 people participated in 69 consultations in all states and territories around Australia between April and November 2003. Consultations involved group discussions on the following broad questions: *Have you (or the community group you represent) experienced discrimination and vilification? If so, what are those experiences? What is being done to fight anti-Arab and anti-Muslim prejudice and discrimination? What more could be done to*

fight anti-Arab and anti-Muslim prejudice and discrimination? Summaries of the consultations are available on the Commission's website at: www.humanrights.gov.au/racial_discrimination/isma/consultations/index.html

2. Empirical and qualitative research conducted by the Centre for Cultural Research at the University of Western Sydney (UWS) using questionnaires and follow-up interviews to learn more about Arab and Muslim Australians' responses to racism and abuse and their experiences and understanding of complaints processes. 1,475 self-complete questionnaires were distributed in New South Wales and Victoria between August and November 2003. The 25 multiple-choice and open-ended questions asked about people's experiences and responses to racism, abuse and violence. 186 people returned questionnaires. 34 of these agreed to take part in open-ended semi-structured interviews where participants were asked to expand on survey questions. The UWS research report is available on the Commission's website at: www.humanrights.gov.au/racial_discrimination/isma/research/index.html
3. An audit of strategies and initiatives that seek to address anti-Arab and anti-Muslim prejudice, discrimination and vilification. The Commission contacted over 100 local, state and federal Government agencies and community groups and had over 50 meetings with representatives from these organisations to provide an overview of existing strategies and identify gaps. Information received from these organisations is available on the Commission's website at: www.humanrights.gov.au/racial_discrimination/isma/strategies/index.html

The summary report of the Ismaε project was launched in Sydney on 16 June 2004, and subsequently in Melbourne, Shepparton, Perth, Brisbane, Adelaide, Canberra, Alice Springs and Hobart. The report provides background information about the Ismaε project, the role of the Commission, the demography and history of Arab and Muslim Australians, federal and state anti-discrimination laws, and the Commission's past involvement in issues relating to discrimination and vilification of Arab and Muslim Australians and religious discrimination. The report also summarises the experiences of Arab and Muslim Australians since September 11 who participated in the Ismaε project and describes how they have been affected by and responded to these experiences. The report is available on the Commission's website at: www.humanrights.gov.au/racial_discrimination/isma/report/index.html



Chapter 9: Race Discrimination

Throughout the Ismaḡ project, the Commission heard that a significant number of Arab and Muslim Australians are feeling fearful, isolated and vulnerable. The majority of consultation participants and survey respondents reported experiencing various forms of prejudice because of their race or religion, which increased after recent international, national and local events. These experiences ranged from offensive remarks about race or religion, to physical violence by strangers or people known to them. The experiences have taken place on the street, in shopping centres, in the media, in schools and universities, on public transport, in government, in police services, in non-government services, at airports, hospitals etc.

Participants felt that those most at risk were readily identifiable as Arab or Muslim because of their dress, physical appearance or name, particularly Muslim women who wear the hijab. Arab and Muslim youth felt that they were particularly at risk of harassment which has led to feelings of frustration, alienation and a loss of confidence in themselves and their trust in authority. Many newly-arrived Arab or Muslim migrants and refugees reported that their experiences of prejudice have made it harder for them to negotiate the already difficult process of settling into a new country.

Participants and survey respondents indicated that they were more likely to complain about these experiences to their families, friends or their local ethnic or religious community organisations than to police or government organisations. They said that the reluctance to complain to police or government organisations was due to: fear of victimisation; lack of trust in authority; lack of knowledge about the law and complaints processes; the perceived difficulty in making a complaint; and the perception that outcomes were unsatisfactory.

Consultation participants felt that the major underlying cause for the rise in prejudice against them was a lack of knowledge and misinformation about their history, culture and faith. They were also concerned about the absence of consistent legal protection from religious discrimination and vilification across Australia and the biased and inaccurate reporting of issues relating to Arabs and Muslims. Participants and survey respondents not only felt this bias was commonplace, but that increases in anti-Arab and anti-Muslim prejudice, discrimination and violence were linked to negative media portrayals of Arabs and Muslims.

However, despite many negative experiences, Arab and Muslim Australians also said they had received support and help from non-Arabs and non-Muslims in the community, and that it had given them an opportunity to answer questions about their cultural background and their religion.

A major goal of the Ismaḡ project was to engage members of Arab and Muslim communities, government and non-government organisations in constructive discussion about future strategies to eliminate anti-Arab and anti-Muslim prejudice and discrimination. While much has been done by community and government organisations, participants in the Ismaḡ project identified a number of key areas for improvement and future action. These included: improving legal

protections; promoting positive public awareness through education; addressing stereotypes and misinformation in public debate; ensuring community safety through law enforcement; encouraging effective community action and fostering public support and solidarity with Arab and Muslim Australians. The Commission developed more specific recommendations from these broad areas following investigation of the various initiatives which were already in place at local, state and federal level across Australia.

In broad terms, the Commission expressed the view that more can be done to counter anti-Arab and anti-Muslim prejudice through education programs that promote positive awareness of cultural and religious diversity among Australians. Negative stereotyping can also be challenged by encouraging better communication between government, non-government and media organisations and Arab and Muslim communities. Supporting and strengthening Arab and Muslim community organisations to develop and participate in projects which address discrimination and vilification is also essential. Importantly, ensuring that both Arab and Muslim Australians have adequate legal protection from discrimination and vilification is also vital. Currently, there is no federal law which makes discrimination or vilification on the basis of religion unlawful, and only piecemeal coverage of religious discrimination and vilification across the states and territories. A federal law would ensure there is a national 'safety net' protecting everyone around the country from religious discrimination and vilification. The Commission expressed the view that government institutions, media, politicians, service providers and Arab and Muslim community organisations and individuals need to work together to eliminate prejudice against Arab and Muslim Australians.

The Commission has also produced an audio CD in English and Arabic which describes the Ismaḡ project, and includes comments from the community consultations about the experiences and issues that participants raised. The audio CD can be downloaded from the Commission's website at:
www.humanrights.gov.au/racial_discrimination/isma/audio/index.html

All of the information relating to the Ismaḡ project is available on the Commission's website at: www.humanrights.gov.au/racial_discrimination/isma/index.html

Public space project

The regulation of public space in Australia often has a disproportionate impact on Indigenous people, including Indigenous children. The Commission has commenced a project to consider how the management of urban public areas impacts on Indigenous people.

The Commission is considering this question in relation to a number of locations around Australia, including Darwin, Adelaide, Townsville, Moree and Perth. The goal of the project is to identify the key issues relevant to this topic, including any issues of relevance to the *Racial Discrimination Act 1975* (Cth) or the *International*

Convention on the Elimination of Racial Discrimination. The Commission is also seeking information about alternative strategies to manage public spaces in ways that do not adversely impact on Indigenous people.

The steps being taken to achieve these goals include:

1. The Commission held an information-share meeting in Brisbane on 27 February 2004. This meeting was co-hosted by the Queensland Anti-Discrimination Commission. Participants at this meeting showcased important research, strategies and trials relating to Indigenous people and public space and discussed concerns about the impact of the regulation of public space in some locations.
2. HREOC President, John von Doussa QC, held consultations with relevant local and state government representatives, anti-discrimination agencies and Indigenous and community groups in Darwin, Adelaide, Townsville and Perth between March and June 2004.



As part of its consultations, the Commission visited several public areas frequented or occupied by Indigenous people, such as urban parks, camps and malls.

The Commission is currently evaluating and analysing the information gathered through the information-share meeting and the consultations.

Erace forum – Australian South Sea Islanders



The Erace forum is an internet forum for publishing Commission research on race discrimination issues and raising policy questions for public comment. It contains a bulletin board to which comments, arguments and analysis submitted by email are posted.

The Erace forum was launched on 14 October 2002. Topics discussed so far have included temporary protection visas, as well as the interpretation of the term 'ethnic origin' under the *Racial Discrimination Act 1975* (Cth) and whether Muslims are likely to come within this term.

On 12 December 2003, the Commissioner published the third Erace topic concerning the experiences of Pacific Islanders trafficked into Queensland and northern New South Wales to work as indentured labourers in the sugar cane and cotton industries between 1863 and 1904.

This topic raised questions about the impact of a long history of legal, social and economic discrimination; how such a history should influence responses to disadvantages experienced by current generations; should the descendants of people directly affected be entitled to an apology for past injustices; and what special measures of support and assistance should be put in place? Comments were invited on these questions as well as any additional information about the history of South Sea Islanders and the current circumstances of the community.

Information about the Erace Forum can be found on the Commission's website at: www.humanrights.gov.au/racial_discrimination/Erace/index.html

Interim report to Special Rapporteur

In August 2003, the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance invited the Commission to submit information relevant to his examination of the situation of Arab and Muslim communities in the aftermath of 11 September with particular reference to physical assaults and attacks against their places of worship, cultural centres, businesses and properties. The Special Rapporteur was asked by the Commission on Human Rights (in resolution 2003–04 of 14 April 2003: UN Doc. E/CN.4/2003/23) to update and expand their initial study on this subject (submitted to the Commission in April 2003). In September 2003, the Race Discrimination Commissioner provided an interim report on the Ismağ project to the Special Rapporteur.

Education and Promotion

Cyber-racism

In 2003–04, the Commission continued to liaise with government and non-government stakeholders on the issue of race hate on the internet.



The Commission participated as a member of the reference group for NetAlert's CyberSafe Schools project. NetAlert is an education and advisory body for on-line content that was established in 1999 by the federal Government. The *CyberSafe Schools* project is intended to develop materials that will alert teachers to the benefits and risks of using the internet and to help students develop internet safety skills. Resource materials include a *CyberSafe Schools* wall chart, a schools quick reference guide and an information booklet called 'A Teacher's Guide to Internet Safety'. The project is to be conducted over a three-year period with a staged development of materials.

The Commission provided information to the project about race hate on the internet. Issues of relevance to schools include racial abuse or harassment in chat

rooms or via e-mail and hate groups often present racist ideology as factual or historically-based and market youth products such as racist computer games and hate music on the internet. The Commission also provided information about the *Racial Discrimination Act 1975* (Cth) (RDA) and the Commission's complaints process. Fact sheets about the RDA and the Commission's complaints process have also been posted on NetAlert's redeveloped website. The Commission also provided information to the *CyberSafe Schools* project regarding sexual harassment on the internet. Information regarding NetAlert's *CyberSafe Schools* project can be viewed at: www.netalert.net.au/01398-About-CyberSafe-Schools.asp.

In addition to these activities, the Commission's website was hyper-linked from the complaints information page of the Australian Broadcasting Authority. This was intended to make it easier for people concerned about racially offensive internet content to contact the Commission (see www.aba.gov.au/internet/complaints/complaints.htm).

In March 2004, the federal Government proposed the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004*. This Bill contains proposed amendments to section 85ZE of the *Crimes Act 1914* (Cth) making it an offence to use the internet to carry offensive content.

The Commission's research on race hate on the internet can be viewed on the Commission's website at: www.humanrights.gov.au/racial_discrimination/cyberracism/index.html.

Legislative Development

Ismağ recommendations

Ensuring that both Arab and Muslim Australians have adequate legal protection from discrimination and vilification is vital. Current legal protections against discrimination on the ground of religion or belief, at federal, state and territory level, lack consistency and uniformity with the result that whether someone can seek redress under anti-discrimination laws for religious discrimination or vilification depends on where the conduct complained of occurred in Australia.

The Commission is of the view that the enactment of federal legislation that makes discrimination and vilification on the basis of religion unlawful, would provide greater consistency and uniformity in this area and would assist in Australia satisfying its international obligations in this regard.

The Ismağ project recommended that a federal law be introduced making unlawful:

- **discrimination on the ground of religion or belief.** Appropriate exemptions, such as those set out in the Article 18 report relating to the inherent requirements of the job and employment by religious institutions,

should be considered, and

- **vilification on the ground of religion or belief.** It is acknowledged that the proposed legislation must make allowances for fair speech and fair reporting to ensure a balance between the competing rights of freedom of expression and the right to be free from vilification on the basis of religion or belief. Appropriate exemptions, such as those set out in the Article 18 report, should be considered.

Submission on Commercial TV Code of Practice

In November 2003, the Commissioner made a submission to Commercial Television Australia (now named Free TV Australia) recommending that the *Commercial Television Industry Code of Practice* (Code of Practice) be amended so that it is consistent with the Racial Discrimination Act.

The Racial Discrimination Act prohibits behaviour that offends, insults, humiliates or intimidates another on the basis of race unless the behaviour falls within one of the exceptions provided for in section 18D of the Act. In the submission to Commercial Television Australia the Commissioner noted that the Code of Practice does not prohibit the racially offensive behaviour referred to in the Racial Discrimination Act. It was noted that it is more difficult for complainants to make a complaint to the requisite standard under the Code of Practice than under the Racial Discrimination Act. The Commissioner also indicated that the Code of Practice assesses the effect of the communication on people who are not of the victim's racial group. By contrast, the Racial Discrimination Act looks to the effect of the communication on the racial group affected (eg. the 'reasonable victim').

The Commissioner noted that because the Code of Practice is not consistent with the Racial Discrimination Act the potential for unlawful conduct exists even if a licensee has adhered to the standards of the Code. He urged that consistency with the Racial Discrimination Act would better protect the interests of licensees and others in the media sector. Consistency with federal law also ensures that the content of commercial television reflects 'current community standards' as per the stated objectives of the Code of Practice.

International activities

The Commissioner made a presentation on working with the media and communication sector at the International Race Relations Roundtable in Auckland, New Zealand on 4 February 2004. The speech outlined Commissioner Jonas' own experiences on the role of the media and communications sector, their influence on race relations, and how the relationships are managed.

Speeches

A selection of public addresses made by the acting Race Discrimination Commissioner during 2003–04 is listed below. Some speeches can be accessed on the Commission's website at:

www.humanrights.gov.au/speeches/race_discrim/index.html

Keynote address to AGM of Executive Council of Australian Jewry, Sydney, 1 December 2003.

Launch of report of Ismaε project – National consultations on eliminating prejudice against Arab and Muslim Australians, Sydney, 16 June 2004.

Launch of report of Ismaε project – National consultations on eliminating prejudice against Arab and Muslim Australians, Melbourne and Shepparton, 22 June 2004.

Launch of report of Ismaε project – National consultations on eliminating prejudice against Arab and Muslim Australians, Perth, 25 June 2004.

Launch of report of Ismaε project – National consultations on eliminating prejudice against Arab and Muslim Australians, Brisbane, 30 June 2004.

Achieving Change: Working with the Media and Communications Sector speech at the International Race Relations Round Table, Auckland, New Zealand, 2–5 February 2004.

Launch of Face the Facts, Newcastle City Hall, 30 July 2003.

Public Space Information-share meeting, Brisbane, 27 February 2004.

Chapter 10: Sex Discrimination

Statement from the Commissioner

The work of the Sex Discrimination Unit (SDU) over the past year has been at its usual hectic pace – at any time there were three major projects on the go and my public advocacy role meant there were always new ideas and issues with which to grapple. The allegations about male footballers' sexual and social behaviour being a case in point.

Although public interest in the vexed question of work life balance has continued, including strong interest in my proposal for a national scheme of paid maternity leave, it was clear that other emerging issues needed attention.



Pru Goward
Sex Discrimination
Commissioner

With the passing of the federal Budget and advent of the Maternity Payment in May 2004, I have taken the view that a national scheme of paid maternity leave is well on the way. The payment, which is to be \$3,000 for each child whether or not the mother is in work, is equivalent to 6.4 weeks of paid leave at about the minimum wage. The federal Government has said it will increase this amount to \$5,000, roughly equivalent to 10.7 weeks paid leave. This falls below the recommended 14 weeks of paid leave and includes no provision of a fortnightly payment rather than an upfront lump sum, nor does it make the payment available to all adoptive parents. On the other hand, it is untaxed. Although the amount is not indexed to any wage level, and does not provide any form of required leave for the mother from paid work, the government could argue that the Maternity Payment Scheme is equivalent to national paid maternity leave schemes of other countries. This is particularly the case when considered in conjunction with the statutory 12 months of unpaid leave available to most Australian workers after the birth of a child.

For this reason I have written to the federal Government urging them to consider whether the new payment, in conjunction with other rights, would allow Australia to remove our long standing and vexatious reservation to the *Convention for the Elimination of All Forms*

of *Discrimination against Women* (CEDAW). For 21 years this reservation has allowed Australia not to have a scheme of Paid Maternity Leave, despite being a signatory to this important Convention. Within the OECD, only Australia and the United States do not have a national scheme of paid maternity leave. If the current arrangements do not constitute paid maternity leave, we are at least nearly there, and I have urged the government to take the final steps. It should be a matter of pride for an Australian Government to apply to have this reservation finally removed.

Sexual harassment continues to be an issue for Australian women. Sexual harassment complaints under the *Sex Discrimination Act 1984* (the Act) have declined to about a quarter of all complaints received by the Commission by ground, partly due to the rapid rise in the number of pregnancy discrimination complaints. But even so, those complaining of sexual harassment under the Act make up just under half of all people complaining to the Commission. This includes men complaining about sexual harassment.

Twenty years after the Act first made this conduct unlawful we still did not know what the general incidence of sexual harassment was in the broader community. To address this shortfall, we first reviewed our own complaints data, suspecting that they were the tip of the iceberg. The review of complaints established one fact which should startle employers – 67 percent of those who made a complaint had left their employment. Other findings of concern were: 78 percent of complainants had reported the harassment within their workplace and 72 percent of complainants reported that the harassment began in the first 12 months of the complainant's employment. The implications for staff turnover costs are clear.

In late 2003, the Sex Discrimination Unit commissioned the Gallup Organization to conduct a statistically significant telephone survey about the incidence and nature of sexual harassment. The main findings were salutary:

- *Incidence* – 41 percent of women and 14 percent of men stated that they have personally experienced sexual harassment at sometime in an area of public life.
- *Nature* – 94 percent of the sexual harassment experienced involved 'crude or offensive behaviour'.
- *Duration* – 50 percent stated that the sexual harassment in the workplace continued for up to six months.

It was a pleasure to have the federal Attorney-General, the Hon. Philip Ruddock MP, launch *20 Years On: The Challenges Continue . . . Sexual Harassment in the Australian Workplace* in Parliament House. The launch included the Commission's updated *Code of Practice for Employers* to reflect both new legal developments and the survey's findings.

The Code, which was written in discussion with employer and business groups, unions, government agencies and non-government organisations, is available to any employer and serves as a very useful and clear guide to those wishing to establish sexual harassment prevention policies or who wish to better understand the nature of their legal obligations.

The liability provisions of the Act in cases of sexual harassment do not absolve employers (no matter how small) from responsibility for their or their staffs' actions. There is a tendency perhaps for smaller employers to believe, incorrectly, that they are exempt from the Act's requirements. The Code enables all employers to meet these liabilities and advises them what is reasonable in their circumstances. I would like to see the major employer groups adopt the Code as a service to their members. In these circumstances, prevention is always better, and cheaper, than the cure.

The survey has one clear long-term purpose – to provide future researchers with base line data. It will now be possible to compare the incidence of sexual harassment over time and develop policies and approaches which respond to any changes.

The federal Government has taken a strong international stand against people smuggling, including trafficking in women, and has appointed an Ambassador for People Smuggling, Ms Carolyn Millar (First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade), to represent the Australian Government on trafficking issues. However, addressing the position of trafficked women within Australia, with Australia being a destination country, has been more problematic. The inquest into the death of Puangthong Simaplee, a young Thai woman who worked as a prostitute who died at Villawood Detention Centre in September 2001, made trafficking in women front page news and reignited concerns about the absence of strong protection available to these victims of crime.

The Commission worked with the federal Government in the development of their trafficking package, which not only involves the expenditure of significant amounts of money (\$20 million over four years), but vastly improves protections for women who claim to have been trafficked into Australia. Their human rights are recognised and steps are now being actively taken to protect them.

As part of our trafficking work the Commission co-hosted a two-day conference on trafficking in Melbourne titled *Stop the Traffic 2*. The conference was designed not only for those who work in the area of crime prevention and detection, but also for parliamentarians and the general public. The forum enabled a vigorous exchange of ideas and methodologies and was a useful contribution to awareness-raising. A training workshop for agencies and organisations working on trafficking was also held.

Chapter 10: Sex Discrimination

2004 is also the 20th anniversary of the Sex Discrimination Act and many of my public engagements this year have been part of these anniversary celebrations. Women's organisations and arms of both major political parties have celebrated this important milestone with dinners and forums. In addition, we will host a number of twentieth anniversary seminars on the history and future of the Act.

In June 2004, as part of the 20th anniversary celebrations, HREOC partnered the Centre for Refugee Research to present a two-day Women's Human Rights Court and workshops on the 12 critical areas to Beijing Plus 10. Beijing Plus 10 is the 10 year review of the United Nation's World Conference on Women, at the Commission for the Status of Women in New York, which will be held in March 2005. The workshops were part of the process of consulting with women around Australia on each of those critical areas and had in turn drawn from regional meetings of women throughout Australia. The workshop findings will be reported to a regional conference and go some way to representing the views of Australian women.

Finally, I have been *amicus curiae* in a number of cases this year (details in the Legal Section of this report), all in an effort to develop a better understanding of the Act's practical meaning.

To be Australia's Sex Discrimination Commissioner has and continues to be an honour, a pleasure and a responsibility of some weight. The support of the Unit and of the Commission are crucial to the success of the role I am able to play in public debate, which in turn is crucial to the respect Australians have for the Act and its aspirations. While the role of the advocate is to be vigilant and passionate, fundamentally the success of the work I do will be judged by its rigour, accuracy and fairness. The intellectual effort of the Unit and the Commission's legal and public affairs officers are vital in ensuring the on-going respect of the Australian community and I thank them for it.

Education and Promotion

20th Anniversary of the Sex Discrimination Act

2004 is the 20th anniversary of the *Sex Discrimination Act 1984* (Cth). The date of assent was 21 March 1984 and the date of commencement was 1 August 1984. The Commission has been involved (also in partnership) in a number of events and activities to celebrate the occasion. A 20th anniversary logo has also been used in publications and correspondence to promote awareness of the anniversary.



Trafficking of women

The Commissioner and the Sex Discrimination Unit (SDU) have continued to monitor the situation in relation to the trafficking of women in Australia. The Commissioner and SDU staff met with Minister for Justice and Customs, Senator the Hon. Chris Ellison, to discuss trafficking issues, and has had informal discussions with members of the inter-departmental committee that developed a government package to address trafficking.

The Commission, in partnership with non-government organisation Project Respect, RMIT University and VicHealth, presented a very successful conference on trafficking called 'Stop the Traffic 2' on 23–24 October 2003 in Melbourne.

The President gave the opening address to the conference and the Commissioner closed the conference. Members of Parliament from all the major political parties attended or spoke at the conference events, including Senator Ellison, who took the lead role in the development of the government package to address trafficking.

The conference received significant press and broadcast media attention.

Conference keynote speaker, Paul Holmes, an international expert in counter trafficking, child prostitution, paedophilia and the commercial exploitation of human beings, also provided training to the Commissioner, SDU staff, officers of Project Respect and representatives of members and the secretariat of the Asia Pacific Forum of National Human Rights Institutions on 21 October 2003. Paul Holmes addressed members of the Australian Federal Police and state police forces on 22 October 2003 at the Australian Federal Police College. SDU staff and officers of Project Respect observed the training session as part of a train-the-trainer program.



Evidence to the Parliamentary Joint Committee on the Australian Crime Commission's (ACC) inquiry into the trafficking of women for sexual servitude

The Parliamentary Joint Committee on the Australian Crime Commission (ACC) conducted an inquiry into the ACC's involvement in assessing trafficking for the purposes of sexual servitude in Australia, its relationship with the relevant state and Commonwealth agencies, and the adequacy of the current legislative framework.

On 25 February 2004, the Director of the Sex Discrimination Unit gave evidence before Committee. The committee's report was tabled in Parliament on 24 June 2004.

Roundtable series

The role of men and boys in achieving gender equality

On 17 February 2004, the Commissioner hosted a roundtable discussion on the issue of the role of men and boys in achieving gender equality.

The roundtable drew together a number of women's organisations and academics. The motivation for the roundtable was the inclusion of this issue as a theme for the 48th session of the United Nations' Commission on the Status of Women and the community debate around men and boys in Australia.

The roundtable was used to inform the side event on practical strategies for involving men in family responsibilities that the Commissioner held at the United Nations' Commission on the Status of Women in New York.

Pay equity and human capital management

On 1 March 2004, the Commissioner and the Work and Organisational Studies, School of Business at the University of Sydney co-hosted a roundtable discussion with Denise Kingsmill CBE (lawyer, economist and company director) on pay equity and human capital management. Roundtable participants included academics, employers and employer groups, unions and Commonwealth government officers.

The roundtable provided a valuable opportunity to discuss strategies that are being used in the United Kingdom and how they could be applied in Australia.

Work-life balance

On 3 June 2004, the Commissioner hosted a roundtable discussion with Grant Fitzner (Director, Employment Market Analysis and Research (EMAR) in the United Kingdom Department of Trade and Industry) on the issue of work-life balance. Roundtable participants included academics, employer groups, unions and government officers.

The roundtable provided a valuable opportunity to discuss strategies that are being used in the United Kingdom and how they could be applied in Australia. This discussion was particularly useful given new employment laws that have been introduced in the United Kingdom and their relevance to the Australian Industrial Relations Commission's Family Provisions Case.

Youth Challenge

The Commissioner and the Public Affairs Unit conducted a *Youth Challenge* program for students on 'Tackling Sexual Harassment in your school'. Each *Youth Challenge* brought together secondary students from a number of schools to work through a day's activities related to sexual harassment in schools.

Four *Youth Challenge* programs were held during September 2003 – Ayr (Qld); Brisbane (Qld); Fremantle (WA); and Adelaide (SA). Five *Youth Challenges* were presented in March/April 2004 in Darwin, (NT) Melbourne, (VIC) Sydney (NSW), Wollongong (NSW) and Canberra (ACT).

Commissioner Goward presented in conjunction with Ryebuck Media at the Brisbane, Fremantle, Adelaide, Melbourne, Sydney, Wollongong and Canberra programs. The President presented at the Darwin and Adelaide program. Representatives of state and territory Anti-Discrimination Commissions attended the programs in their respective states and territories.

Research and Policy

Sexual harassment

A Bad Business: Review of Sexual Harassment in Employment Complaints 2002

On 12 November 2003, the Commissioner launched *A Bad Business: Review of Sexual Harassment in Employment Complaints 2002* at the Commission. Nareen Young, Director of the NSW Working Women's Centre also spoke at the launch. The paper analysed 152 sexual harassment complaints finalised in 2002.

Approximately 70 people attended the launch, including employers, legal practitioners, academics, policy makers, and representatives from employer groups, unions and the media.

Sexual Harassment in the Workplace materials

The Commissioner and the Attorney-General launched the *Sexual Harassment in the Workplace* materials on 24 March at Parliament House, Canberra. Materials launched included:

- *20 Years On: The Challenges Continue . . . Sexual Harassment in the Australian Workplace* – this paper reports the findings of the first national survey on the incidence and nature of sexual harassment in the Australian community. The paper also compares the results of the survey with the findings of *A Bad Business: Review of Sexual Harassment in Employment Complaints 2002*;
- a revised and updated version of the sexual harassment code of practice, entitled *Sexual Harassment in the Workplace: A Code of Practice for Employers*; and
- two posters – one aimed at young women in schools, TAFE and universities; the other aimed at the perpetrators of workplace sexual harassment.



Approximately 80 people attended the launch, including employer groups, union representatives, representatives from women's groups and NGOs, Members of Parliament and their staff, academics and federal public servants. The launch received considerable media coverage.

A copy of the *Code of Practice* and posters were mailed to almost 1 200 employers, employer groups, unions, women's organisations and community groups.



National Women's Human Rights Court and Workshop

The Commission, in partnership with the Australian National Committee on Refugee Women (ANCORW) and the Centre for Refugee Research (CRR) hosted the Women's Human Rights Court and Women Taking Action Locally and Globally Workshop.

The court was held on 15–16 June and the workshop on 17–19 June 2004 at the University of New South Wales and were key events to mark the 20th anniversary of the Sex Discrimination Act. Approximately 160 people attended the workshop and the Court was also very popular.

ARC linkage project 'Parental leave in Australia: access, utilization and efficacy'

The SDU, on behalf of the Commission, is an industry partner to an ARC linkage project 'Parental leave in Australia: access, utilization and efficacy'. The project aims to provide benchmark information on: access to, and utilisation of, parental leave in Australia; identify parents' preferences and unmet needs; and assess broader implications for gender equality.

The project will be conducted over three years from 2004. The Chief Investigators for the project are Dr Gillian Whitehouse, Associate Professor, School of Political Science & International Studies, University of Queensland and Dr Marian Baird, Senior Lecturer, School of Business, Faculty of Economics and Business, University of Sydney. The other industry partners are the NSW Office of Industrial Relations, the Queensland Department of Industrial Relations, the NSW Department for Women, the Queensland Office for Women and the Women's Electoral Lobby.

Work has been currently progressing on the first phase of the project, which will involve surveying parents on their experience of parental leave.

Legislative Development

Sex Discrimination Amendment (Pregnancy and Work) Bill 2003

The *Sex Discrimination Amendment (Pregnancy and Work) Bill 2003*, implementing Recommendations 36, 37 and 43 of the report *Pregnant and Productive: It's a right not a privilege to work while pregnant*, received Royal Assent on 15 October 2003. The amendments, which took effect on 12 November 2003, make it clear that discrimination on the basis of breastfeeding is a form of unlawful sex discrimination; that it is unlawful to ask women for information about pregnancy or potential pregnancy in job interviews; and that requests for medical information about a woman's pregnancy or potential pregnancy may only be sought for legitimate reasons such as occupational health and safety purposes.

Sex Discrimination Amendment Bill 2002

On 27 June 2002, the federal Government introduced a Bill to amend the Sex Discrimination Act to enable states and territories to legislate to limit access to assisted reproductive technology services to married couples (or married couples who are not living separately and apart from their spouse) and couples in a de facto marriage. The Selection of Bills Committee considered the Bill but did not refer it to a Committee.

The Bill is in substance the same as the *Sex Discrimination Amendment Bill (No. 1) 2001* as passed in the House of Representatives in the previous Parliament. The 2001 Bill was referred to the Senate Legal and Constitutional Legislation Committee on 31 October 2000 for inquiry and report by 4 December 2000. On 4 December 2000 the Senate extended the reporting date until 27 February 2001. The Commission made a submission to, and appeared before, the Committee in relation to this earlier Bill.

The Bill remains current.

Family Assistance Legislation Amendment (More Help for Families – Increased Payments) Bill 2004

The Family Assistance Legislation Amendment (More Help for Families – Increased Payments) Bill 2004, implementing the 'Maternity Payment' and other federal Budget measures, received Royal Assent on 26 May 2004.

The new 'Maternity Payment' is also relevant in terms of the provisions of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). Article 11(2)(b) of CEDAW provides that States' Parties should introduce paid maternity leave as a means of redressing discrimination against women, ensuring their right to work and supporting them in their mothering role.

Australia has a reservation to Article 11(2)(b) that has been in place since Australia ratified CEDAW in 1983. The Commissioner has called on the government to remove this reservation to CEDAW and has suggested that the government seek legal advice to determine whether the introduction of the 'Maternity Payment' in combination with workplace rights meets the standard in CEDAW.

***Amicus curiae* function**

The Commissioner, along with the Legal section, has been involved in the progress of the following litigation as *amicus curiae*:

- *Howe v Qantas Airways Ltd*; and
- *Jacomb v Australian Municipal Services and Clerical Union*.

For further details see the Legal Section of the report (Chapter 5).

Exemptions

Sex Discrimination Act exemption applications

On 19 March, the Commission granted to the Trustees of the Roman Catholic Church for the Archdiocese of Sydney (the 'Trustees') a temporary exemption pursuant to section 44(1) of the Sex Discrimination Act to enable them to offer 24 new scholarships to students undertaking primary teaching courses; 12 of these scholarships to be awarded to men and 12 to women. The temporary exemption was granted for five years.

The Catholic Education Office withdrew its proceedings before the Administrative Appeals Tribunal (AAT) in relation to its earlier exemption application that sought to offer scholarships for male trainee primary school teachers.

International activities

Analysis of the situation of children and women in Cambodia for UNICEF Cambodia

In late November 2003, a tender was awarded by UNICEF Cambodia to a team, including the Director of the SDU and managed by the Asia Pacific Forum of National Human Rights Institutions, to conduct an analysis of the situation of children and women in Cambodia. The project involved two field trips to Cambodia, one in January and one in May, and the preparation of a written report. The Director of the Sex Discrimination Unit participated in the project as a specialist on women's issues.

Australia-China Human Rights Technical Co-operation Program

The SDU is working with the international section on the trafficking and domestic violence activities of the Australia-China Human Rights Technical Co-operation Program. Between 29 March and 9 April 2004, a tour was undertaken to Thailand and Vietnam for 10 Chinese officials and three Australian participants to study anti-trafficking initiatives in those countries. The Director of the Sex Discrimination Unit accompanied the tour as a specialist in the area of trafficking in women.

Commission on the Status of Women

The Commissioner and a member of the Sex Discrimination Unit attended the 48th session of United Nations' Commission on the Status of Women (CSW) as part of the Australian Government delegation. The meeting was held in New York on 1 to 12 March 2004.

Agreed conclusions on both of the themes were adopted by the meeting. The Australian Delegation played an active role in the negotiation of the two texts.

The Commissioner also held a side event at CSW on 8 March 2004 which was attended by approximately 300 non-government organisations and government representatives.

Australia-Vietnam Dialogue on International Organisations and Legal Issues, including Human Rights

The Commissioner and the Executive Director of the Commission attended the Australia-Vietnam Dialogue on International Organisations and Legal Issues, including Human Rights as part of the Australian Government delegation. The meeting was held in Hanoi on 22 to 25 June 2004.

The Commissioner also met with the President of Vietnam Women's Union and the Vice-Minister of Foreign Affairs and took part in a workshop with the Vietnam Women's Union to assess and critique various pilot programs introduced in Vietnamese communes.

Speeches

Commissioner Goward and SDU were involved in approximately 55 meetings and made 100 speeches during 2003–04. A selection of these are listed below, which can be accessed on the Commission's website at:
www.humanrights.gov.au/speeches/sex_discrim/index.html

Three Legal Systems But Still No Justice: Aboriginal family violence and the challenge of reform, Northern Territory Criminal Lawyers Conference, Port Douglas, 1 July 2003.

Women's Human Rights, University of Melbourne Juris Doctor Lecture, Melbourne, 9 July 2003.

Women and Work: Key issues, MGSM Women, Management and Employment Relations Conference, Sydney, 24 July 2003.

Midwives – the Oldest Profession; Facing Future Challenges, NSW Midwives Conference, Sydney, 25 July 2003.

The Global Trade by Women, Austrade Women in Export Launch, Brisbane, Sydney Melbourne, 4, 6 & 8 August 2003.

Today's Revolution, Strategic Conference of Fatherhood, Canberra, 18 August 2003.

Values of Leadership, Australian Public Service Commission Annual Conference for Directors, Melbourne, 28 August 2003.

Why HILDA's Life Could do with a Little Balance, University of Melbourne Economic and Social Outlook conference, Melbourne, 14 November 2003.

Bearing the Burden of Culture, National Ethnic and Multicultural Broadcasters Association, Brisbane, 6 December 2003.

Diversity in Local Government Leadership, Local Government Professionals Annual Conference, Melbourne, 19 February 2004.

Managing Discrimination in the Workplace, Tasmanian Chamber of Commerce and Industry Conference, Tasmania, 25 February 2004.

Work and Family Balance: Men, women and harmony, Australian Workers Union and Australian Services Union conference, Adelaide, 26 February 2004.

Men, Women, Work and Family – Towards gender equality, 48th Session of the Commission for the Status of Women, New York, 8 March 2004.

The Work and Family Debate: Finding a solution for all, Families Australia Conference, Brisbane, 1 April 2004.

Protecting Women's Human Rights in Australia, Legal Studies conference, Sydney, 2 April 2004.

Managing Parental Leave Before, During and After, CPA Employment Law Symposium, Melbourne, Sydney and Brisbane (Gayle Balding), 15, 22 & 29 April.

Crisis of Masculinity, Ozprospect lecture series, Melbourne, 20 April 2004.

Women in Business, Women in Management, Adelaide, 23 April 2004.

Women and Work – Personal fulfilment or economic necessity? Australian Human Resources Institute National Conference, Melbourne, 11 May 2004.

Flexible Work Options, Australian Education Union Conference, Melbourne, 5 June 2004.

Why Work and Family Balance is Important to Us, Victorian Employers Chamber of Commerce and Industry, Melbourne, 29 June 2004.





Chapter 11:

International Activities

In 2003–04, as in past years, much of our international work was in the form of bilateral technical cooperation programs with the national human rights institutions of other countries, or related agencies. These programs, which are based around sharing knowledge and expertise, are generally delivered through the framework of the Australian Government's development cooperation program, which is administered by the Australian Agency for International Development (AusAID).

The fact that the Commission has a role in the delivery of international human rights programs is due to the expertise we have developed in fulfilling our domestic mandate. In some cases, regional countries wish to access this expertise in pursuit of their own human rights objectives. In other cases, the Australian Government wishes to use our expertise in pursuit of its development cooperation objectives.

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. The Commission participated in dialogue meetings held in China in July 2003.

The HRTC program encompasses three principal themes: protection of the rights of women and children; protection of ethnic minority rights; and reform of the legal system. Each year, HRTC undertakes a series of activities intended to assist China to promote and protect human rights. In 2003–04, the program included providing scholarships for Chinese officials to study human rights in Australia, and community level workshops on subjects such as measures to combat trafficking in women and children. The Commission also sponsored a visit by Chinese authorities to Thailand and Vietnam to study their anti-trafficking strategies.

The Commission has hosted visits to Australia by Chinese officials working in areas relevant to human rights protection to work with their Australian counterparts. These visits have included Chinese judges, prison system officials and officials involved in development of educational policies for minority groups.

Chapter 11: International Activities

The Commission also participated in the second session of the annual Australia-Vietnam Dialogue on International Organisations and Legal Issues, held in Canberra in June 2003, and the third session, held in Vietnam in June 2004, which included discussion of human rights issues.

As part of the dialogues, the Commission hosted a study visit by officials of the Government of Vietnam in July 2003. The study visit examined Australian systems for the protection of human rights and their relevance to Vietnamese priorities and explored options for a longer term program of technical cooperation. The possibility of such a program is being considered by Vietnamese and Australian authorities.

In addition to these bilateral international programs, the Commission maintained our involvement in a number of multilateral bodies concerned with the protection and promotion of human rights. The Commission participated in the following international conferences and meetings:

- National Human Rights Institutions and the Administration of Justice Roundtable Conference, Copenhagen, Denmark, November 2004
- International Race Relations Round Table for Race Relations and Race Discrimination Commissioners, Auckland, New Zealand, February 2004
- Eighth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Kathmandu, Nepal, February 2004
- 12th UN Asia Pacific Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia Pacific Region, Doha, Qatar, March 2004
- 60th Session of the United Nations Commission on Human Rights, Geneva, Switzerland, April 2004
- Annual Meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), Geneva, Switzerland, April, 2004, and
- Pacific Islands Human Rights Consultation, Suva, Fiji, June 2004.



Appendices

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Appendix 1

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

Human Rights and Equal Opportunity Commission Act

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

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

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

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

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

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

Appendices

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

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

The *International Labour Organisation Convention 111* deals with discrimination in employment and occupation. Australian adherence to this Convention provides that all people have the right to equal treatment in employment and occupation without discrimination on the basis of:

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

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

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

Age Discrimination Act

Australia has assumed obligations to eliminate and address age discrimination under the *International Labour Organisation Convention 111*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child*.

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 2003–04

General

Human Rights and Equal Opportunity Commission *Annual Report 2002–03* (tabled report)

HREOC Report No. 26 – Report of an inquiry into a complaint by Mr Kenneth Douglas of age discrimination in the Australian Defence Force (2004)

HREOC Report No. 27 – Report of an inquiry into a complaint by Ms KJ concerning events at Woomera Immigration Reception and Processing Centre between 29–30 March 2002 (2004)

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)

Pathways to Resolution: The conciliation process of the Human Rights and Equal Opportunity Commission video/DVD

Federal Discrimination Law 2004

Quarterly Legal Bulletin: providing an update on domestic and international human rights law

2003 Human Rights Award and Medals brochure

Aboriginal and Torres Strait Islander Social Justice

Social Justice Report 2003 (tabled report)

Native Title Report 2003 (tabled report)

Promoting Economic and Social Development through Native Title discussion paper

Bringing them home postcard and promotional flyer

Bringing them home Educational Module CD-Rom

Human Rights

A last resort? The report of the National Inquiry into Children in Immigration Detention

A last resort? Summary guide to the National Inquiry into Children in Immigration Detention

A last resort? The report of the National Inquiry into Children in Immigration Detention CD-Rom

Racial Discrimination

Summary report of *Ismaḡ – Listen: National Consultations on eliminating prejudice against Arab and Muslim Australians*

Ismaḡ Audio report CD-Rom

Erace forum papers – Australian South Sea Islanders (online)

Sex Discrimination

20 Years On: The Challenges Continue . . . Sexual harassment in the Australian Workplace

A Bad Business: Review of Sexual harassment in employment complaints 2002

Sexual Harassment in the Workplace: A Code of Practice for Employers

Appendix 3

Freedom of Information

The Freedom of Information Act gives the general public legal access to government documents.

Freedom of Information statistics

During 2003–04, the Commission received 17 requests for access to documents under the Freedom of Information Act:

- 14 requested access to documents relating to complaints.
- 3 relating to research matters.

A total of 15 applications were processed.

Categories of documents

Documents held by the Commission relate to:

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

Freedom of Information procedures

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

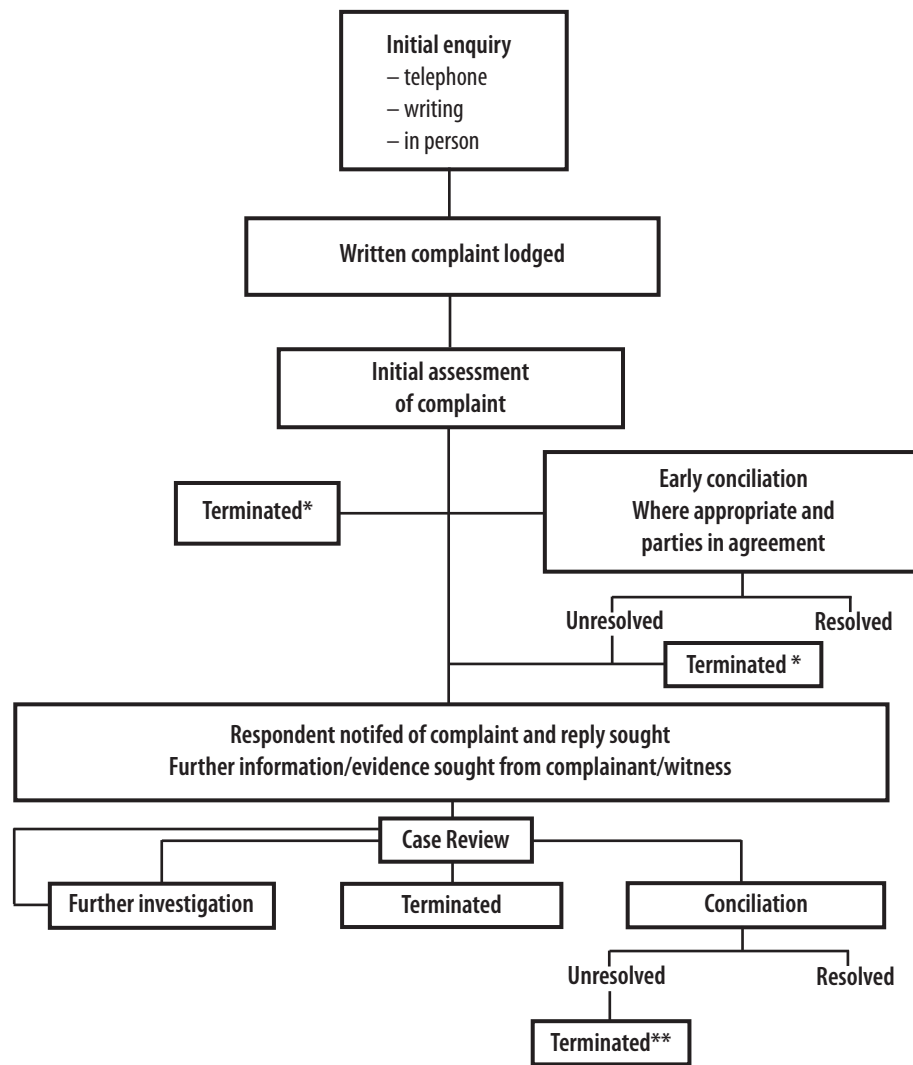
Freedom of Information Officer
Human Rights and Equal Opportunity Commission
GPO Box 5218
Sydney, NSW 2001

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

- Be in writing
- Be accompanied by a payment of \$30 application fee
- Include the name and address of the person requesting the information, and
- Specify the documents to be accessed.

Appendix 4

The complaint handling process



* When complaints under the Racial, Age, 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 Court.

** 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. The Commission supported refresher performance management training in June 2004 for all staff.

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 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. During the year, the Committee developed a new diversity plan and are in the process of circulating to staff for comment. Committee members also attended training on diversity issues.

Throughout the year the Commission promoted and supported events, including International Women's Day, NAIDOC week and an international lunch for staff.

Under the Commission's Indigenous employment strategy our Indigenous trainee successfully completed a 12-month training program and this year the Commission also supported a staff member on the inaugural Indigenous Leadership Course. The diploma level course is run by the Australian Indigenous Leadership Centre and examines models and styles of leadership, and leadership in various contexts, including personal, organisational, political and international. The Commission also supported two staff members to attend the Mawul-Rom Project, a cross-cultural mediation and leadership program conducted 'in ceremony' on Elcho Island for 100 young mediator participants from around Australia by 40 Yolgnu elders. Other strategies under the plan focus on supporting staff with family responsibilities, including part-time work, with 17 staff currently working part-time.

Occupational health and safety

It is the policy of the Commission to promote and maintain the highest degree of health, safety and well being of all staff. The Commission monitors health and safety through its OHS Committee, which includes a staff health and safety representative and four corporate support staff who met regularly through the year. Minutes of the Committee are placed on the Commission's intranet and any issues that require action are brought to the attention of management.

A hazards survey is conducted annually and the Committee monitor any OH&S issues that arise. Personnel staff have been trained as case managers and regularly attend COMCARE forums and training as required. Ongoing assistance and support on OH&S and ergonomic issues is provided to new and existing staff. A software program called 'Workplace' was introduced on all computers to assist staff in taking regular ergonomic breaks through the day. The Commission also offer support to staff through the promotion of QUIT smoking programs and flu vaccinations. There have been no dangerous accidents or occurrences reported and no compensation cases have arisen over the last 12 months.

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 on 19 December 2002 and is in operation until 15 July 2005. The agreement is comprehensive and was certified under section 170LJ of the *Workplace Relations Act 1976*. The number of Commission employees covered by the agreement as at 30 June 2004 was 95, including both ongoing and non-ongoing staff. Productivity savings funded a 12% salary increase to staff, delivered in three instalments over the life of the agreement, with a 4% increase in January 2004.

The agreement maintains core employment conditions 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 six staff covered by Australian Workplace Agreements, including one senior executive level staff member.

Staffing overview

The Commission's average staffing level for the year was 98.26 staff, with a turnover of 5% for ongoing staff. In order to meet short-term staffing needs for the year additional non-ongoing staff were employed. An overview of the Commission's staffing profile as at 30 June 2004 is summarised in the table below.

Classification	Male	Female	Full time	Part time	Total Ongoing	Total Non-ongoing
Statutory Office Holder	3	1	3	1		4
SES Band 2		1		1	1	
SES Band 1						
EL2 above the barrier (\$90,506)		2	1	1	2	
EL 2 (\$75,322–\$86,748)	10	11	20	1	19	2
EL 1 (\$65,308–\$71,618)	5	8	9	4	11	2
APS 6 (\$52,210–\$58,519)	6	25	29	2	26	5
APS 5 (\$47,167–\$50,943)	2	2	4	0	3	1
APS 4 (\$42,287–\$45,915)	1	8	6	3	7	2
APS 3 (\$37,943–\$40,951)	1	12	12	1	12	1
APS 2 (\$34,229–\$36,940)	1	4	4	1	4	1
APS 1 (\$29,435–\$32,532)	1	1	0	2	1	1
Total	30	75	88	17	86	19

Office of the Federal Privacy Commissioner

The Commission provides corporate support to the Office of the Federal Privacy Commissioner (OFPC) under the terms of a three year MOU. The Commission provides financial, procurement and contract services, personnel management, legal advice, library facilities, registry and reception, records management, information technology and property management services to the OFPC. The OFPC pays an agreed fee to the Commission of 10% of gross revenue for corporate support services.

The OFPC and the Commission are co-located and the OFPC occupies space under the Commission's lease. OFPC and the Commission have a separate MOU covering the provision of office space which is referenced to the Commission's lease with Stockland Trust Management Ltd. The rate at which the lettable area is charged to OFPC is the same as that which is paid by the Commission.

Consultancy services

During 2003–04 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 eight consultants under engagement during the financial year and total payments of \$149 454 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 and are updated to incorporate changes as required. 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 "Energy 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 Commission, along with all other Commonwealth agencies, reports against the CDS performance framework annually. Full details on the CDS can be found on the Department of Family and Community Services website at: www.facs.gov.au/disability/cds.

Through the CDS, 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 CDS 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. The Commission is in the process of developing a new action plan. 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, website and education material, and consultation with disability groups provide examples of what we are doing to achieve this. Further details of these can be found within the Annual Report.

Commonwealth Disability Strategy Performance reporting June 2004

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 assesses impact on the lives of people with disabilities prior to decision

Performance measure

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 2003–04

- Commission public inquiries and exemption applications include people with disabilities to seek views on the issue before finalisation.

- National peak disability groups and selected regional groups are consulted on new projects in development phase to seek their views on impact. In the DRU compliance is 100%.
- All submissions to inquiries are taken in a range of formats, including verbal/ audio (transcribed by the Commission), email and handwritten letters.
- All new initiatives are made publicly available through the Commission's webpage and key disability organisations are informed of developments through the Commission's listserve.
- Through the use of the Commissions website and e-based networks the DRU provides extensive information on new and revised policies and programs and seeks feedback at any stage on their effect.
- The Commission is implementing a "disability lens approach" as a means of focussing attention onto policies/programs and how they affect people with disabilities. It involves a short checklist of things to question before proceeding with a policy/program.

Performance indicator 2

People with disabilities are included in consultation about new or revised policy/ program proposals

Performance measure

Percentage of consultations about new or revised policy/program proposals that are developed in consultation with people with disabilities.

Current level of performance 2003–04

- In the DRU consultation with people with disabilities and their representative organisations occurs at a number of levels:
 - ◊ direct contact with representative organisations at a national and state/territory level. For example, on telecommunication issues and the proposed *UN Convention on the Rights of People with Disabilities*
 - ◊ through invitation to respond to new and revised policy/programs through the Commission's website, e-based networks, in writing or by phone
 - ◊ through public forums (such as the Health Access Forum), conferences and public meetings.
- New initiatives are made publicly available through the Commission's webpage and disability organisations and individuals are informed of developments through the Commission's listserve.

- Public consultation events all occur in accessible venues with hearing augmentation and sign language interpreters available.

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

- Percentage of new, revised or proposed policy/program announcements available in a range of accessible formats.
- Time taken in providing announcements in accessible formats.

Current level of performance 2003–04

- All information about new Commission initiatives is available on a W3C/WAI compliant website simultaneous with public release.
- 100% of announcements and information material available in accessible electronic format.
- 100% of material produced is also available in standard print, large print, audio and Braille on request.
- Time taken to produce in other than electronic format varies according to the size of the document, but generally within seven days.

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

- Complaints information service accessible to people with disabilities.
- Number of calls/emails/visits to complaints information service related to disability issues.

- Number of groups that attended complaint handling information session, or were visited by the Complaint Handling Section (CHS) during regional and interstate visits included disability advocacy and disability legal services.

Current level of performance 2003–04

- Commission complaints information is available in electronic and alternative formats. Email facility and accessible online complaint form for the lodgement of complaints is available. Telephone and TTY facilities are available with a national 1300 number at local call cost.
- All complaint handling brochures and publications are available on the Commission's website in accessible electronic format and are available in alternative formats on request. Information about the complaints process and legislation is available in plain English format on the Commission's website. The website is updated regularly.
- 21% of phone/email/written enquiries to the CIS are related to disability issues.
- 120 groups attended a CHS session or were visited by CHS staff
- A complaints information referral list is updated regularly to ensure callers with disabilities can be referred to appropriate advocacy groups and other appropriate services.

Goals 2004–05

- Increase targeted community education and liaison with disability groups and advocacy organisations in all states, in particular regional areas.
- Development of an easy English information sheet about the complaint process for use by people with intellectual disabilities.
- Targeted community education and liaison with Indigenous and multicultural disability networks in each state.

Performance indicator 2

Complaint handling service accessible to people with disabilities

Performance measure

- Number of complaints received under the DDA.
- Number of complaints lodged by people with disabilities under all legislation administered by the Commission.
- Number of complainants who identify the need for specific assistance on intake form.
- Complaints received about accessibility of service.

Current level of performance 2003–04

- 483 complaints were received under DDA legislation for 2003–04. Refer to the Complaints handling section of the annual report for further details.
- Complaints were received from people identifying as having a disability under all Acts administered by the Commission. 56% of responses to a survey question on demographics indicated the complainant had a disability.
- 189 requests for assistance were recorded, including assistance with language interpreters and sign language interpreters, TTY and assistance with writing.
- There were no formal complaints received regarding accessibility of the Commission complaint handling service or premises. Performance measure = 100%.
- The Commission's premises are accessible. Premises used for remote conciliation conferences are accessible. Performance measure = 100%.
- The Complaint Handling Section (CHS) Access Committee reviews access to the CHS 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

Percentage of training programs that include information regarding people with disabilities and relevance to complaint handling processes.

Current level of performance 2003–04

- CHS investigation and conciliation training courses include specific training on accommodating people with disabilities in the complaint handling investigation and conciliation processes. Performance measure = 100%.
- Ad hoc CHS training sessions specifically address relevance to people with disabilities who use complaint handling services. Performance measure = 100%.
- CHS 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%.

Performance indicator 4

Complaint mechanism in place to address concerns raised about service and addresses requirements of people with disabilities

Performance measure

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 2003–04

- Charter of Service addresses roles and responsibilities of the Commission and parties.
- No complaints about accessibility of service or disability-related issues were received under the Charter in the year.
- Performance measure = 100%.

EMPLOYER ROLE

Performance indicator 1

Employment policies, procedures and practices comply with the requirements of the Disability Discrimination Act 1992

Performance measure

Number of employment policies, procedures and practices that meet the requirements of the *Disability Discrimination Act 1992*.

Current level of performance 2003–04

- The Corporate Plan includes reference to APS values and social justice principles to ensure access to the Commission's services.
- The Commission's Certified Agreement 2002–2005 contains reference to Workplace Diversity principles. Most of the Commission's policies on employment are contained within the Certified Agreement.
- The Workplace Diversity Plan outlines strategies to maximise employment opportunities for people with disabilities. On induction, all new staff are provided with a copy of the Plan.
- The email/internet policy is reviewed annually. It specifically refers to the inappropriate use of emails that may demean people with disabilities.

- No formal complaints/grievances made by staff with disabilities with regard to current work practices.
- Reasonable adjustment principles are adhered to in the modification of employee's duties in the workplace. Two employees have been provided with voice-activated software to enable them to undertake their duties.

Performance indicator 2

Recruitment information for potential job applicants is available in accessible formats on request

Performance measure

- Percentage of recruitment information requested and provided in alternate electronic formats and accessible formats other than electronic.
- Average time taken to provide accessible information in electronic formats and formats other than electronic.

Current level of performance 2003–04

- Performance in providing accessible formats for recruitment material = 100%.
- Applicants are advised on the Commission's website that recruitment information is able to be provided in any format. All recruitment material is on the Commission's website and available by download at the same time it is advertised in the press. Advertisements in the press advise that information is available by contact phone no, 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 Jobs Page www.humanrights.gov.au/jobs/index.html received approx 39 780 page views during the last financial year.
- There were no requests for Braille during 2003–04. The Commission is able to supply any requests within three to seven days.

Performance indicator 3

Agency recruiters and managers apply the principle of reasonable adjustment

Performance measure

Percentage of recruiters and managers provided with information on reasonable adjustment.

Current level of performance 2003–04

- Selection guidelines include information on reasonable adjustment and guidelines for interviewing staff with disabilities.
- Recruitment action is managed internally and not outsourced and all committees are provided with selection information on reasonable adjustment.

Performance indicator 4

Training and development programs consider the needs of staff with disabilities

Performance measure

Percentage of training and development programs that consider the needs of staff with disabilities.

Current level of performance 2003–04

- Due to the small number of staff in the agency, training is co-ordinated by each of the unit managers under the Commission's Performance Management Scheme. The majority of training is provided off-site with external providers. Any in-house training programs recognise the needs of people with disabilities.
- Training nomination forms include specific requirements that may be needed such as:
 - ◇ wheelchair access
 - ◇ accessible toilets/parking
 - ◇ a hearing device
 - ◇ sign language interpreter
 - ◇ an attendant
 - ◇ a support person
 - ◇ 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

Percentage of training and development programs that include information on disability issues as they relate to the program.

Current level of performance 2003–04

- As noted above, training is coordinated by each individual section.
- Induction includes information on workplace diversity and relevant legislation that the Commission administers, including the Disability Discrimination Act.
- 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

Established complaints/grievance mechanisms, including access to external mechanisms in operation.

Current level of performance 2003–04

- There is an established process in the Commission's Certified Agreement 2002–2005 for complaints/grievances, which includes access to external review through the Australian Public Service Commission.
- 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.
- Provision of access to complaints/grievance mechanisms = 100%.

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.





INDEPENDENT AUDIT REPORT

To the Attorney-General

Scope

- The financial statements comprise:
- Statement by the Chief Executive and Chief Finance Officer;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedules of Commitments and Contingencies; and
- Notes to and forming part of the Financial Statements

of the Human Rights and Equal Opportunity Commission for the year ended 30 June 2004.

The Commission's President is responsible for the preparation and true and fair presentation of the financial statements in accordance with the Finance Minister's Orders. This includes responsibility for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

Audit approach

I have conducted an independent audit of the financial statements in order to express an opinion on them to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control, and the availability of persuasive, rather than conclusive, evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal controls over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

I performed procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, Accounting Standards and other mandatory financial reporting requirements in Australia, a view which is consistent with my understanding of the Human Rights and Equal Opportunity Commission's financial

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position, and of its performance as represented by the statements of financial performance and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Commission's President.

Independence

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate Australian professional ethical pronouncements.

Audit Opinion

In my opinion, the financial statements:

- i. have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997* and applicable Accounting Standards; and
- ii. give a true and fair view, of the matters required by applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and the Finance Minister's Orders, of the financial position of the Human Rights and Equal Opportunity Commission as at 30 June 2004, and of its performance and cash flows for the year then ended.

Australian National Audit Office



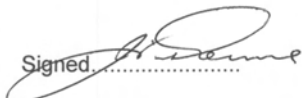
P Hinchey
Senior Director

Delegate of the Auditor-General
Sydney

2 September 2004

**Human Rights and Equal Opportunity Commission
STATEMENT BY THE CHIEF EXECUTIVE AND CHIEF
FINANCE OFFICER**

In our opinion, the attached financial statements for the year ended 30 June 2004 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the Financial Management and Accountability Act 1997.

Signed 

J von Doussa, QC
Chief Executive Officer

/ September 2004

Signed 

D Temby
Chief Finance Officer

/ September 2004

Human Rights and Equal Opportunity Commission
STATEMENT OF FINANCIAL PERFORMANCE
for the year ended 30 June 2004

	Notes	2004 \$	2003 \$
Revenues from ordinary activities			
Revenues from government	4A	11,971,000	11,172,000
Goods and services	4B	2,597,553	2,878,238
Interest	4C	-	41,613
Revenue from sale of assets	4D	-	218
Revenues from ordinary activities		14,568,553	14,092,069
Expenses from ordinary activities			
Employees	5A	8,084,452	7,518,635
Suppliers	5B	5,712,721	5,382,439
Depreciation and amortisation	5C	731,739	570,093
Write-down of assets	5D	278,846	-
Value of assets disposed	4D	15,481	5,660
Expenses from ordinary activities		14,823,239	13,476,827
Net (deficit) surplus		(254,686)	615,242
Net credit to asset revaluation reserve	11A	2,205,590	-
Total revenues, expenses and valuation adjustments attributable to the Commonwealth Government and recognised directly in equity		2,205,590	-
Total changes in equity other than those resulting from transactions with the Australian Government as owners		1,950,905	615,242

The above statement should be read in conjunction with the accompanying notes.

Human Rights and Equal Opportunity Commission
Statement of Financial Position
as at 30 June 2004

	Notes	2004 \$	2003 \$
ASSETS			
Financial assets			
Cash	6A	2,276,456	2,500,017
Receivables	6B	432,599	554,619
Total financial assets		2,709,055	3,054,636
Non-financial assets			
Infrastructure, plant and equipment	7A	2,514,505	805,257
Intangibles	7B	75,911	89,599
Other non-financial assets	7C	431,671	93,328
Total non-financial assets		3,022,087	988,184
Total Assets		5,731,142	4,042,820
LIABILITIES			
Non-interest bearing liabilities			
Lease Incentives	8A	-	782,706
Total non-interest bearing liabilities		-	782,706
Provisions			
Employees	9A	2,264,597	1,924,573
Total provisions		2,264,597	1,924,573
Payables			
Suppliers	10A	343,307	256,206
Total payables		343,307	256,206
Total Liabilities		2,607,904	2,963,485
NET ASSETS		3,123,238	1,079,335
EQUITY			
Contributed equity	11A	1,099,000	1,006,000
Reserves	11A	2,255,186	49,596
Accumulated surplus/(deficits)	11A	(230,947)	23,739
TOTAL EQUITY		3,123,238	1,079,335
Current assets		3,140,725	3,147,964
Non-current assets		2,590,416	894,857
Current liabilities		1,479,940	1,994,676
Non-current liabilities		1,127,964	968,809

The above statement should be read in conjunction with the accompanying notes.

Human Rights and Equal Opportunity Commission
Statement of Cash Flows
for the year ended 30 June 2004

	Notes	2004 \$	2003 \$
OPERATING ACTIVITIES			
Cash received			
Goods and services		2,816,315	3,408,467
Appropriations for outputs		11,936,000	11,137,000
Interest		-	53,000
Net GST received from ATO		439,892	427,958
Total cash received		15,192,207	15,026,425
Cash used			
Employees		(7,744,427)	7,360,298
Suppliers		(7,346,273)	6,720,623
Total cash used		(15,090,700)	14,080,921
Net cash from/(used by) operating activities	12	101,507	945,504
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		-	218
Total cash received		-	218
Cash used			
Purchase of property, plant and equipment		(387,068)	275,513
Purchase of intangibles		(31,000)	52,538
Total cash used		(418,068)	328,051
Net cash from/(used by) investing activities		(418,068)	(327,833)
FINANCING ACTIVITIES			
Cash received			
Appropriations - Contributed equity		93,000	-
Total cash received		93,000	-
Cash used			
Capital Use charge paid		-	35,000
Total cash used		-	35,000
Net cash from/(used by) financing activities		93,000	(35,000)
Net increase / (decrease) in cash held		(223,561)	582,671
Cash at the beginning of the reporting period		2,500,017	1,917,346
Cash at the end of the reporting period	6A	2,276,456	2,500,017

The above statement should be read in conjunction with the accompanying notes.

Human Rights and Equal Opportunity Commission
SCHEDULE OF COMMITMENTS
as at 30 June 2004

	2004	2003
	\$	\$
BY TYPE		
Other Commitments		
Operating leases ¹	13,315,235	15,726,306
Other commitments ²	3,599,282	3,454,397
Total other commitments	16,914,517	19,180,703
Commitments receivable	(8,181,238)	(5,236,201)
Net commitments	8,733,279	13,944,502
BY MATURITY		
Operating Lease Commitments		
One year or less	1,569,370	1,548,911
From one to five years	6,319,207	6,230,280
Over five years	3,469,628	5,368,712
Other Net Commitments		
One year or less	(675,654)	(414,261)
From one to five years	(1,872,052)	959,358
Over five years	(77,220)	251,502
Net Commitments by maturity	8,733,279	13,944,502

NB: Commitments are GST inclusive where relevant.

Note	Nature of lease	General description of leasing arrangement
1	Leases for office accommodation	The agreement allows annual fixed rental increases. There are no options to renew.
1	Agreements for the provision of motor vehicles to senior executive officers	No contingent rentals exist. There are no renewal or purchase options available to HREOC.
1	A lease in relation to desktop computer equipment	The lessor provides all desktop computer equipment and software. The contract allows for variations to the duration of the rental and to the equipment rented.
2	Other commitments	Consisting of agreements with other entities for services, outgoings and AEPUs.

Human Rights and Equal Opportunity Commission
Schedule of Contingencies
as at 30 June 2004

Contingent liabilities	150,000	-
Contingent assets	-	-
Net contingent liabilities	150,000	-

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or considered remote, are disclosed in **Note 13: Contingent Liabilities and Assets**.

The above schedules should be read in conjunction with the accompanying notes.

Human Rights and Equal Opportunity Commission
Notes to and forming part of the Financial Statements
for the year ended 30 June 2004

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the Human Rights and Equal Opportunity Commission

The Commission has one outcome:

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

The Commission's objective is to ensure that Australians:

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

1.2 Basis of accounting

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general purpose financial report.

The statements have been prepared in accordance with:

- Finance Minister's Orders (or FMOs, being the *Financial Management and Accountability (Financial Statements for reporting periods ending on or after 30 June 2004 Orders)*);
- Australian Accounting Standards and Accounting Interpretations issued by the Australian Accounting Standards Board; and
- Consensus Views of the Urgent Issues Group.

The Statements of Financial Performance and Financial Position have been prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets, which, as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

Assets and liabilities are recognised in the Commission's Statement of Financial Position when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionally unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets which are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies (other than unquantifiable or remote contingencies, which are reported at Note 13).

Revenues and expenses are recognised in the Statement of Financial Performance when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

The continued existence of the Commission in its present form, and with its present functions, is dependent on Government policy and on continuing appropriations by Parliament for the Commission's administration and functions.

1.3 Changes in accounting policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 2002-03.

Property plant and equipment assets are being revalued progressively as explained in Note 1.12. Revaluations up to 30 June 2002 were done on a 'deprival' basis; since that date, revaluations have been done on a fair value basis. Revaluation increments and decrements in each year of transition to fair value that would otherwise be counted for as revenue or expenses are taken directly to accumulated results in accordance with transitional provisions of AASB 1041 *Revaluation of Non-current Assets*.

As a result of the Commission's decision to remain in its current premises, the premises lease has been renewed for a further 8 years. Non current assets previously depreciated over the term of the initial lease (eg Leasehold Improvements) have been revalued on the basis of a renewed 'effective life' corresponding to the new lease term. The impact of this change is shown at Note 1.12 below.

1.4 Revenue

Revenues from Government

Amounts appropriated for Departmental outputs appropriations for the year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised as revenue, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Resources received free of charge

Services received free of charge are recognised as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised at their fair value when the asset qualifies for recognition, unless received from another government agency as a consequence of a restructuring of administrative arrangements (refer to Note 1.5).

Other revenue

Revenue from the sale of goods is recognised upon delivery of goods to customers.

Revenue from the rendering of a service is recognised by reference to the stage of completion of contracts or other agreements to provide services. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability of the debt is judged to be less rather than more likely.

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

Revenue from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

1.5 Transactions with the Government as Owner

Equity injections

Amounts appropriated which are designated as 'equity injections' for a year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised directly in Contributed Equity in that year.

1.6 Employee benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for wages and salaries (including non-monetary benefits) and annual leave are measured at their nominal amounts. Other employee benefits expected to settle within 12 months of the reporting date are also measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated cash outflows to be made in respect of services provided by employees up to the reporting date.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Commission is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined in accordance with applicable finance briefs issued by the Department of Finance. The estimate of the present value of the liability takes into account attrition rates and pay increases prescribed by the Commission's Certified Agreement.

Separation and redundancy

Provision is made for separation and redundancy payments in circumstances where the Commission has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

Superannuation

Staff of the Commission are members of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. The liability for their superannuation benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

The Commission makes employer contributions to the Australian Government at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Commission's employees.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the 2004 financial year.

1.7 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at the present value of minimum lease payments at the beginning of the lease term and a liability recognised at the same time and for the same amount. The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a basis which is representative of the pattern of benefits derived from the leased assets. The net present value of future net outlays in respect of surplus space under non cancellable lease agreements is expensed in the period in which the space becomes surplus.

The Commission has renewed the premises lease for a further 8 year period, effectively renewing the useful lives of a number of non current assets previously depreciated over the term of the initial lease.

Lease incentives taking the form of 'free' leasehold improvements and rent holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

1.8 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution.

1.9 Other Financial Instruments

Trade Creditors

Trade creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.10 Contingent Liabilities and Contingent Assets

Contingent Liabilities (assets) are not recognised in the Statement of Financial Position but are discussed in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability (asset), or represent an existing liability (asset) in respect of which settlement is not probable or the amount cannot be reliably measured. Remote contingencies are part of this disclosure. Where settlement becomes probable, a liability (asset) is recognised. A liability (asset) is recognised when its existence is confirmed by a future event, settlement becomes probable or reliable measurement becomes possible.

1.11 Acquisition of assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor agency's accounts immediately prior to the restructuring.

1.12 Property, Plant and Equipment (PPE)

Asset recognition threshold

Purchases of property, plant and equipment are recognised initially at cost in the Statement of Financial position, except for purchases costing less than \$1,500, which are expensed in the year of acquisition (other than where they form a part of a group of similar items which are significant in total).

Revaluations

Basis

Property, plant and equipment are carried at valuation. Revaluations undertaken up to 30 June 2002 were done on a deprival basis. The deprival value of all assets as at 30 June 2002 was deemed to be their fair value at 1 July 2002. The financial effect of the change is given by the difference between the carrying amounts at 30 June 2002 of these assets and their fair value as at 1 July 2002 and thus there is no financial effect arising from the adoption of fair value.

Under both deprival and fair value, assets which are surplus to requirements are measured at their net realisable value. At 30 June 2004, the Commission had no assets in this situation.

Frequency

Property, plant and equipment are all revalued annually on a Fair Value basis.

The Revaluation conducted as at 1 July 2003 also needed to consider the renewal of the Commission's premises lease for a further 8 years and the resulting impact on useful lives of leasehold improvements previously depreciated over the term of the initial premises lease. This resulted in an increase in value of \$2,158,654 for leasehold improvements, which was allocated to the Asset revaluation Reserve.

A further revaluation as at 30 June 2004 was conducted to standardise the practice, and to report fair value as at the reporting date. The final position of the combined revaluations is displayed at Note 7A below.

Conduct

All valuations are conducted by an independent, qualified valuer.

Depreciation and amortisation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight-line method of depreciation. Leasehold improvements are depreciated on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Residual values are re-estimated for a change in prices only when assets are revalued.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2004	2003
Leasehold improvements	Lease term *	Lease term
Plant and equipment	4 to 10 years	4 to 10 years

* Note the renewal of this term as at 1 July 2003.

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 5C.

Recoverable amount test

From 1 July 2002, Schedule 1 no longer requires the application of the recoverable amount test in Australian Accounting Standard *AAS 10 Recoverable Amount of Non-Current Assets* to the assets of agencies when the primary purpose of the asset is not the generation of net cash inflows.

No property plant and equipment assets have been written down to recoverable amount per AAS 10. Accordingly, the change in policy has had no financial effect.

1.13 Impairment of Non-Current Assets

Non-current assets carried at up to date fair value at the reporting date are not subject to impairment testing.

Non-current assets carried at cost (those acquired since 1 July 2003 and Intangibles), which are not held to generate net cash inflows, have been assessed for indications of impairment as at 30 June 2004.

Where indications of impairment exist, the carrying amount of the asset is compared to the higher of its net selling price and depreciated replacement cost and is written down to that value if greater.

No assets were found to be impaired at 30 June 2004.

1.14 Intangibles

The Commission's intangibles comprise internally-developed software for internal use. These assets are carried at cost.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of The Commission's software is 2 to 5 years (2002-03: 2 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2004. No assets were found to be impaired.

1.15 Taxation

The Commission is exempt from all forms of taxation except fringe benefits tax and the goods and services tax (GST);

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

1.16 Foreign currency

Transactions denominated in a foreign currency are converted at the exchange rate at the date of the transaction. Foreign currency receivables and payables are translated at the exchange rates current as at balance date. Associated currency gains and losses are not material.

1.17 Insurance

The Commission has insured for risks through the Government's insurable risk managed fund, called 'Comcover'. Workers compensation is insured through the Government's Comcare Australia.

1.18 Agency and Administered Items

The Commission has no administered items.

Note 2 - Adoption of Australian Equivalents to International Financial Reporting Standards from 2005 - 2006

The Australian Accounting Standards Board has issued replacement Australian Accounting Standards to apply from 2005-06. The new standards are the Australian Equivalents to International Financial Reporting Standards (AEIFRSs) which are issued by the International Accounting Standards Board. The new standards cannot be adopted early. The standards being replaced are to be withdrawn with effect from 2005-06, but continue to apply in the meantime.

The purpose of issuing AEIFRSs is to enable Australian entities reporting under the Corporations Act 2001 to be able to more readily access overseas capital markets by preparing their financial reports according to accounting standards more widely used overseas.

For-profit entities complying fully with the AEIFRSs will be able to make an explicit and unreserved statement of compliance with IFRSs and well as with the Australian Equivalents. It is expected that the Finance Minister will continue to require compliance with the Accounting Standards issued by the AASB, including AEIFRSs, in his Orders for the preparation of Agency financial statements for 2005-06 and beyond. AEIFRSs contain certain additional provisions which will apply to not-for-profit entities, including Australian Government agencies. Some of these provisions are in conflict with the IFRSs and therefore the Commission will only be able to assert compliance with the AEIFRSs.

Existing AASB standards that have no IFRS equivalent will continue to apply, including in particular AAS 29 Financial Reporting by Government Departments.

Accounting Standard AASB 1047 Disclosing the impact of Adopting Australian Equivalents to IFRSs requires that the financial statements for 2003-04 disclose:

- An explanation of how the transition to the Australian Equivalents is being managed, and
- A narrative explanation of the key differences in accounting policies arising from the transition.

The purpose of this Note is to make these disclosures.

The Commission has developed a plan for the implementation of Australian equivalents of IFRSs. The plan was approved by the Agency's Audit Committee on 7 July 2004. Review of progress against the plan has been made a standing agenda item for Audit Committee meetings. The Chief Finance Officer is formally responsible for the project and reports regularly to the Audit Committee on progress against the formal plan approved by the Committee.

The Commission has been reviewing AASB Pending Standards as they are placed on the AASB web site. The standards that have been reviewed to date and HREOC's assessment of their impact are contained in the Implementation Plan. Where issues relevant to the Agency are identified an assessment will be made on the need for specialist advice. Where advice indicates the need for an amendment to accounting policy this will be implemented as at 30 June 2004.

Commission accounting policies have been fully reviewed, taking into account Australian equivalents to IFRSs and relevant Finance *Briefs* issued by the Department of Finance. Revised accounting policies to take effect from 1 July 2005, with retrospective restatement of comparative information, have been tentatively endorsed by the Audit Committee. Final endorsement will be sought from the Audit Committee closer to 1 July 2005.

Preparation of an opening balance sheet required by AASB 1 *First Time Adoption of Australian Equivalents of International Financial Reporting Standards* has commenced and is scheduled for completion by 15 September 2004. The reconciliation of equity as at the 1 July 2004 is scheduled to be completed by 30 September.

The Commission's financial management system currently provides regular monthly reports and will continue to do so in FY 2004-05. There is no requirement within HREOC to amend the current financial management information system to enable monthly reports to be produced under both current Australian Accounting Standards and AEIFRSs. Procedures currently in place will enable the capture of data necessary for reporting under Australian equivalents to IFRSs.

Key financial management staff will be trained in Australian equivalents to IFRSs. All financial management staff will receive training on the changes resulting from the introduction of Australian equivalents to IFRSs over the period October to December 2004.

Expected Key Differences in Accounting Policies

AASB 116 Property Plant and Equipment

In anticipation of the requirement of this standard that property, plant and equipment (PPE) assets be measured at fair value or historical cost, all PPE assets were revalued to fair value on 1 July 2003. An updated valuation will be carried out in July 2004 and these values will constitute the carrying amounts of PPE assets in the opening balance sheet prepared as at 1 July 2004. There will be no requirement for changes to valuation or valuation policy under this AEIFRS.

AASB 1041 Revaluation of Non-Current Assets

Intangible assets are currently measured on a cost basis. These assets have not been revalued since their initial recognition in the Agency's financial statements.

There is no requirement to amend any policy relating to valuations of intangible assets under this standard.

AASB 138 Intangible Assets

HREOC currently holds intangible assets comprising computer software. These assets are carried at cost less accumulated amortisation which is calculated on a straight line basis. The useful life of intangible assets is currently reviewed on a yearly basis to ensure that the current amortisation period remains appropriate. If any changes in the amortisation period are required these will be accounted for in accordance with AASB 108. Intangible assets are currently not subject to revaluation under HREOC accounting policy and in accordance with paragraph 74 of the standard this remains acceptable.

AASB 102 Inventories

Currently HREOC does not value inventories which consist primarily of publications held for distribution free of charge or for sale. The majority are distributed free of charge. The cost of producing publications is currently expensed on occurrence. HREOC accounting policy will be changed to recognise inventories held either for sale or for distribution as an asset and they will be carried at the lower of cost or current replacement cost. When the inventories are distributed free of charge the carrying amount will be expensed in that period. Where inventory is sold the expense of the carrying amount will be recognised in the same period as the sale transaction.

The required disclosures under this standard will be provided in the financial statements for FY 04/05. This will necessitate a stock take and valuation by HREOC of all current publications as at 30 June 2004. This will be carried out in the first three months of FY 04/05.

AASB 107 Cash Flow Statements

This standard widens the definition of cash equivalents from that which was in the previous AAS. HREOC does not routinely hold cash equivalents other than accounts receivable therefore this change will not impact of the financial reporting of the Organisation. The Commission also does not conduct financing activities. Cash received and used by the Commission is primarily for operating activities with a small amount used for investing, primarily in PPE or intangible assets. HREOC currently provides Cash Flow Statements identifying activities as either investing, operating and financing as required by the new standard.

Paragraph 20.2 of the standard requires not for profit entities to provide a reconciliation of cash flows to net cost of services as reported in the income statement. HREOC already discloses net cost of outcome in the financial statements and will from 30 June 2005 provide a reconciliation between this figure and the cash flow statement. This will not require any change in financial policy or systems but will be an additional requirement to be included in the statements. This information is already provided by the current financial systems. Paragraph 35 requires separate disclosure of cash flows associated with taxes. The Commission already provides separate identification of GST in the cash flow statements and is not liable for other income taxes.

AASB 117 Leases

HREOC currently holds no finance leases. Were the situation to arise where a finance lease was entered into it would be reported in accordance with this standard.

Operating leases within HREOC are currently recognised as an expense on a straight line basis as required by the standard. HREOC currently discloses in its financial statements, future operating lease payments by one, one to five and greater than five years as required by the standard. HREOC has not previously reported the value of non cancellable sub lease future payments as there were none held. At 30 June 2004 there may be a non cancellable sub lease. If applicable, the value of this will be calculated at 30 June 2004 to enable comparison with 30 June 2005 when this standard comes into effect. The value will be identified for one, one to five and greater than 5 years. There are no required changes to accounting policy under this standard.

Employee Benefits

The provision for long service leave is measured at the present value of estimated future cash outflows using market yields as at the reporting date on national government bonds.

Under the new Australian Equivalent standard, the same discount rate will be used unless there is a deep market in high quality corporate bonds, in which case the market yield on such bonds must be used.

Note 3 - Events occurring after Reporting Date

The Commission is not aware of any significant events that have occurred since balance date which warrant disclosure in these statements.

	2004 \$	2003 \$
Note 4: Operating Revenues		
<u>Note 4A: Revenues from Government</u>		
Appropriations for outputs	11,936,000	11,137,000
Resources received free of charge	35,000	35,000
Total revenues from government	<u>11,971,000</u>	<u>11,172,000</u>
<u>Note 4B: Goods and Services</u>		
Goods	95,118	146,218
Services	2,502,435	2,732,020
Total sales of goods and services	<u>2,597,553</u>	<u>2,878,238</u>
Provision of goods to:		
Related entities	82,643	27,259
External entities	12,475	118,959
Total sales of goods	<u>95,118</u>	<u>146,218</u>
Rendering of services to:		
Related entities	2,369,606	1,723,377
External entities	132,829	1,008,643
Total rendering of services	<u>2,502,435</u>	<u>2,732,020</u>
Cost of goods sold	<u>95,118</u>	<u>146,218</u>
<u>Note 4C: Interest Revenue</u>		
Interest on deposits	-	41,613

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	2004 \$	2003 \$
Note 4D: Net Gains from Sale of Assets		
Infrastructure, plant and equipment:		
Proceeds from disposal	-	218
Net book value of assets disposed	-	-5,660
Write-offs	-15,481	-
Net loss from disposal of infrastructure, plant and equipment	-15,481	-5,442
TOTAL proceeds from disposals	-	218
TOTAL value of assets disposed	-15,481	-5,660
TOTAL net loss from disposal of assets	-15,481	-5,442
Note 5: Operating Expenses		
Note 5A: Employee Expenses		
Wages and Salary	6,289,773	6,340,570
Superannuation	1,012,286	833,717
Leave and other benefits	733,137	250,178
Separation & Redundancy	-	-
Other employee expenses	9,564	61,917
Total employee benefits expense	8,044,760	7,486,380
Workers compensation premiums	39,691	32,254
Total employee expenses	8,084,452	7,518,635
Note 5B: Supplier Expenses		
Goods from related entities	15,542	75,794
Goods from external entities	398,916	411,659
Services from related entities	488,872	436,009
Services from external entities	3,806,419	3,213,235
Operating lease rentals*	1,002,972	1,245,742
Total supplier expenses	5,712,721	5,382,439
* These comprise minimum lease payments only		
Note 5C: Depreciation and Amortisation		
<i>(i) Depreciation</i>		
Other infrastructure, plant and equipment	687,050	524,261
Total Depreciation	687,050	524,261
<i>(ii) Amortisation</i>		
Intangibles - Computer Software	44,688	45,832
Total depreciation and amortisation	731,739	570,093
The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable assets are as follows:		
Leasehold improvements	413,651	316,712
Plant and equipment	273,399	207,549
Intangibles	44,689	45,832
Total depreciation and amortisation	731,739	570,093
No depreciation or amortisation was allocated to the carrying amounts of other assets.		

	2004 \$	2003 \$
Note 5D: Write Down of Assets		
Financial assets		
Bad and doubtful debts expense	97,967	-
Non-financial assets		
Plant and equipment - revaluation decrement	180,879	-
Total write-down of assets	<u>278,846</u>	<u>-</u>
Note 6: Financial Assets		
Note 6A: Cash		
Cash on hand:		
Departmental (other than special accounts)	2,276,456	2,500,017
Total cash	<u>2,276,456</u>	<u>2,500,017</u>
Note 6B: Receivables		
Goods and services	438,543	504,885
Less: Provision for doubtful debts	<u>(102,709)</u>	<u>-</u>
	335,834	504,885
GST Receivable	96,765	49,734
Appropriations Receivable	-	-
Total receivables (net)	<u>432,599</u>	<u>554,619</u>
Receivables is represented by:		
Current	432,599	554,619
Non-Current	-	-
Total receivables (net)	<u>432,599</u>	<u>554,619</u>
All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (2003: 30 days)		
Receivables (gross) are aged as follows:		
Not overdue	281,211	537,223
Overdue by:		
Less than 30 days	44,568	4,004
30 to 60 days	112,764	-
60 to 90 days	-	-
More than 90 days	-	13,392
	<u>157,332</u>	<u>17,396</u>
Total receivables (gross)	<u>438,543</u>	<u>554,619</u>
The Provision for Doubtful debts is aged as follows:		
Not overdue	-	-
Overdue by:		
Less than 30 days	-	-
30 to 60 days	102,709	-
60 to 90 days	-	-
More than 90 days	-	-
Total provision for doubtful debts	<u>102,709</u>	<u>-</u>

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	2004 \$	2003 \$
Note 7: Non-Financial Assets		
Note 7A: Infrastructure, Plant and Equipment		
Infrastructure, plant and equipment		
- at cost	-	245,526
- Accumulated depreciation	-	(23,599)
	-	221,927
- at valuation	354,705	824,139
- Accumulated depreciation	-	(559,074)
	354,705	265,065
Total plant and equipment	354,705	486,992
Leasehold improvements		
- at cost	-	29,988
- Accumulated amortisation	-	(1,694)
	-	28,294
- at valuation	2,159,800	3,149,999
- Accumulated amortisation	-	(2,860,028)
	2,159,800	289,971
Total leasehold improvements	2,159,800	318,265
Total Infrastructure, Plant and equipment	2,514,505	805,257

All revaluations are independent and are conducted in accordance with the revaluation policy stated at Note 1. In 2003-04, the revaluations were conducted by an independent valuer (AON Valuation Services). A Revaluation increment of \$2,255,186 for leasehold improvements (2003: NIL) was made to the asset revaluation reserve; decrements of \$49,596 for plant and equipment were applied to the Asset Revaluation and a further decrement of \$180,879 was expensed (2003: NIL expensed).

Note 7A: Analysis of Infrastructure, Plant, Equipment and Intangibles

TABLE A: Reconciliation of the opening & closing balances of property, plant & equipment.

Item	Infrastructure, Plant & Equipment	Leasehold Improvements	Total
	\$	\$	\$
As at 1 July 2003			
Gross book value	1,073,472	3,179,987	4,253,459
Accumulated Depreciation/Amortisation	(586,480)	(2,861,722)	(3,448,202)
Net book value	486,992	318,265	805,257
Additions			
by purchase	387,068	-	387,068
Net revaluation increment/(decrement)	(230,475)	2,255,186	2,024,711
Depreciation/amortisation expense	(273,399)	(413,651)	(687,050)
Recoverable amount write-downs	-	-	-
Disposals			
From disposal of operations	-	-	-
Other disposals	(15,481)	-	(15,481)
As at 30 June 2004			
Gross book value	354,705	2,159,800	2,514,505
Accumulated Depreciation/Amortisation	-	-	-
Net book value	354,705	2,159,800	2,514,505

TABLE B: Assets at valuation

Item	Infrastructure, Plant & Equipment	Leasehold Improvements	Total
	\$	\$	\$
As at 30 June 2004			
Gross Value	354,705	2,159,800	2,514,505
Accumulated Depreciation/Amortisation	-	-	-
Net book value	354,705	2,159,800	2,514,505
As at 30 June 2003			
Gross Value	824,140	3,149,999	3,974,139
Accumulated Depreciation/Amortisation	(559,074)	(2,860,028)	(3,419,102)
Net book value	265,066	289,971	555,037

	2004	2003
	\$	\$
Note 7B: Intangibles		
Computer software:		
Internally developed - in use	440,782	409,782
Accumulated amortisation	(364,871)	(320,183)
Total intangibles	75,911	89,599

TABLE A: Reconciliation of the opening & closing balances of intangibles

Item	Computer Software \$
As at 1 July 2003	
Gross book value	409,782
Accumulated Depreciation/Amortisation	(320,183)
Net book value	89,599
Additions	
by purchase	31,000
Net revaluation increment/(decrement)	
Depreciation/amortisation expense	(44,688)
Recoverable amount write-downs	-
Disposals	
Other disposals	-
As at 30 June 2004	
Gross book value	440,782
Accumulated Depreciation/Amortisation	(364,871)
Net book value	75,911

	2004	2003
	\$	\$
Note 7C: Other non-financial assets		
Work in Progress - International Programs	276,911	-
Prepayments	154,759	93,328
Total other non-financial assets	431,670	93,328
All other non-financial assets are current assets.		

Note 8: Interest Bearing Liabilities

Note 8A: Other Interest Bearing Liabilities		
Lease incentives	-	782,706

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	2004 \$	2003 \$
Note 9: Provisions		
<u>Note 9A: Employee provisions</u>		
Salaries and wages	266,046	186,024
Leave	1,961,174	1,705,136
Separations and Redundancies	-	-
Superannuation	37,377	33,413
Aggregate employee benefit liability	2,264,597	1,924,573
Current	1,136,634	955,764
Non-current	1,127,964	968,809
Note 10: Payables		
<u>Note 10A: Suppliers Payable</u>		
Trade creditors	343,307	256,206
Operating lease rentals	-	-
Total supplier payables	343,307	256,206
Supplier payables are represented by:		
Current	343,307	256,206
Non-current	-	-

Note 11: Equity

Note 11A: Analysis of Equity

Item	Accumulated Results		Asset revaluation reserve		Contributed Equity		TOTAL EQUITY	
	2004 \$	2003 \$	2004 \$	2003 \$	2004 \$	2003 \$	2004 \$	2003 \$
Opening Balance as at 1 July	23,739	(591,503)	49,596	49,596	1,006,000	1,006,000	1,079,335	464,093
Net (deficit) surplus	(254,686)	615,242	-	-	-	-	(254,686)	615,242
Net revaluation increment	-	-	2,205,590	-	-	-	2,205,590	-
Decrease in retained surpluses on application of transitional provisions in accounting standard AASB 1041 Revaluation of Non-current Assets	-	-	-	-	-	-	-	-
Transactions with owner:								
Distributions to owner:	-	-	-	-	-	-	-	-
Return on Capital	-	-	-	-	-	-	-	-
Capital Use Charge	-	-	-	-	-	-	-	-
Contributions by owner:								
Restructuring	-	-	-	-	-	-	-	-
Equity injection	-	-	-	-	93,000	-	93,000	-
Restructuring transfers	-	-	-	-	-	-	-	-
Closing Balance as at 30 June	(230,947)	23,739	2,255,186	49,596	1,099,000	1,006,000	3,123,238	1,079,335
Total equity attributable to the Commonwealth	(230,947)	23,739	2,255,186	49,596	1,099,000	1,006,000	3,123,238	1,079,335

	2004 \$	2003 \$
Note 12: Cash Flow Reconciliation		
Reconciliation of cash per Statement of Financial Position to Statement of Cash Flows		
Cash at year end per Statement of Cash Flows	2,276,456	2,500,017
Statement of Financial Position items comprising above cash: 'Financial Asset -Cash'	2,276,456	2,500,017

	2004 \$	2003 \$
Reconciliation of net surplus to net cash from operating activities:		
Net surplus (deficit)	(254,686)	615,242
Depreciation and Amortisation	731,739	570,093
Net write-down of non-financial assets	180,879	-
Loss on disposal of assets	15,481	5,441
Capital Use Charge	-	5,641
(Increase)/Decrease in net receivables	122,020	436,468
(Increase)/Decrease in prepayments	(338,344)	142,897
Increase/(Decrease) in employee provision	340,024	108,426
Increase/(Decrease) in supplier payables	87,101	(120,022)
Increase/(Decrease) in Other payables	-	(35,977)
Increase/(Decrease) in Non Int. Bearing Liabilities	(782,706)	(782,705)
Net cash from operating activities	101,508	945,504

Note 13: Contingent Liabilities and Assets*Quantifiable contingencies*

The amount of the contingent liability recognised relates to an amount of lease outgoings incurred by the Commission, and subsequently charged out at full recovery to a sub-lessee in contradiction of the lease arrangement. The charges raised are under examination by the parties concerned and the amount shown as a contingent liability represents an offer made by the Commission to the sub lessee, and expected to be accepted by the sub lessee, in full settlement of the debt.

Unquantifiable contingencies

As at 30 June 2004 the Commission (or officers of the Commission) were named as respondents in eleven applications before the High Court, Federal Court and Administrative Appeals Tribunal. It is not possible to estimate the amounts of the eventual payment that may be required in relation to these claims, though it is not common for costs to be awarded against the Commission (or its officers) in these matters.

There are four Intervention matters before the courts. It is unlikely that a costs order will be made against the Commission

Note 14: Executive Remuneration

The number of Executives who received or were due to receive total remuneration of \$100,000 or more:

	2004 Number	2003 Number
\$100,000-\$109,999	2	-
\$110,000-\$119,999	6	-
\$120,000-\$129,999	1	-
\$130,000-\$139,999	1	-
\$140,000-\$149,999	1	-
\$190,000-\$199,999	1	-
\$200,000-\$209,999	-	1
\$210,000-\$219,999	1	1
\$220,000-\$229,999	-	1
\$230,000-\$239,999	1	1
\$250,000-\$259,999	1	1
The aggregate amount of total remuneration of executives shown above:	\$2,186,065	\$1,132,041

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	2004 \$	2003 \$
Note 15: Remuneration of Auditors		
Financial statement audit services are provided free of charge to the Commission		
The fair value of the services provided was:	35,000	35,000
<i>Other services</i>		
Amount paid in relation to a special purpose audit	-	3,500
Total	<u>35,000</u>	<u>38,500</u>
Note 16: Average Staffing Levels	2004 Number	2003 Number
The average staffing levels for the Commission during the year were:	<u>98</u>	<u>95</u>

Note 17: Financial instruments

Note 17A: Interest Rate Risk

Financial Instrument	Notes	Floating interest rate		Fixed interest rate		Non-interest bearing		Total		Weighted average effective interest rate	
		2004	2003	2004	2003	2004	2003	2004	2003	2004	2003
		\$	\$	\$	\$	\$	\$	\$	\$		
Departmental Financial Assets											
Cash at bank	6A	-	-	-	-	2,276,456	2,500,017	2,276,456	2,500,017	n/a	2.0%
Receivables for goods and services (gross)	6B	-	-	-	-	432,599	554,619	432,599	554,619	n/a	n/a
Total Financial Assets		-	-	-	-	2,709,055	3,054,636	2,709,055	3,054,636		
Financial Liabilities (Recognised)											
Lease incentives	8A	-	-	-	-	-	782,706	-	782,706	n/a	n/a
Trade creditors	10A	-	-	-	-	343,307	256,206	343,307	256,206	n/a	n/a
Total Financial Liabilities (Recognised)		-	-	-	-	343,307	1,038,912	343,307	1,038,912		

Note 17B: Net Fair Values of Financial Assets and Liabilities

	Notes	2004		2003	
		Total Carrying amount	Aggregate Net Fair value	Total Carrying amount	Aggregate Net Fair value
		\$	\$	\$	\$
Agency Financial Assets					
Cash at bank	6A	2,276,456	2,276,456	2,500,017	2,500,017
Receivables for goods and services (net)	6B	432,599	432,599	554,619	554,619
Total Financial Assets		<u>2,709,055</u>	<u>2,709,055</u>	<u>3,054,636</u>	<u>3,054,636</u>
Financial Liabilities (Recognised)					
Lease incentives	8A	-	-	782,706	782,706
Trade Creditors	10A	343,307	343,307	256,206	256,206
Total Financial Liabilities (Recognised)		<u>343,307</u>	<u>343,307</u>	<u>1,038,912</u>	<u>1,038,912</u>

The net fair values of cash and non-interest bearing monetary financial assets approximate their carrying amounts.

The net fair values for trade creditors are approximated by their carrying amounts.

Note 17C: Credit risk exposures

The Commission's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Financial Position.

The Commission has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

Note 18: Appropriations**Cash basis acquittal of appropriations from Acts 1 and 3**

Particulars	Departmental Output
Year ended 30 June 2004	\$
Balance carried from previous year	2,500,017
Appropriation Act (No.1) 2003-04 - basic appropriation	11,936,000
Appropriation Act (No.3) 2003-04 - basic appropriation	-
Departmental Adjustments by the Finance Minister	-
Amounts from Advance to the Finance Minister	-
Refunds credited (FMAA s30)	-
Appropriations to take account of recoverable GST (FMAA s30A)	439,892
Annotations to 'net appropriations' (FMAA s31)	2,816,315
Adjustment of appropriations on change of entity function (FMAA s32)	-
Appropriation lapsed or reduced	-
Total Appropriations available for payments	17,692,224
Payments made (GST inclusive)	15,477,768
Appropriations credited to Special Accounts	-
Balance carried to next year	2,214,456
<i>Represented by:</i>	
Cash	2,214,456
Add: Appropriations receivable	-
Add: Receivables - Goods and Services - GST receivable from customers	-
Add: Return of contributed equity	-
Less: Other payables - Net GST payable to the ATO	-
Less: Payable - Suppliers - GST portion	-
Add: Savings in Portfolio Additional Estimates Statement	-
Total	2,214,456

Particulars	Departmental Output
Year ended 30 June 2003	\$
Balance carried from previous year	1,917,346
Total annual appropriation	15,026,425
Available for payments	16,943,771
Payments made	14,443,754
Appropriations credited to Special Accounts	-
Balance carried to next year	2,500,017
<i>Represented by:</i>	
Cash	2,500,017
Add: Appropriations receivable	-
Add: Receivables - Goods and Services - GST receivable from customers	-
Add: Investment in term deposit	-
Add: Receivables - Net GST receivable from the ATO	-
Less: Payable - Suppliers - GST portion	-
Total	2,500,017

Cash Basis Acquittal of Appropriations from Acts 2 and 4

Particulars	Non-operating				Total
	Equity	Loans	Previous years' outputs	Admin assets and liabilities	
Year ended 30 June 2004	\$	\$	\$	\$	\$
Balance carried from previous year	-	-	-	-	-
Appropriations for reporting period (Act 2)	-	-	-	-	-
Appropriations for reporting period (Act 4)	93,000	-	-	-	-
Adjustments by the Finance Minister	-	-	-	-	-
Amounts from Advance to the Finance Minister	-	-	-	-	-
Refunds credited (FMA s 30)	-	-	-	-	-
GST Credits (FMA s 30A)	-	-	-	-	-
Transfers to/from other agencies (FMA s 32)	-	-	-	-	-
Administered appropriation lapsed	-	-	-	-	-
Available for payments	93,000	-	-	-	93,000
Payments made	- 31,000	-	-	-	- 31,000
Appropriations credited to Special Accounts	-	-	-	-	-
Balance carried to next year	62,000	-	-	-	62,000
<i>Represented by:</i>					
Cash	62,000	-	-	-	62,000
Appropriations receivable	-	-	-	-	-
Total	62,000	-	-	-	62,000

Note 19 - Reporting of outcomes

The Commission has one outcome:
"An Australian society in which the human rights of all are respected, protected and promoted".

Note 19A: Net cost of outcome delivery

	2004 \$	2003 \$
Total departmental expenses	14,823,239	13,476,827
Total departmental costs recovered from the non-government sector	145,304	1,127,602
Other departmental external revenues		
Interest	-	41,613
Goods and services from related entities	2,452,249	1,750,636
Total Other departmental external revenues	2,452,249	1,792,249
Net cost of outcome	12,225,687	10,556,976

Note 19B: Major classes of departmental revenues and expenses by output groups and outputs

The Commission has one output (1.1):
"Australians have access to independent human rights complaint handling and public enquiries processes and benefit from human rights education, promotion and monitoring, and compliance activities."

Departmental expenses	2004	2003
Employees	8,084,452	7,518,635
Suppliers	5,712,721	5,382,439
Depreciation and amortisation	731,739	570,093
Other expenses	294,328	5,660
Total Departmental expenses	14,823,239	13,476,827

	2004 \$	2003 \$
Funded by:		
Revenues from government	11,971,000	11,172,000
Sales of goods and services	2,597,553	2,878,238
Other non-taxation revenues	-	41,831
Total Departmental revenues	14,568,553	14,092,069

Note 20 - Special Accounts

HREOC has an Other Trust Monies Special Account and a Services for other Governments and Non-Agency Bodies Account. Both accounts were established under Section 20 of the Financial Management and Accountability Act 1997. For the year ended 30 June 2004 both of these accounts had nil opening and closing balances and there were no transactions debited or credited to them in the 2003/2004 financial year.

The purpose of the Other Trust Monies Special Account is for expenditure of monies temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth. Any money held thus is special public money under section 16 of the FMA Act 1997.

The purpose of the Services for other Governments and Non-Agency Bodies Account is for expenditure in connection with services performed on behalf of other Governments and bodies that are not Agencies under the Financial Management and Accountability Act 1997.



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