

# Chapter 5

## Legal Services

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### 5.1 RESPONSIBILITIES AND OVERVIEW

The Legal Section provides legal advice and representation to HREOC, the President and Commissioners. Its work includes:

- Advising on human rights, discrimination and other laws relevant to the work of HREOC;
- Preparing notices and reports under the Human Rights and Equal Opportunity Commission Act (HREOCA) concerning complaints of breaches of human rights or discrimination in employment;
- Representing HREOC in proceedings in which it intervenes to make submissions about human rights issues;
- Representing Commissioners as *amicus curiae* in unlawful discrimination proceedings;
- Legal education and promoting awareness of developments in human rights and discrimination law;
- Representing HREOC in external litigation such as review proceedings under the *Administrative Decisions (Judicial Review) Act 1977* (Cth);
- Preparing and advising on submissions to government and law reform bodies concerning the human rights implications of changes or proposed changes to the law. (A list of these submissions can be found in Chapter 3 of this report, Monitoring Human Rights.)
- Assisting HREOC to consider applications for exemptions under the Sex Discrimination Act and Age Discrimination Act;
- Responding on behalf of HREOC to applications for access to information under the *Freedom of Information Act 1982* (Cth); and
- Assisting in international technical assistance work undertaken by HREOC.

## **5.2 REPORTS CONCERNING BREACHES OF HUMAN RIGHTS OR DISCRIMINATION IN EMPLOYMENT MADE UNDER THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION ACT**

The Human Rights and Equal Opportunity Commission Act gives HREOC the function of inquiring into complaints concerning breaches of human rights or discrimination in employment. HREOC attempts to resolve such complaints through conciliation where appropriate. If the matter is not resolved through conciliation and the President is satisfied that a breach of human rights or an act of discrimination has occurred, the President reports on the matter to the federal Attorney-General. The President can make recommendations to compensate for loss or injury suffered by the complainant, but these are not legally enforceable.

Between 1 July 2006 and 30 June 2007, the President reported to the Attorney-General on one matter.

### **5.2.1 HREOC Report No. 36**

#### ***Breach of Ms CD's human rights at the Curtin Immigration Reception and Processing Centre***

In this case, the President found that the Commonwealth had acted in breach of the human rights of Ms CD, a person detained at the Curtin Immigration Reception and Processing Centre (IRPC). Amnesty International Australia brought the complaint on behalf of Ms CD.

The President found that the Commonwealth continued to accommodate Ms CD in the Charlie Compound of the Curtin IRPC despite being informed of her complaints that she was being harassed by other detainees since approximately September 2001. In particular, on 19 June 2002 the Commonwealth was informed of Ms CD's allegation that another detainee attempted to sexually assault her and on 28 July 2002 the Commonwealth was informed of Ms CD's allegation that another (different) detainee had physically assaulted her. Ms CD was eventually transferred out of the Curtin IRPC on 7 September 2002.

The President also found that from at least 5 June 2002 until 7 September 2002, Ms CD and her daughter were the only females detained in Charlie Compound amongst a large group of male detainees. Ms CD and her daughter were also members of a religious minority amongst that larger group.

The President concluded that the Commonwealth failed to provide Ms CD with a safe place of detention and that this failure constituted a breach of her human right to be treated with humanity and respect for her inherent dignity while in detention (Article 10.1 of the International Covenant on Civil and Political Rights).

The President recommended that the Commonwealth pay Ms CD compensation of \$15 000. He also recommended that, in addition to the general efforts made by the then Department of Immigration and Multicultural Affairs (DIMA) to ensure that all detainees are treated in a culturally sensitive way, DIMA should have particular regard to circumstances in which there may be a history of hostility between certain groups of people, whether for national, cultural, religious or ethnic reasons. The President

held that appropriate action should be taken in such cases, for example, by providing separate accommodation for those detainees. In particular, a detainee should not be accommodated with groups who are related to the detainee's claims of persecution.

The Commonwealth paid the recommended compensation to Ms CD. DIMA also indicated that they will take the recommendations into consideration in developing their new client placement model and review of their operational procedures. DIMA will also ensure that the President's findings are widely circulated to facility managers and the detention services contractor GSL.

The report is available online at: [www.humanrights.gov.au/legal/HREOCA\\_reports/hrc\\_report\\_36.html](http://www.humanrights.gov.au/legal/HREOCA_reports/hrc_report_36.html)

### 5.3 INTERVENTIONS

HREOC has a statutory function of intervening, with the leave of the Court, in proceedings that involve issues of human rights, equal opportunity in employment and age, race, sex, marital status, pregnancy and disability discrimination.<sup>2</sup>

HREOC's intervention functions are contained in:

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

In deciding whether to seek leave to intervene, HREOC considers whether the human rights or discrimination issues are significant and central to the proceedings and whether these issues are being addressed adequately by the parties to the proceedings.

The guidelines that HREOC uses to determine if it will seek leave to intervene in a matter are publicly available on HREOC's website at [www.humanrights.gov.au/legal/submissions\\_court/](http://www.humanrights.gov.au/legal/submissions_court/)

Through its interventions, HREOC seeks to promote human rights principles and encourage the development of Australian law in line with human rights standards. The intervention functions also serve an important educative purpose, by bringing a human rights perspective to the attention of courts and the parties to litigation. HREOC seeks to further pursue this educative purpose by placing all of its submissions on its website. These are available at: [www.humanrights.gov.au/legal/submissions\\_court/intervention/intervention\\_info.html](http://www.humanrights.gov.au/legal/submissions_court/intervention/intervention_info.html)

In 2006–07, HREOC considered nine potential intervention matters.

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<sup>2</sup> HREOC's Commissioners also have a function to appear as 'amicus curiae' in unlawful discrimination proceedings. The exercise of this function is considered in section 5.5 below.

- In two of these cases, HREOC was requested by one of the parties to consider intervention. In the remaining seven cases, HREOC considered the matters of its own motion.
- HREOC made an application to intervene in two matters, detailed below.

### 5.3.1 Oceania Judo Union Inc v Clarke

Mr Anthony Clarke claimed that he was discriminated against on the basis of his disability by the Oceania Judo Union (OJU) which had excluded him from a judo tournament held in Queensland because he is blind. Before the Federal Magistrates Court, OJU argued that the appropriate jurisdiction to hear the matter was New Zealand, where OJU is incorporated and where the relevant decision to exclude Mr Clarke from the competition was made.

Federal Magistrate Raphael rejected the argument of OJU and held that the Court had jurisdiction to hear the matter: *Clarke v Oceania Judo Union* [2007] FMCA 292. OJU appealed from that decision.

The Acting Disability Discrimination Commissioner appeared as *amicus curiae* before the Federal Magistrates Court (see section 5.5.3 below) and HREOC sought leave to intervene in the appeal before the Federal Court.

Before HREOC's application for leave to intervene was decided, the matter settled at mediation. As a result, the appeal and Mr Clarke's substantive application were discontinued. The settlement agreed between the parties is confidential.

### 5.3.2 Qantas Airlines Ltd v Gama

HREOC has applied to intervene in this matter, which is an appeal by Qantas Airways Ltd (Qantas) and cross appeal by Mr Gama from a decision of Raphael FM: *Gama v Qantas Airways Ltd (No.2)* [2006] FMCA 1767.

Raphael FM found that Mr Gama had been discriminated against by Qantas on the basis of his race and disability. His Honour did not, however, find in favour of Mr Gama in relation to all of his allegations of discrimination.

HREOC has sought leave to intervene to address the following four issues arising in the appeal:

1. The application of the test in *Briginshaw v Briginshaw* (1938) 60 CLR 336 concerning the standard of evidence required to satisfy the burden of proof in civil cases;
2. The proper approach to drawing inferences of discrimination;
3. The application of the *Limitations Act 1969* (NSW) to proceedings brought under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth); and
4. The application of *Forbes v Australian Federal Police (Commonwealth of Australia)* [2004] FCAFC 95 to issues of disability discrimination.

At 30 June 2007, HREOC's application for leave had not yet been heard by the Court and the appeal had not yet been set down for hearing.

## 5.4 INTERVENTION MATTERS COMMENCED BEFORE 2006–07

### 5.4.1 Proceedings in the Family Court of Australia concerning medical treatment for a child

The applicants in this matter seek an order from the Family Court that they may lawfully authorise the medical treatment of their child in respect of the condition of transsexualism without an order of a court. Such treatment is proposed to include both reversible and irreversible treatment of a hormonal nature. The proceedings will therefore raise issues that include the scope of parental power to consent to such treatment. In the alternative, the parents seek an order that the court authorise such treatment and empower them to provide the authorities and consents that are necessary for the treatment to proceed.

HREOC is of the view that the matter raises important issues of human rights, especially in relation to those rights recognised in the *Convention on the Rights of the Child*. HREOC was granted leave to intervene on 7 March 2006. The matter was ongoing on 30 June 2007.

Note that pursuant to section 121 of the *Family Law Act 1975* (Cth), HREOC is unable to disclose any details that may disclose the identities of the parties to the proceedings.

### 5.4.2 Inquest into the death of Mulrunji

HREOC played an active role in the Inquest conducted by the Queensland Deputy State Coroner into the death in custody of Mulrunji on Palm Island in November 2004. HREOC was involved in the proceedings from the outset and cross-examined witnesses and made submissions on a wide range of human rights issues.

In particular, HREOC raised human rights concerns relating to the policing, arrest and detention of Indigenous people. HREOC's submissions particularly focused on the implementation of the recommendations of the 'Royal Commission into Aboriginal Deaths in Custody' and encouraged the Deputy State Coroner to make comments pursuant to her functions under the *Coroners Act 2003* (Qld) that may assist to prevent further deaths. HREOC's final submissions listed 40 recommendations on systemic issues that were designed to protect human rights.

On 27 September 2006 the Deputy State Coroner delivered her findings. The Coroner adopted all of HREOC's 40 recommendations. The Coroner sent her comments to the Queensland Attorney-General, the Director-General and the Minister of government with responsibility for police and to the Commissioner for Police.

The Queensland Government responded to the Coroner's comments on 2 November 2006. The response indicated that the Government accepted almost all of the Coroner's comments. While many of the responses reflected only an 'in principle' agreement, many others indicated concrete action being taken as a result of the recommendations.

HREOC's submissions to the Mulrunji inquest are available online as follows:

- *Submissions seeking leave and on the scope of the inquest:*  
[www.humanrights.gov.au/legal/submissions\\_court/intervention/mulrunji\\_matters\\_for\\_argument.html](http://www.humanrights.gov.au/legal/submissions_court/intervention/mulrunji_matters_for_argument.html)
- *Submissions on the powers of the Coroner to make comment:*  
[www.humanrights.gov.au/legal/submissions\\_court/intervention/mulrunji\\_power.html](http://www.humanrights.gov.au/legal/submissions_court/intervention/mulrunji_power.html)
- *Final submissions:*  
[www.humanrights.gov.au/legal/submissions\\_court/intervention/mulrunji.html](http://www.humanrights.gov.au/legal/submissions_court/intervention/mulrunji.html)

The findings of the Deputy State Coroner are available online at:  
[www.justice.qld.gov.au/courts/coroner/findings/mulrunji270906.doc](http://www.justice.qld.gov.au/courts/coroner/findings/mulrunji270906.doc)

## 5.5 AMICUS CURIAE

Section 46PV of the Human Rights and Equal Opportunity Commission Act gives HREOC Commissioners an *amicus curiae* ('friend of the court') function. The role of an *amicus curiae* is to provide special assistance to the court in resolving issues raised by the case and to draw attention to aspects of the case that might otherwise have been overlooked.

Under this function, 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 seek the permission of the Federal Court or Federal Magistrates Court, to assist the court as *amicus curiae* in the hearing of unlawful discrimination applications.

Guidelines for the exercise of this function are publicly available on HREOC's website at [www.humanrights.gov.au/legal/submissions\\_court/](http://www.humanrights.gov.au/legal/submissions_court/)

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

During 2006–07, Commissioners were granted leave to appear as *amicus curiae* in five matters, which are summarised below.

### 5.5.1 Vickers v NSW Ambulance Service

This matter concerned an application by Mr Vickers for employment with the NSW Ambulance Service as a trainee ambulance officer. Mr Vickers' employment application was rejected because he has insulin dependant diabetes.

On the evidence, Raphael FM found that there was not a real risk to the safety or health of Mr Vickers or others arising from his diabetes. This was because Mr Vickers was able to effectively manage his diabetes and the risk of hypoglycaemic incident was very low. The manner in which Mr Vickers managed his diabetes would not interfere with his ability to perform the inherent requirements of the job. Accordingly, his Honour found that the respondent had unlawfully discriminated against Mr Vickers,

contrary to section 15(1)(b) of the *Disability Discrimination Act 1992* (Cth), and had failed to make out an 'inherent requirements' defence under section 15(4).

Mr Vickers had also alleged that he was discriminated against in the arrangements made for assessing his application, in breach of section 15(1)(a). The Court rejected this claim. Raphael FM found that Mr Vickers' individual circumstances were considered and there was no evidence of a policy to exclude people with diabetes. Rather, the doctors involved genuinely and independently held the view that Mr Vickers was not suitable for the job.

The Court made the following orders:

- \$5 000 in general damages. This was the sum sought by the applicant and his Honour indicated that he would have awarded more for the discrimination if the assessment 'had been left at large';
- That Mr Vickers' application proceed to the next stage of selection, namely probity screening; and.
- Costs of \$5 000 (a sum agreed prior to the hearing).

The Acting Disability Discrimination Commissioner was granted leave to make submissions as *amicus curiae* in the proceedings. A copy of the Commissioner's submissions is available online at:

[www.humanrights.gov.au/legal/submissions\\_court/amicus/damien\\_vickers.html](http://www.humanrights.gov.au/legal/submissions_court/amicus/damien_vickers.html)

The Court's decision is available online at:

[www.austlii.edu.au/au/cases/cth/FMCA/2006/1232.html](http://www.austlii.edu.au/au/cases/cth/FMCA/2006/1232.html)

### 5.5.2 Access for All Alliance v Hervey Bay City Council

This matter involved an application by Access for All Alliance (Hervey Bay) Inc (AAA) alleging that a number of bus stops within the Hervey Bay City Council (the Council) area did not comply with the Disability Standards for Accessible Public Transport (DSAPT).

On 2 May 2007, Collier J summarily dismissed the proceedings, accepting the Council's submission that AAA lacked standing to bring the claim. Her Honour concluded that AAA was not a 'person aggrieved' for the purposes of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), primarily because the alleged breach of the DSAPT affected AAA's members, but not AAA itself.

The Acting Disability Discrimination Commissioner was granted leave to make submissions as *amicus curiae* in the proceedings. A copy of the Commissioner's submissions is available online at:

[www.humanrights.gov.au/legal/submissions\\_court/amicus/hervey\\_bay.html](http://www.humanrights.gov.au/legal/submissions_court/amicus/hervey_bay.html)

The Court's decision is available online at:

[www.austlii.edu.au/au/cases/cth/federal\\_ct/2007/615.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2007/615.html)

### 5.5.3 Clarke v Oceania Judo Union Inc

Mr Anthony Clarke claimed that he was discriminated against on the basis of his disability by the Oceania Judo Union (OJU) which had excluded him from a judo tournament held in Queensland because he was blind. OJU made an interlocutory application objecting to the Court's jurisdiction. OJU argued that the appropriate jurisdiction to hear the matter was New Zealand, where OJU is incorporated and where the relevant decision to exclude Mr Clarke from the competition was made.

Raphael FM dismissed the respondent's application, holding that where relevant act/s of discrimination occurred within Australia, it is irrelevant where the actual decision to do that act/those acts was made. In reaching this finding, the Court agreed with the submissions of the Acting Disability Discrimination Commissioner, who appeared at the interlocutory hearing as *amicus curiae*.

The substantive matter was subsequently resolved at mediation.

The Commissioner's submissions are available online at:  
[www.humanrights.gov.au/legal/submissions\\_court/amicus/anthony\\_clarke.html](http://www.humanrights.gov.au/legal/submissions_court/amicus/anthony_clarke.html)

The Court's decision is available at:  
[www.austlii.edu.au/au/cases/cth/FMCA/2007/292.html](http://www.austlii.edu.au/au/cases/cth/FMCA/2007/292.html)

### 5.5.4 Smith v Tower Australia Ltd

The applicant in this matter claims that he has been discriminated against on the basis of current and non-ongoing disabilities by the respondent's refusal to provide him with income protection insurance. The applicant also claims that he was refused income protection insurance even with his disabilities excluded from the policy.

The respondent denies it has discriminated against the applicant and relies on sections 46(1)(f) and 46(1)(g) of the *Disability Discrimination Act 1992* (the DDA). These subsections provide that it is not unlawful for a person to discriminate against another on the grounds of their disability in the provision of insurance (amongst other things) if:

- the discrimination is reasonably based on actuarial or statistical data and other relevant factors; or, where there is no such data,
- the discrimination is reasonable having regard to any other relevant factors.

The Acting Disability Discrimination Commissioner has been granted leave to appear as *amicus curiae* in the proceedings before the Federal Magistrates Court. The Commissioner intends to make submissions on the interpretation of sections 46(1)(f) and 46(1)(g) of the DDA and, in particular, the circumstances in which it may be reasonable for an insurer to rely on actuarial or statistical data to refuse an insurance policy on the grounds of disability.

At 30 June 2007, the matter has yet to be listed for hearing.



### 5.5.5 Webb v Child Support Agency

In this matter, the applicant claims to have been discriminated against on the basis of his disability by the Child Support Agency (the CSA). The applicant has mobility impairment and uses a manual wheelchair.

While the applicant has made a number of claims of discrimination, the Acting Disability Discrimination Commissioner made submissions as *amicus curiae* only on that aspect of the claim concerning access to premises.

The applicant claims that he was unable to gain access to the CSA's premises via its main street entrance. The main entrance of the building in which CSA has its offices requires a person to use the stairs which lead from the street to the front entrance. Mr Webb claims that this constitutes indirect discrimination.

The respondent denies it has discriminated against the applicant in relation to access to premises and claims that ramp access is available to the building. The respondent also claims that as lessee of premises with the building, it cannot be held liable for accessibility problems with the building over which it has no control.

The matter was heard before the Federal Magistrates Court on 12–14 June 2007.

A report from an expert on disability access was obtained by the Commissioner and tendered at the hearing. This report concluded that the building in which CSA's premises are located is not compliant with the Building Code of Australia or the Australian Standards, being documents which provide technical specifications for buildings. The Commissioner submitted that these documents are useful tools in determining whether discrimination has occurred, though they are not determinative of the issue.

At 30 June 2007 the Court had reserved its decision.

HREOC's submissions are available online at:  
[www.humanrights.gov.au/legal/submissions\\_court/amicus/webb20070521.html](http://www.humanrights.gov.au/legal/submissions_court/amicus/webb20070521.html)

## 5.6 AMICUS CURIAE MATTERS COMMENCED BEFORE 2006–07

Prior to July 2006, Commissioners had been granted leave to appear as *amicus curiae* in a number of matters that continued into the 2006–07 period.

### 5.6.1 AB v Registrar of Births, Deaths and Marriages

The Sex Discrimination Commissioner was granted leave to appear as *amicus curiae* in these proceedings on 2 May 2006.

The applicant claimed marital status discrimination in the provision of goods and services. The applicant is a post-operative transsexual who applied to alter the record of her sex on her birth registration. The *Births, Deaths and Marriages Registration Act 1996* (Vic) provides that the Registrar cannot make the alteration to the birth registration if the applicant is married. The applicant is married. The Registrar refused the applicant's application.

The submissions of the Sex Discrimination Commissioner addressed a number of issues, including the coverage of marital status discrimination under the Sex Discrimination Act and whether the process of altering the record of sex on a birth registration amounted to the provision of a service under the Sex Discrimination Act.

Heerey J dismissed the application. Although his Honour found that the respondent had refused to provide a service to the applicant, this refusal did not breach the Sex Discrimination Act. This was because the Convention on the Elimination of all forms of Discrimination Against Women, upon which the Sex Discrimination Act is based, deals with marital status discrimination as a form of discrimination against women. The Sex Discrimination Act therefore does not prohibit marital status discrimination per se – it only does so where such discrimination has the effect of denying the equality of women with men.

Heerey J held that the action of the Registrar in refusing to alter the applicant's birth certificate had nothing to do with the applicant being a woman. Had the applicant been a man, the result would have been the same.

HREOC's submissions are available online at:  
[www.humanrights.gov.au/legal/submissions\\_court/amicus/ab.html](http://www.humanrights.gov.au/legal/submissions_court/amicus/ab.html)

The Court's decision is available online at:  
[www.austlii.edu.au/au/cases/cth/federal\\_ct/2006/1071.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/1071.html)

### 5.6.2 Douglas and Others v Queensland and Others

The Aboriginal and Torres Strait Islander and Social Justice Commissioner and Acting Race Discrimination Commissioner (the Social Justice Commissioner) was granted leave on 9 May 2006 to appear as *amicus curiae* in three related cases before the Federal Court. The applicant in each of the matters claims that they were discriminated against on the basis of their race contrary to the *Racial Discrimination Act 1975* (Cth) while employed on missions in Queensland from 1975 until the mid-1980s.

The first of the three cases, *Douglas & Ors v Queensland & Ors*, settled between the parties. Whilst the other two proceedings remain on foot, the hearing dates have been vacated to enable mediation between the parties to continue.

As the hearing was likely to involve a number of Aboriginal witnesses, particularly witnesses who were elderly and from remote parts of Queensland, the Social Justice Commissioner filed submissions on common difficulties faced by Aboriginal witnesses.

A copy of those submissions is available online at:  
[www.humanrights.gov.au/legal/submissions\\_court/amicus/giblet\\_aboriginalwitnesses20mar07.html](http://www.humanrights.gov.au/legal/submissions_court/amicus/giblet_aboriginalwitnesses20mar07.html)

### 5.6.3 Forest v Queensland (Queensland Health)

The applicant has a psychiatric disability and claims that he relies on his two dogs as assistance animals (within the meaning of the DDA) to alleviate his psychological difficulties. The applicant claimed that the respondent discriminated against him in

late 2004 and early 2005 by refusing to provide him access and services at Cairns Base Hospital, and also at Smithfield Community Health Centre while he was accompanied by one or both of his dogs.

The Acting Disability Discrimination Commissioner (the Commissioner) was granted leave by the Federal Court, Queensland, to appear in this matter as *amicus curiae*.

Collier J found that:

- The respondent discriminated against the applicant within the meaning of sections 6 (indirect discrimination) and 9(1)(f) (guide dogs/assistance animals) of the DDA; and
- The respondent's conduct was unlawful within the meaning of sections 23(1)(a), 23(1)(b) (access to premises) and 24(1)(a) and 24(1)(b) (goods, services and facilities) of the DDA.

In reaching her conclusions, Collier J accepted the Commissioner's submissions on a number of points, including in relation to the meaning of 'assistance animal' under section 9(1)(f) the DDA.

The Court in this case commented on the need for reform of the assistance animals provision of the DDA to provide greater certainty and clarity both for users of assistance animals and for other relevant parties. These comments are consistent with advice which HREOC has previously provided to Government.

The Commissioner's submissions are available online at:  
[www.humanrights.gov.au/legal/submissions\\_court/amicus/forest.html](http://www.humanrights.gov.au/legal/submissions_court/amicus/forest.html)

The Court's decision can be accessed at:  
[www.austlii.edu.au/au/cases/cth/federal\\_ct/2007/936.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2007/936.html)

## 5.7 REVIEW OF ADMINISTRATIVE DECISIONS MADE BY HREOC

People affected by administrative decisions made by HREOC may be entitled to seek a review of those decisions before a court or tribunal. HREOC staff are also sometimes party to such proceedings.

### 5.7.1 Judicial review

Judicial review of HREOC 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, HREOC (as decision maker) usually does not play an active role in those proceedings. Instead, HREOC agrees to be bound by the decision of Court and leaves the substantive parties (usually the complainant and respondent to a complaint that was before HREOC) to argue the matter in Court.

HREOC was a respondent to 10 applications brought under the Administrative Decisions (Judicial Review) Act in 2006–07.

### **5.7.2 Merits review**

Some decisions of HREOC or HREOC staff (acting under instruments of delegation) are subject to merits review by the Administrative Appeals Tribunal. These 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, section 55 of the Disability Discrimination Act and section 44 of the Age Discrimination Act.

During the reporting period, there were three applications for merits review of HREOC decisions under the Freedom of Information Act.

## **5.8 INTERNATIONAL TECHNICAL ASSISTANCE WORK**

### **5.8.1 China-Australia Human Rights Technical Cooperation Program**

Two activities conducted by HREOC in China as part of the China-Australia Human Rights Technical Cooperation Program (HRTCP) were assisted by participation of a senior lawyer from HREOC. The HRTCP is reported on in Chapter 11. The activities were the seminar in October 2006 in Urumqi, Xinjiang Autonomous Region, on Economic, Social and Cultural Rights, and the Woman Law Workshop in March 2007 in Haikou City, Hainan Province.

## **5.9 EDUCATION AND PROMOTION**

The Legal Section plays a significant role in human rights legal education and the promotion of human rights principles. This is done in a number of ways, including through publishing regular journal articles, presenting seminar papers and speaking as guest lecturers to university students on discrimination and human rights law issues.

Two of the Legal Section's significant ongoing human rights education projects are summarised below.

### **5.9.1 Federal Discrimination Law 2005**

On 12 May 2005, HREOC launched its publication *Federal Discrimination Law 2005*. The publication was produced by the Legal Section and provides a comprehensive overview of the case law that has been decided in the field of federal unlawful discrimination law. In addition to detailed analysis of discrimination law jurisprudence, the publication also covers issues of practical concern for litigants and practitioners, with chapters on procedural issues, damages, remedies, and costs.

The publication is accessible online via HREOC's website and can be downloaded free of charge. Printed copies of the publication are also available for sale. For details, see [www.humanrights.gov.au/legal/FDL/fed\\_discrimination\\_law\\_05/](http://www.humanrights.gov.au/legal/FDL/fed_discrimination_law_05/)

Throughout 2006–07, the Legal Section published supplements to *Federal Discrimination Law 2005* to take account of recent developments. These supplements are also available as a free download from HREOC's website.

### 5.9.2 Human Rights Law Bulletin and associated seminars

The Legal Section has also continued to publish its *Human Rights Law Bulletin*, providing an update on domestic and international human rights law. The *Human Rights Law Bulletin* is published on HREOC's website and distributed through the Legal Section's email list (see [www.humanrights.gov.au/legal/ mailing.html](http://www.humanrights.gov.au/legal/ mailing.html) to subscribe).

In connection with each new edition of the *Human Rights Law Bulletin*, the Legal Section organises a seminar on a topic of current interest in domestic or international human rights law. The seminars and speakers for 2006–07 were as follows:

#### ***13 November 2006: All under control? Recent issues in Australia's legal response to terrorism***

This seminar focused on developments in Australia's anti-terrorism laws and the human rights impacts of these laws. The panel of three speakers comprised the Hon. Philip Ruddock MP, Commonwealth Attorney-General, the Hon. John von Doussa QC, HREOC President, and Professor George Williams, Director of the Gilbert + Tobin Centre of Public Law, University of New South Wales (UNSW). The seminar was chaired by Mr Jonathon Hunyor, Director of Legal Services, HREOC.



*Professor George Williams, Director of the Gilbert + Tobin Centre of Public Law, University of New South Wales (UNSW) speaking at the Legal Section's seminar 'All under control? Recent issues in Australia's legal response to terrorism'.*

#### ***9 March 2007: Stolen Wages – the way forward***

This seminar focused on the issue of Indigenous Stolen Wages and advancements in the mechanisms for repayment. The panel of three speakers comprised Senator Russell Trood, member of the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into Stolen Wages, Ms Robynne Quiggin, panel member of the NSW Aboriginal Trust Fund Repayment Scheme, and Mr Jonathon Hunyor, Director of Legal Services, HREOC. The seminar was chaired by the Hon. John von Doussa QC, HREOC President.

#### ***4 June 2007: Native Title – developments in case law and practice***

This seminar looked at recent developments in case law and practice in the area of Native Title law. The panel of two speakers comprised Mr Sean Brennan, Project Director of the Indigenous Rights, Land and Governance Project at the Gilbert + Tobin Centre of Public Law, UNSW, and Mr Kevin Smith, Queensland State Manager of the National Native Title Tribunal. The seminar was chaired by Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner.

