

# Human Rights and Equal Opportunity Commission

## Annual Report 2005—2006

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



Human Rights and  
Equal Opportunity  
Commission

Human Rights - everyone's responsibility

# 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 2005–2006***



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**ISSN 1031–5098**

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The 2005–06 Annual Report is available on the Commission's website at:  
[www.humanrights.gov.au/annrep05\\_06/](http://www.humanrights.gov.au/annrep05_06/)



18 September 2006

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 2006, 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,

A handwritten signature in black ink, which appears to read "John von Doussa". The signature is written in a cursive style with a large, sweeping initial "J".

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

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# Significant achievements

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- The National Inquiry into Discrimination against Same-Sex Couples regarding Financial and Work-Related Entitlements – *Same-Sex: Same Entitlements* was launched in April 2006. As at 30 June 2006, the Inquiry had received 340 written submissions.
- The Final Report of the National Inquiry into Employment and Disability *Workability II: Solutions* was tabled by the Attorney-General in federal parliament on 14 February 2006.
- The Commission has commenced an Indigenous Health Equality campaign that aims to eliminate the life expectancy gap between Indigenous and non-Indigenous peoples within a generation.
- The Commission released an overview paper in June 2006 of research and findings on domestic violence in Indigenous communities.
- *Rights of Passage – A Dialogue with Young Australians about Human Rights* was launched in November 2005. *Rights of Passage* provides current information about young people's perceptions of their enjoyment of human rights in Australia.
- The *Striking the Balance: Women, men, work and family* project has conducted 37 consultations around the country and held a roundtable on the issues with stakeholders from academia, industry and the community. It continues to attract significant media attention.
- The Commission has developed culturally specific education materials on pregnancy, potential pregnancy and breastfeeding discrimination in the workplace for Indigenous women.
- The Commission and federal Attorney-General Philip Ruddock launched the magazine and CD *Voices of Australia – 30 years of the Racial Discrimination Act 1975-2005* in October 2005.
- The fourth edition of *Face the Facts* – the Commission's most popular publication dealing with myths and misconceptions about Indigenous people, migrants and refugees - was released in October 2005.
- The Complaint Handling Section finalised 93 percent of matters within 12 months. 39% were finalised by conciliation.
- The Commission developed *Information for Students*, an online education resource for secondary school students to help them gain an awareness and understanding of human rights.

- The Commission has made a number of submissions to parliamentary committees on issues including anti-terrorism laws, migration laws, Family Law Act amendments.
- Five reports of breaches of the Human Rights and Equal Opportunity Commission Act were completed and the Commission was granted leave to intervene in five matters.
- Significant progress was made during 2005–06 towards a possible international convention on human rights and disability through a working group of the United Nations General Assembly. The Commission has continued to participate as part of the Australian Government delegation.
- Usage of the Commission’s web site has increased by 52 percent since 2004–05. In 2005–06 there were approximately **8,371,613 page views** on the server. This equates to approximately **71,779,044 hits** on the site in total.
- In March 2006, the Commission received an award to recognise long term support of the Jobsupport Program, which supports staff with intellectual disabilities in the workplace. The award recognises a staff member’s 15 years of employment with the Commission.



# Statement from the President

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This Annual Report is evidence of the vital role that the Commissioners and staff at the Human Rights and Equal Opportunity Commission (the Commission) play in promoting and protecting human rights. In the last year, the Commission has not shied away from the big issues.



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

We have made important contributions to debates about counter-terrorism laws, welfare to work and industrial relations reforms, violence in Indigenous communities and Australia's treatment of asylum seekers. We have launched a national inquiry into discrimination against same-sex couples. Through our legal section we have intervened or appeared as *amicus curiae* in a number of cases with important human rights implications. The Commission has also prepared numerous submissions to parliamentary committees on the human rights impact of proposed legislation. We continue to work with Australia's Arab and Muslim communities to develop strategies to counter vilification and violence.

Our complaints handling section has once again exceeded its performance indicators finalising 93 percent of complaints within 12 months and conciliating outcomes in 39 percent of them. Importantly, 93 percent of parties were satisfied with the service they received.

One of the most challenging human rights issues facing Australia, and indeed all democratic nations, is how to reconcile the need to protect Australians from the threat of terrorism with the need to preserve the human rights principles that lie at the heart of our democracy.

Following the London bombings, the Australian Government introduced the Anti-Terrorism Bill (No.2) 2005. This Bill included provisions for preventative detention orders, control orders and special police powers to stop, search and question people.

The Commission's main concern about the new laws was the absence of judicial oversight and mechanisms for review of the extraordinary new powers the Bill gave to the executive. In public submissions and forums we supported the need to introduce broad-ranging powers to guard against the threat of terrorism. But we also said that these

extraordinary new powers must be accompanied by effective means for review to check that decisions which could potentially violate fundamental rights were necessary and proportionate in the particular circumstances.

As a result of the public discussion and media attention about the new counter-terrorism laws, the Commonwealth Government announced amendments allowing greater judicial involvement and merits review of the most invasive measures. Finding the balance between human rights and national security is an ongoing challenge. There are still aspects of Australia's counter-terrorism laws – such as the proscription regime for terrorist organisations – which we believe would benefit from judicial oversight and merit review mechanisms.

Ultimately, the litmus test for the human rights compatibility of counter-terrorism legislation is proportionality. This was the test adopted this year by the Government-appointed Sheller Inquiry, who accepted the Commission's submission that counter-terrorism laws must be proportionate to the aim of achieving national security.

Focusing public attention on the importance of human rights principles in the policy and law making process is an important part of the Commission's educative function. A crucial element of this education process is the work undertaken by our three Commissioners.

This year the *Striking the Balance* consultations conducted by our Sex Discrimination Commissioner Pru Goward and the Sex Discrimination Unit have fuelled a national debate about how to balance work and family life and divisions of labour between men and women at home and in the workplace. Through her role as Commissioner responsible for Age Discrimination, Pru Goward has also enlivened public debate about challenges facing older workers and promoted public awareness of the *Age Discrimination Act 2004*.

In January 2006 I had the pleasure of welcoming our new Human Rights Commissioner and Acting Disability Discrimination Commissioner Mr Graeme Innes AM. Commissioner Innes, who was previously the Deputy Disability Discrimination Commissioner, steps into the formidable shoes of Dr Sev Ozdowski OAM whose term expired in December 2005.

One of Dr Ozdowski's enduring legacies is his work on mental health. The 2005 *Not for Service Report: Experiences of injustice and despair in mental health care in Australia* produced by the Mental Health Council of Australia and the Brain and Mind Research Institute in collaboration with the Commission shone the spotlight on the crisis in mental health care in Australia. In 2006 the Council of Australian Governments (COAG) agreed to tackle the problems highlighted by the report, announcing additional funding for mental health care of \$1.8 billion over five years.

In April 2006, Commissioner Innes and I launched a national inquiry into discrimination faced by same-sex couples in relation to financial and work related

benefits. The right to non-discrimination and the right to equality before the law are two of the most fundamental principles of human rights law. Yet there is a raft of laws on Australia's books that clearly deny certain rights to gay and lesbian couples.

The inquiry is conducting an audit of all Australian laws that exclude gay and lesbian couples from financial and work-related benefits that heterosexual couples take for granted. Our goal is to identify those discriminatory laws, explain the impact of those laws on real people and recommend changes so the discrimination disappears.

Of course, discriminatory attitudes are often deeply embedded and hard to shake. Overcoming prejudice requires education, leadership and, most importantly, political will. The threat of terrorism has been accompanied by a rising tide of suspicion and fear directed at Australia's Arab and Muslim communities.

If we trace the history of Australia's treatment of migrants we find this fear is little different to the fear that led us to intern members of Australia's German community in World War I. It is a fear born of the unknown and sustained by wild and inaccurate stereotypes that slander the name of Australia's Muslim community. It is a fear that manifests itself in vilification, violence, alienation and anger. It is a fear that discriminates and divides and that we must all work together to dispel.

In this context, I must pay tribute to the work of the Acting Race Discrimination Commissioner Tom Calma and our Race Discrimination Unit, who have sought to work with Arab and Muslim communities and New South Wales and Victoria police to develop lawful strategies to respond to the vilification and vitriol that is all too often directed at Muslim Australians.

Commissioner Calma has also been a pivotal force in addressing and promoting the human rights of Indigenous Australians in his role as the Aboriginal and Torres Strait Islander Social Justice Commissioner. Under his stewardship the Social Justice Unit has produced a ten step plan to address violence in Indigenous communities and paved the way for a national campaign to improve Indigenous health.

Earlier this year I accompanied Commissioner Calma on a visit to Indigenous communities in the Top End. This visit was a powerful reminder of what we already know – that the entrenched deprivation of Indigenous communities is a matter of national shame. It also reinforced the need for governments to take note of Commissioner Calma's 2005 *Social Justice Report* which sets out clear guidelines to make sure the Shared Responsibility Agreement process does not breach human rights.

I am a strong believer in the importance of human rights education and the need to make sure that the Commission's work captures a nationwide audience. One way we try to connect with people is through our Commission website. The website contains a wealth of practical information – popular items include our

guidelines for employees and employers about their rights and obligations under federal discrimination laws. This year the website has received 8,371,613 page views or approximately 70 million hits: twice as many as it did last year.

In 2006 another way we have made ourselves accessible is by holding our Commission meetings in different locations across Australia. This initiative not only allows the Commission to keep regular contact with the state and territory equal opportunity commissions who play host to these meetings but gives us the opportunity to hold forums in different states and territories. These forums are proving to be an excellent way for NGOs and the Commission to explore issues of common concern.

While the Commission's focus is on human rights at home in Australia, our international work is also deserving of recognition. In the last year we have witnessed important reforms in the United Nations. The Human Rights Commission has been abolished and the new Human Rights Council held its first meeting in June.

One of the important questions the reforms raised is what role should National Human Rights Institutions (NHRIs) play in the new Human Rights Council. Through our membership of a working Group established by the Asia Pacific Forum Working Group to consider the role of NHRIs in the new Human Rights Council, the Commission has encouraged the new Council to recognise the vital role that NHRIs play in the human rights field and to make sure that the procedural rules of the Council enable NHRIs to make meaningful contributions to the work of the Council.

The Commission also continues to manage the China-Australia Human Rights Technical Cooperation Program (HRTC), established under the annual Human Rights Dialogue initiated in 1997 between the two governments. Through this program, the Commission works with a number of key Chinese organisations on practical activities aimed at strengthening the protection and promotion of human rights in China. The HRTC program includes activities in both China and Australia and focuses on three main themes: reform of the legal system, rights of women and children and ethnic minority rights.

In the age of global terrorism some argue that the time of human rights has come and gone. In my view, this idea that we must choose between national security and human rights is a dangerous and inaccurate distortion: the only outcome of such an argument is to justify the unjustifiable. Of course, States must take actions to protect their citizens against terrorism as far as possible. Yet these actions must not disproportionately curtail the human rights of those who may be subject to the laws.

Human rights principles are a practical set of minimum standards which can be used by lawmakers to achieve national security without disproportionately limiting fundamental rights and liberties – the very rights that are essential to the maintenance of the rule of law, and ultimately, the sense of security we value so much.

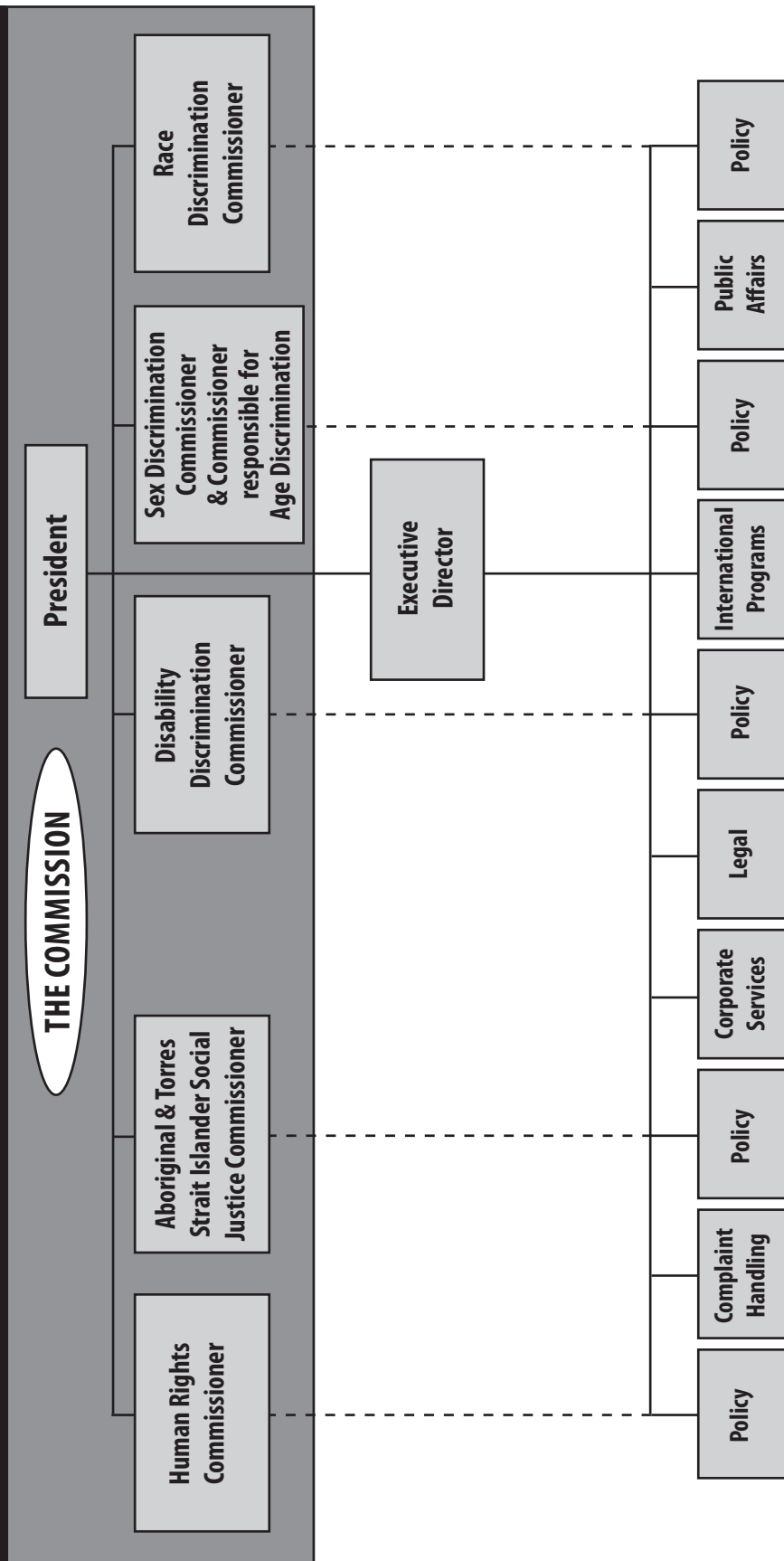
Now, more than ever, we must uphold and cherish the basic principles of mutual respect, tolerance, equality, proportionality and due process. After all, it is by promoting and valuing human rights principles in our everyday life that we lay the foundations for a unified and peaceful future.

Finally, I would like to thank all the staff of the Commission. They have worked tirelessly behind the scenes to ensure the success of the Commission's activities.

A handwritten signature in black ink, reading "John von Doussa". The signature is written in a cursive style with a large, looping initial "J".

John von Doussa QC

# Human Rights and Equal Opportunity Commission Organisational Chart



# Chapter 1: *The Commission*

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## **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 retired from the Court upon his appointment as President of the Commission. 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 practising 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.

He was appointed Chancellor of the University of Adelaide in July 2004.

## **Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination – 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 been nominated by the Commission as the Commissioner responsible for Age Discrimination.

### **Aboriginal and Torres Strait Islander Social Justice Commissioner and acting Race Discrimination Commissioner – Mr Tom Calma**

Mr Tom Calma was appointed as the Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner on 12 July 2004.

Mr Calma is an Aboriginal elder from the Kungarakana tribal group and the Iwaidja tribal group whose traditional lands are south west of Darwin and on the Coburg Peninsula in Northern Territory, respectively. He has been involved in Indigenous affairs at a local, community, state, national and international level and worked in the public sector for over 30 years.

Mr Calma has broad experience in public administration, particularly in Indigenous education programs and in developing employment and training programs for Indigenous people from both a national policy and program perspective.

He served three terms as a Director of Aboriginal Hostels Ltd and as a Company Director for a private tourism and hospitality venture in the Northern Territory.

Until his appointment as Commissioner, Mr Calma managed the Community Development and Education Branch at Aboriginal and Torres Strait Islander Services (ATSIS) where he worked with remote Indigenous communities to implement community-based and driven empowerment and participation programs. In 2003, he was Senior Adviser Indigenous Affairs to the Minister of Immigration, Multicultural and Indigenous Affairs.

From 1995-2002, he worked as a senior Australian diplomat in India and Vietnam representing Australia's interests in education and training. During his time in India, he also oversaw the management of the Australian international education offices in Pakistan, Nepal and Sri Lanka.

He moved to Canberra in 1992 and undertook various assignments, including Executive Director to the Secretary and Senior Executive of the Department of Employment, Education, Training and Youth Affairs (DEETYA).

In the early 1980s, Mr Calma and Indigenous colleagues established the Aboriginal Task Force (ATF) at the Darwin Community College (which later became the Darwin Institute of Technology ), which provided second chance education programs for Indigenous people. He became a senior lecturer and head of the ATF for six years.

## **Human Rights Commissioner and acting Disability Discrimination Commissioner – Mr Graeme Innes, AM**

Lawyer, mediator and company director Graeme Innes was appointed as Human Rights Commissioner and acting Disability Discrimination Commissioner on 15 December 2005 for a five year term.

A human rights practitioner for over 25 years, Mr Innes has worked in equal opportunity in NSW, WA, and nationally. He was Deputy Disability Discrimination Commissioner with the Human Rights and Equal Opportunity Commission from 1999 to 2005.

He has been a Member of the NSW Administrative Decisions Tribunal; the NSW Consumer, Trader and Tenancy Tribunal; and the Social Security Appeals Tribunal; and a Hearing Commissioner with the Human Rights and Equal Opportunity Commission.

Mr Innes has been active in the disability field for thirty years. He was Chair of the Disability Advisory Council of Australia for four and a half years. He was the first blind President of Royal Blind Society of NSW, and the first Chair of Vision Australia, Australia's largest national blindness agency.

Mr Innes has been one of Australia's delegates to the World Blind Union, and the President of that Union's Asia-Pacific region. He is a member of the Australian delegation to the United Nations developing a Convention on the Rights of People with Disabilities.

Mr Innes has been a consultant to organisations such as Westpac, Qantas, and Sydney Water, on disability issues and was a Councillor on Ku-ring-gai local Council.

In 1995 Mr Innes was admitted as a Member of the Order of Australia (AM) for his contribution to the development of Commonwealth disability discrimination legislation. He was a finalist for Australian of the year in 2003.

## 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 Racial Discrimination Act, the Sex Discrimination Act, Disability Discrimination Act and the Age Discrimination Act, and attempts to resolve these matters through conciliation where appropriate. The President may terminate a complaint of alleged unlawful race, sex, age 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.
- Investigates 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 Federal 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 with the permission of the Court.
6. Act as *amicus curiae* (friend of the court) in alleged unlawful discrimination cases that are before the Courts
7. Grant exemptions under certain conditions (Age, Sex and Disability Discrimination Acts).
8. Conduct inquiries into issues of major importance, either on its own initiative, or at the request of the Attorney-General.
9. 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 Chief Executive Officer of the Commission, responsible for its financial and administrative affairs. The President is also responsible for the complaint handling function of the Commission.

### **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 Australian 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 2005–06 \$'000	Actual Expenses 2005–06 \$'000	Budget 2006–07 \$'000
Total Administered Expenses	–	–	–
<b>Prices of Department Outputs</b>	<b>14 452</b>	<b>15 128</b>	<b>15 475</b>
Output Group 1.1 – 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.	14 452	15 128	15 475
<b>Subtotal Output Group 1.1</b>	<b>14 452</b>	<b>15 128</b>	<b>15 475</b>
Revenue from Government (Appropriation) for Departmental Outputs	12 702	12 702	13 725
Revenue from other sources	1 712	2 426	1 712
Total Price of Outputs	14 414	15 128	15 437
<b>Total for Outcome 1 (Total Price of Outputs and Administered Expenses)</b>	<b>14 414</b>	<b>15 128</b>	<b>15 437</b>

	2005–06	2006–07
Staff years (number)	98	95



## Chapter 2:

# ***Human Rights Education and Promotion***

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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 NGOs (including peak bodies), community groups, parliamentarians, business and industry groups, academics and government officers.
- The development of an extensive and accessible website which includes human rights education materials for students, teachers, employers, government, community groups and interested individuals.
- Curriculum-linked human rights education materials for teachers and students.
- Preparation and distribution of plain English publications on human rights and discrimination, and translations of essential Commission information into 14 other languages.
- 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 predicated on the desire 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 informational and education material.

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

In 2005–06, the Commission issued **101 media releases and alerts**, and the President and Commissioners have had **15 opinion pieces** published in major metropolitan newspapers throughout Australia and have conducted approximately **600 media interviews** resulting in a significant range of press, radio and television coverage. Thousands of media inquiries were received.

Commissioners have contributed to public debate on human rights, equality and discrimination issues, including: age discrimination, terrorism legislation, refugees and asylum seekers, racial vilification and discrimination, Indigenous social justice, native title, sex discrimination and sexual harassment in the workplace, paid maternity leave, work and family balance, 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.

President John von Doussa has engaged in public debate on a range of human rights issues including anti-terrorism laws, the plight of David Hicks, migration legislation (especially as it relates to offshore processing of asylum seekers), bill of rights and the death penalty.

President von Doussa and Human Rights Commissioner Graeme Innes have given interviews about the national inquiry announced in April called *Same-Sex: Same Entitlements* – National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits.

Commissioner Innes has promoted the 2006 human rights art and essay competition and has commented on mental health funding, copyright access, accessible transport (especially aircraft and taxis) and the report of the National Inquiry into Employment and Disability, called *WORKability II: Solutions*.

Sex Discrimination Commissioner Pru Goward continues to engage in media debate on issues related to her work/life balance project. She has also spoken about superannuation, equal pay, the WorkChoices legislation, child care and the federal budget, and continues to target womens' magazines to deliver the message about women's rights and work/life balance to a broader audience.

Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, launched his 2005 Social Justice and Native Title reports at public events throughout Australia. There was national media coverage of most of the launches by print media, radio and television.

He has also continued to promote via the media the Indigenous Health Equality Campaign brought about by the 2005 Social Justice and Native Title reports. He has engaged in media debate about other relevant issues such as administrative arrangements for Indigenous affairs, the United Nations Declaration on the Rights of Indigenous Peoples, family violence and abuse in Indigenous communities, Indigenous land use, native title agreements and the Palm Island Inquest.

As acting Race Discrimination Commissioner, Tom Calma did a range of interviews about the *Voices of Australia* project (for the 30th anniversary of the Racial Discrimination Act), racism in sport and issued a statement about violence, intimidation and racism on Sydney's southern beaches, in particular, Cronulla.

Prior to his departure in December 2005, Human Rights and acting Disability Discrimination Commissioner Dr Ozdowski conducted media interviews about the human rights dialogue, funding for mental health, the disability and employment Inquiry, education for people with disabilities and new welfare reforms. Many of his interviews related to the launch of the report *Not for Service: Experiences of injustice and despair in mental health care in Australia* produced by the Mental Health Council of Australia and Brain and Mind Research Institute in association with the Commission.

## Community consultations

Community consultations are an important part of the Commission's human rights education program and provide a valuable 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.

## NGO consultations

The Commission has begun a series of community/NGO fora around Australia to coincide with Commission meetings in each State and Territory. The purpose of these meetings is to share with key community organisations the current work of the Commission and to form networks that will enhance cooperation on national issues of human rights and equal opportunity.

In 2006, Commission meetings and the community fora were held in Adelaide (April) and Brisbane (June). More than 30 representatives of peak non-government organisations and other key community groups attended.

Other consultations include:

- The **acting Disability Discrimination Commissioner and staff** conducted over 100 meetings and made approximately 21 speeches. These included consultations in the course of, and in promoting follow up from,

the National Inquiry into Employment and Disability; the development of standards on access to premises; and continuing contact with a range of industry bodies, including public transport, health service providers, the financial services industry, TV and cinema organisations, local government and educational institutions. The unit has also continued regular contact with representatives from peak and state/territory disability advocacy groups.

- The **Sex Discrimination Commissioner and staff** were involved in approximately 130 meetings and consultations and made over 100 speeches. These consultations have been with community organisations and activists, academics, employers and employer groups, unions, Commonwealth Government officers, federal ministers and other members of Parliament.
- The **Race Discrimination Commissioner and staff** held 134 community consultation meetings. Of these 120 were with the Muslim community in association with the Muslim Community and Police Project and the Muslim Women's Forum. There were eight community forums in Victoria and seven in NSW.
- The **Human Rights Commissioner and staff** conduct meetings, consultations and media interviews on an ongoing basis. For 2005–06, Commissioner Ozdowski was involved in 39 meetings. Commissioner Innes was involved in 35 meetings.
- Over 150 organisations throughout all states and territories attended information sessions on the law and the complaint process run by **Complaint Handling Staff** or were visited by CHS staff. These organisations included community legal centres, Aboriginal legal centres, multicultural organisations, universities, disability groups, professional associations and unions. Locations visited included: Launceston and Hobart in Tasmania; Coffs Harbour, Grafton, Nowra, Moree, Tamworth and Narrabri in New South Wales; Brisbane; Melbourne; Darwin, Adelaide and Canberra.

## **Commission website – [www.humanrights.gov.au](http://www.humanrights.gov.au)**

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

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

Web resources include an online complaints form and information for complainants and respondents, a range of curriculum-linked human rights education resources

for schools, information resources for employers, a legal section which provides full details of legislation and other legal issues, and information on the policy and educational work of the President and Commissioners.

### Major additions and improvements in 2005–06

- Online information sheets published including: *Anti-Discrimination Laws and Employment*.
- Updates and additions to curriculum-linked human rights education resources published online including:
  - ◊ *Information for Students*
  - ◊ *Face the Facts* Education module (2005 update)
- Translations into community languages of the *Complaints guide* and *About HREOC* brochures.
- Implementation on the site of the *Funnelback* search engine developed by CSIRO as part of the search trial managed by the Australian Government Information Management Office (AGIMO), which has delivered significant search improvement.
- Online publication of Commission reports and publications including:
  - ◊ *Social Justice Report 2005*
  - ◊ *Native Title Report 2005*
  - ◊ *Ending Family Violence in Indigenous Communities*
  - ◊ *Face the Facts* (2005 update)
  - ◊ *Workability II: Report of National Inquiry into Disability and Employment*
  - ◊ *Voices of Australia*
  - ◊ *Rights of Passage: a dialogue with young Australians about human rights*
  - ◊ *On the Record – Guidelines for the prevention of discrimination in employment on the basis of criminal record*.
- Publication of speeches and other presentations by the President and Commissioners.
- *Human Rights Medal and Awards* website published to promote the Commission's annual Human Rights Awards competition.
- Publication of a range of legal submissions made to the federal parliament and other bodies by the Commission.

## 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 significantly over the year with approximately **8,371,613 page views** on the server during 2005–06. This equates to approximately **71,779,044 hits** on the site in total. This is an increase of 52 percent on website usage since the previous financial year.

A summary of statistical information is provided below:

Section	Home/Index page views	Section page views
<i>HREOC Homepage</i> www.humanrights.gov.au	500 167	n/a
<i>Aboriginal and Torres Strait Islander Social Justice</i> www.humanrights.gov.au/social_justice	64 056	636 369
<i>Complaints Information</i> www.humanrights.gov.au/complaints_information	34 737	189 290
<i>Disability Rights Homepage</i> www.humanrights.gov.au/disability_rights	96 229	961 653
<i>Human Rights Homepage</i> www.humanrights.gov.au/human_rights	63 743	795 672
<i>Legal Information Homepage</i> www.humanrights.gov.au/legal	22 315	208 062
<i>Racial Discrimination Homepage</i> www.humanrights.gov.au/racial_discrimination	79 270	438 960
<i>Sex Discrimination Homepage</i> www.humanrights.gov.au/sex_discrimination	179 318	622 387
<i>Information for Employers Homepage</i> www.humanrights.gov.au/info_for_employers	26 027	169 860
<i>Publications Homepage</i> www.humanrights.gov.au/publications	25 580	n/a
<i>Media Releases Index</i> www.humanrights.gov.au/media_releases	31 209	450 035
<i>Job Vacancies Homepage</i> www.humanrights.gov.au/jobs	42 442	58 420
<i>Human Rights Education Resources</i>	n/a	909 023

## Human rights education for teachers and students

The Commission has developed a range of human rights education modules specifically for use in upper primary and secondary schools. These modules were developed in consultation with education experts and are linked to the curriculum of each state and territory education system.

### *Philosophy*

The philosophy that guides the Commission's approach to human rights education is based on a critical methodology which balances the learning needs of students with the curriculum requirements of relevant subject areas.

The modules that make up the human rights education program draw students into real-life situations relevant to their own experiences, which can then be explored in the context of Australian and international law.

Such programs have the capacity to develop values of respect and tolerance and encourage young people to consider ways in which they can take an active role to address intolerance and discrimination in the communities in which they live.

Human rights education is promoted through:

1. *Knowledge*: provision of information about human rights and mechanisms for their protection;
2. *Values, beliefs and attitudes*: development of values, beliefs and attitudes, which uphold human rights; and
3. *Action*: encouragement to take action to defend human rights and prevent human rights abuses.

### *Outcomes*

The broad goal of the Commission's human rights education program is to develop in students an awareness of their human rights and responsibilities as members of the community in which they live.

A central aim is to assist young people in their development as informed, active citizens and to encourage values of tolerance, respect and empathy.

### *Content*

Each human rights education module developed by the Commission is linked to the curriculum framework that exists in each state and territory. These curriculum links are clearly outlined in the supporting documentation of each module.

Links have been established to subjects across a range of Key Learning Areas, including:



- Studies of Society and Environment (especially subjects such as History, Aboriginal Studies, Australian Studies, Civics and Citizenship);
- English;
- The Arts.

The education modules also include detailed teaching notes and resources to help teachers deliver an effective teaching and learning program on human rights.

They also provide significant flexibility in how they are delivered – teachers can incorporate individual activities into an existing program or teach the module as a whole.

### **Resources**

The Commission has developed a range of human rights education resources, which focus on issues included in the Commission’s area of statutory responsibility. These include:

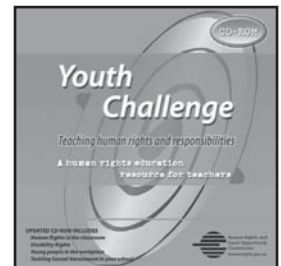
- **Youth Challenge: Teaching Human Rights and Responsibilities**

The Youth Challenge program comprises four units of study:

- ◇ *Human Rights in the Classroom* provides an accessible overview of human rights: what they are, how they have developed and where they apply.
- ◇ *Disability Discrimination – But what about Doug’s rights?* explores the issue of how competing rights can be resolved in a school community environment.
- ◇ *Young People in the Workforce* examines issues of race and sex discrimination, as well as the legal rights and responsibilities of employees and employers in Australia.
- ◇ *Tackling Sexual Harassment* addresses the issue of sexual harassment and how students can identify and address the issue, regardless of whether it happens to them or another student.

- **Bringing Them Home**

This education module introduces students and teachers to some of the key issues in the Commission’s Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. It gives students the opportunity to research issues and engage in debate in an informed way.



- ***Face the Facts: Questions and Answers about Refugees, Migrants and Indigenous People***

This education module provides teaching notes, student activities and worksheets, plus a range of recommended online resources and further reading, to research, analyse and debate the issues facing different groups in Australian society.



- ***Paid Maternity Leave: Activities on Gender Equality in the Workplace***

This education module draws on comprehension and oral/written composition skills to develop an understanding of gender and the workforce. It includes a fact sheet, a case study, teaching notes, structured activities and a student interview with the Commissioner.

In addition, the Commission's website features links to a comprehensive collection of national and international human rights education resources.

### ***Electronic mailing lists***

The Commission maintains ongoing communication with teachers and education bodies through an electronic mailing list. The Commission provides regular updates about:

- 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;
- upcoming human rights education events.

### ***Delivery***

The modules are delivered direct to teachers via the Commission website at [www.humanrights.gov.au/info\\_for\\_teachers](http://www.humanrights.gov.au/info_for_teachers).

The Commission also advertises in teacher magazines and other education press to let teachers know about the resources. The Commission sends CD-Roms and other hard copy education materials to all schools together with order forms. All of these resources are provided free of charge.

### ***Information for Students Webpage***

The new human rights webpage for secondary students was launched in Sydney by Federal Attorney-General, the Hon. Philip Ruddock MP, and Commission President, the Hon. John von Doussa QC on 24 February 2006.

*Information for Students* is an online education resource for secondary school students to help them gain an awareness and understanding of human rights; their origin and history, the development of international human rights norms and contemporary human rights issues in Australia.

It is a multi-layered website that draws students through a range of human rights issues. It includes a plain English guide to what human rights are; common questions and answers on human rights; an explanation of the Universal Declaration of Human Rights; and more detailed information on issues such as Indigenous social justice, 'stolen children', refugees and asylum seekers, children in immigration detention, sexual harassment and discrimination; and human rights in other countries.



Information for Students is also linked to other areas of the Commission's website that may interest students including:

- *Human Writes* essay competition and the national youth dialogue
- *Youth Challenge* modules
- *Voices of Australia*
- *The Face the Facts* publication
- *Bringing them home* module
- *Information for Employers* kit

The site can be found at [www.humanrights.gov.au/info\\_for\\_students/index.html](http://www.humanrights.gov.au/info_for_students/index.html)

### ***Human Rights Explained***

This is an online resource for Tertiary students. It was first published in 1998 and remains one of the Commission's most accessed sections.

### ***Usage of Online Education Resources***

The Commission's online human rights education resources are widely used by educators, both nationally and internationally. During 2005–06, the resources received 909,023 page views. This is an increase of 32 percent on usage of the online education resources since the previous financial year.

Human Rights Education Resource	Page views
Youth Challenge Education Module	112 186
Bringing them home Education Module	194 754
Information for Teachers	167 356
Information for Students	78 460
Face the Facts Education Module	56 410
Face the Facts publication	101 340
Human Rights Explained	47 572
A last resort? Teaching Resources	9 604
A last resort? Summary Guide	27 343
Celebrate Human Rights Day	5 262
Paid Maternity Leave – Gender and the Workplace Education Module	25 643
Follow the Rabbit-Proof Fence Education Resources	22 814
SHOT! Photo Competition	40 649
Spirit of Reconciliation Poster Competition	3 589
Young People and Human Rights Competitions	16 041

## Commission publications

In addition to all Commission publications being made available on the Commission’s website, around 118 000 publications were dispatched in hard copy format during 2005–06.

The most popular publications were *Face the Facts*, *Voices of Australia* (magazine and CD), *Good Practice*, *Good Business* CD, *Age Discrimination* brochure and *The Complaint Guide*.

A list of publications released during 2005–06 can be found at Appendix 2 of this Report.

## 2005 Human Rights Medal and Awards

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



The 2005 Medal and Awards presentation ceremony was held on 9 December 2005 at a luncheon at the Sheraton on the Park hotel in Sydney. The Human Rights Day address was delivered by Commission President, the Hon. John von Doussa QC, and Julie McCrossin was the MC.

A field of quality entries in the seven categories – Law, Community (Individual and Organisation), Arts Non-Fiction, Print Media, Television, Radio and the Human Rights Medal – showcased the tireless work undertaken by a range of individuals and organisations in the fields of disability and Indigenous rights, race discrimination, refugees and asylum seekers, gay rights, legal advocacy, young people, migration, law reform, rights for sex workers, child abuse and a range of community work.



The Commission is very grateful for the services of the judging panels who gave their time and expertise. The 2005 judges were: Ms Angela Bates, Justice Virginia Bell, Mr Barry Cheadle, Mr Maurice Corcoran AO, Mr Nicholas Cowdery QC, Ms Eva Cox AO, Prof Ann Curthoys, Ms Sue Dunlevy, Ms Merinda Epstein, Mr Dick Estens, Ms Deborah Kilroy, Mr Steve Larkin, Ms Debbie Lee, Mr Peter Mares, Ms Debbie Mortimer SC, Mr John Murray, Dr Klaus Neumann, Ms Suzanne Smith, Mr Mike Steketee, Mr Ron Sutton.

The winners can be found below. Further details can be found on the Commission's website at: [www.humanrights.gov.au/hr\\_awards/2005.html](http://www.humanrights.gov.au/hr_awards/2005.html).

### Human Rights Medal



The Human Rights Medal is awarded to an individual who has made an outstanding contribution to the advancement of human rights in Australia.

#### *Winner: Kevin Cocks*

Kevin Cocks, a long-time advocate for social justice and disability rights, was described by the judges as an articulate advocate for human rights and the absolute epitome of the quiet achiever.

He has been a member of Queensland Advocacy Incorporated (QAI) since its inception in 1988 and its Director since 1998. He has shown a great capacity to bridge the gap between government, the private sector and people with a disability.

His work ranged across many areas – from building access, transport, consumer health, universal housing design and the criminal justice system, to exposing abuse and neglect of people with a disability and education about Indigenous people with a disability.



2005 Law Council President John North (left) presents the law category award to Kristen Hilton (middle) and Paula O'Brien on behalf of PILCH Homeless Persons' Legal Clinic

### Law Award – sponsored by the Law Council of Australia

*Winner: PILCH Homeless Persons' Legal Clinic*

PILCH (Public Interest Law Clearing House) Homeless Persons' Legal Clinic, established in 2001, provides free legal assistance to and advocacy on behalf of people who are homeless. It has succeeded in promoting the human rights of homeless people, reducing the degree to which homeless people are marginalised and providing sustainable pathways out of homelessness by addressing the underlying causes. The clinic also conducts research and legal advocacy on behalf of homeless people, training and community consultation.

### Community Award – sponsored by SBS Radio

*Community Award (Organisation) Winner: ChilOut*

The group of middle Australia mums and dads that formed in 2001 after seeing the plight of a six-year-old Iranian boy in immigration detention demonstrated the remarkable power of committed individuals to achieve change. They showed the faces of children behind razor wire and brought the suffering of those children into Australian living rooms.

The judges credited ChilOut for their relentless campaign and for their contribution in pressuring the federal government to remove children from immigration detention.

*Community Award (Individual) Winner: David Vadiveloo*

David Vadiveloo is an internationally acclaimed filmmaker who has been a human rights lawyer, trainer and adviser.

He works at the grass roots level assisting Indigenous communities to communicate their issues to the global stage. The judges said he was motivated by love for

his work, the communities and individuals who lived there. He created the landmark ABC children's television and interactive series UsMob; his nationally and internationally recognised documentaries and docu-dramas include episodes for the SBS series *Tales from a Suitcase*, *Trespass*, *Beyond Sorry* and *Bush Bikes*.

## Arts Non-fiction Award

*Winner: Disability in Australia: Exposing a Social Apartheid by Associate Professor Christopher Newell and Dr Gerard Goggin*

*Disability in Australia* explores a hidden blight in society – the ways in which the routine, daily and oppressive treatment of people with disabilities denies them dignity. It uses the everyday, untold experiences of life of people with disabilities to make a powerful and persuasive argument about social apartheid. The judges described the book as 'provocative, well-written and informative'. They said it combined the qualities of a passionate manifesto and a cool academic investigation.

## Television Award

*Winner: Vivian Solon, Lateline, ABC Television, produced by Margot O'Neill, Tom Iggulden, Hamish Fitzsimmons, Lisa Millar and Tony Jones*

The award was given for a series of news-breaking stories by the Lateline program which unravelled the tragedy of Australian mother of two, Vivian Solon, who was wrongly deported to the Philippines more than four years ago.

It highlighted the systemic incompetence and negligence inside the Immigration Department and was described by the judges as an outstanding piece of investigative journalism that led to significant changes in government policy.

## Radio Award

*Winner: Locked in with Friends, Cath Dwyer, Street Stories, ABC Radio National*

The radio documentary was about a young man, Chris Nolan, who lives in an aged care nursing home and the family and friends who support him.

When Nolan was 28 years old he suffered a hypoxic brain injury which left him in a 'locked in' state – unable to speak, see or move much, but he could still hear and understand. The program dealt with the profound effects of his injury – on him and those around him. It was described by the judges as an incredibly moving, challenging and brilliant piece of radio.

## Print Media Award

*Winner: "Mystery detained woman an Australian", Andra Jackson, The Age*

The series of stories resulted in the identification of Cornelia Rau, a mentally ill woman who was unlawfully detained as a suspected illegal immigrant.

Cornelia Rau's unlawful detention captured the attention of the Australian public and had a substantial impact on immigration detention. The stories prompted a federal government inquiry and changes to government policy.



## *Chapter 3:*

# ***Monitoring Human Rights Legislation and Policy***

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Along with its human rights education and promotion function, the Commission undertakes a monitoring role in relation to human rights. This monitoring role ranges across the work of the individual Commissioners who examine and report on issues of race, age, sex and disability discrimination and human rights, to the work of the Complaint Handling Section which examines individual claims about breaches of human rights and anti-discrimination legislation, to the assessment of legislative and policy proposals and presentation of submissions through the parliamentary committee process.

In this chapter, the Commission's contribution to policy development and legislative review is highlighted by the many submissions made to parliamentary committees and other bodies. Many of these submissions indicate breaches or potential breaches of human rights inherent in proposed legislation.

These submissions are 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. The submissions are usually prepared on behalf of the Commission by the Commission's legal section or policy units, in conjunction with the complaint handling section.

A range of submissions made by the Commission during 2005–06 are summarised below. The summaries do not detail government actions or other responses to the submissions.

For further information about the Commission's submissions, refer to: [www.humanrights.gov.au/legal/submissions/index.html](http://www.humanrights.gov.au/legal/submissions/index.html). For further information about the progress of relevant federal legislation, refer to the Parliament of Australia website: [www.aph.gov.au/](http://www.aph.gov.au/).

## Law and Justice Amendment Bill 2005

The Commission made a submission to the Senate Legal and Constitutional Legislation Committee on the Law and Justice Legislation Amendment (Video Evidence and Other Measures) Bill 2005 (Cth) ('the Bill') in relation to proposed amendments under the Bill to the *Crimes Act 1914* (Cth) ('Crimes Act') and the *Foreign Evidence Act 1994* (Cth) ('Foreign Evidence Act'). The relevant amendments related to the taking of video evidence in criminal proceedings for federal terrorism and related offences.

The Commission submitted that:

- The Bill's proposed amendments to both the Crimes Act and the Foreign Evidence Act in relation to the taking of video evidence favoured the prosecution over the defence;
- The Bill potentially impaired an accused person's right to a fair trial as provided for by Article 14(1) of the *International Covenant on Civil and Political Rights*, by denying the accused an equal right to the prosecution in calling and examining witnesses; and
- The Bill contained inadequate safeguards to ensure the exclusion of evidence procured by torture or other cruel or inhumane treatment, particularly in relation to video evidence received from foreign countries.

A copy of the Commission's submission is available at: [www.humanrights.gov.au/legal/submissions/video\\_evidence\\_and\\_other\\_measures.html](http://www.humanrights.gov.au/legal/submissions/video_evidence_and_other_measures.html).

The Senate Legal and Constitutional Legislation Committee tabled its report in the Senate on 1 November 2005. A copy of the report is available at: [www.aph.gov.au/Senate/committee/legcon\\_ctte/videolink\\_evidence/report/index.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/videolink_evidence/report/index.htm).

## Migration Amendment (Designated Unauthorised Arrivals) Bill 2006

The Commission made a submission to the Senate Legal and Constitutional Committee Inquiry into the provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006. In its submission the Commission expressed concern that the Bill will:

- Breach Australia's obligations under the *Convention on the Rights of the Child* (CRC) including the obligation to act in the best interests of the child (Article 3(1)) and the principle that children should only be detained as a measure of last resort.
- Undermine Australia's obligations under the *International Covenant on Civil and Political Rights* ('ICCPR') by failing to act in accordance with the principle of non-discrimination (Article 26), failing to provide effective remedies for potential breaches of ICCPR rights (Article 2(3)) and exposing asylum seekers in Offshore Processing Centres (OPCs) to the risk of arbitrary detention (Article 9).

- Undermine the fundamental human rights principle of non-refoulement by failing to provide adequate procedural safeguards, including independent merits reviews, to ensure that cases in which a person has a fear of persecution are justly decided.
- Undermine Australia's commitment to the *Convention Relating to the Status of Refugees* ('the Refugee Convention').

The Commission submitted that if the unauthorised boat arrivals are processed offshore it is imperative that OPCs are subject to the same level of independent scrutiny that applies to immigration detention centres in Australia.

A copy of the Commission's submission is available at: [www.hreoc.gov.au/legal/submissions/migration20060522.html](http://www.hreoc.gov.au/legal/submissions/migration20060522.html).

The Senate Legal and Constitutional Committee tabled its report on 13 June 2006. The report is available at: [www.aph.gov.au/senate/committee/legcon\\_ctte/migration\\_unauthorised\\_arrivals/report/index.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/migration_unauthorised_arrivals/report/index.htm).

### **Administration and operation of the *Migration Act 1958* (Cth)**

The Commission made a submission to the Senate Legal and Constitutional References Committee's Inquiry into the administration and operation of the *Migration Act 1958* (Cth) ('Migration Act'). In its submissions, the Commission directed the Committee to relevant aspects of reports prepared by the Commission in relation to the Migration Act, particularly *A last resort?* (2004) and *Those who've come across the seas* (1998).

The Commission addressed the following particular concerns:

- The Minister's discretionary power to grant asylum is problematic and inadequate;
- The amendments to the Migration Act by the *Migration Amendment (Detention Arrangements) Act 2005* (Cth) are inadequate to address the concerns raised in the Commission's reports on immigration; and
- The Commission raised concerns about the adequacy of health care and related services to people in immigration detention, as well as concerns about the outsourcing of management and service provision at immigration detention centres.

A copy of the Commission's submission is available at: [www.humanrights.gov.au/legal/submissions/administration\\_and\\_operation\\_of\\_the\\_migration\\_act\\_1958.html](http://www.humanrights.gov.au/legal/submissions/administration_and_operation_of_the_migration_act_1958.html).

The Senate Legal and Constitutional Committee tabled its report in the Senate on 2 March 2006. A copy of the report is available at: [www.aph.gov.au/Senate/committee/legcon\\_ctte/migration/report/index.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/migration/report/index.htm).

## Proposed Victorian Charter of Rights

The Commission made a submission to the Human Rights Consultation Committee (Victoria) on a proposed Victorian Charter of Rights. The Commission's recommendations included the following:

- The Charter should apply to acts of the Legislature and the Executive, and public authorities should be expressly required to perform their duties in a manner consistent with the Charter;
- The Charter should embody the rights conferred by *both* the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*;
- A mechanism should be established to scrutinise all legislation to ensure compatibility with the Charter. Where time does not permit such scrutiny, sunset clauses should be inserted to expire legislation that has not been scrutinised after a certain period;
- The Charter should expressly state that all legislation should be interpreted in a manner consistent with the Charter; and
- The Charter should provide a mechanism for individuals to seek enforceable remedies for breaches of the Charter, with a broad provision granting standing.

A copy of the Commission's submission is available at: [www.humanrights.gov.au/legal/submissions/hr\\_consultation\\_committe.html](http://www.humanrights.gov.au/legal/submissions/hr_consultation_committe.html).

A copy of the final report prepared by the Human Rights Consultation Committee is available at: [www.justice.vic.gov.au/CA256902000FE154/Lookup/HR\\_Report/\\$file/HumanRightsFinal\\_FULLL.pdf](http://www.justice.vic.gov.au/CA256902000FE154/Lookup/HR_Report/$file/HumanRightsFinal_FULLL.pdf).

## Extradition Review Discussion Paper

The Commission was invited to make a submission in response to the Attorney-General's Department (AGD) discussion paper, *A new extradition system – a review of Australia's extradition law and practice*. The Commission made 21 recommendations in response to the reform proposals canvassed in the AGD Discussion paper. These recommendations emphasised the importance of human rights safeguards in the extradition process and, in particular, the importance of review mechanisms.

A copy of the Commission's submission to the Attorney-General's Department is available at: [www.hreoc.gov.au/legal/submissions/extradition200604.html](http://www.hreoc.gov.au/legal/submissions/extradition200604.html).

A copy of the Attorney-General's Department extradition review discussion paper is available at: [www.ag.gov.au/agd/WWW/agdHome.nsf/AllDocs/CC14F9A3D7692FB6CA25715E00269159?OpenDocument](http://www.ag.gov.au/agd/WWW/agdHome.nsf/AllDocs/CC14F9A3D7692FB6CA25715E00269159?OpenDocument).

## Anti-Terrorism Bill (No.2) 2005

The Commission made a submission to the Senate Legal and Constitutional Committee's inquiry into the Anti-Terrorism (No.2) Bill 2005 (Cth). The submission considered the human rights implications of several aspects of the Bill and recommended:

- The enhancement of review mechanisms for preventative detention and control orders;
- The enhancement of the provision of information to people seeking to challenge preventative detention and control orders;
- Additional safeguards for the exercise of the powers to issue preventative detention and control orders;
- Additional safeguards regarding the treatment of people in detention pursuant to a preventative detention order; and
- The amendment of the proposed sedition offences.

A copy of the Commission's submission is available at: [www.humanrights.gov.au/legal/submissions/terrorism\\_sub\\_12-11-2005.html](http://www.humanrights.gov.au/legal/submissions/terrorism_sub_12-11-2005.html).

The Senate Legal and Constitutional Committee tabled its report in the Senate on 28 November 2005. A copy of the report is available at: [www.aph.gov.au/Senate/committee/legcon\\_ctte/terrorism/index.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/terrorism/index.htm).

## Submission to Security Legislation Review Committee

The Commission made a submission to the Security Legislation Review Committee ('the Sheller Inquiry') on 10 January 2006 in relation to the terrorism offences in Part 5.3 of the *Criminal Code 1995* enacted by the *Security Legislation Amendment (Terrorism) Act 2002* (Cth) and the *Criminal Code Amendment (Terrorism) Act 2003* (Cth).

The Commission recommended that the current executive process by which an organisation is proscribed as a terrorist organisation should be replaced by a judicial process. In the absence of a judicial process being adopted by the legislature, the Attorney-General's wide discretion to proscribe an organisation ought to be circumscribed and merits review available. The Commission also made recommendations for the circumscription of certain other terrorism offences contained in Part 5.3 of the *Criminal Code 1995*.

A copy of the Commission's submission is available at: [www.humanrights.gov.au/legal/submissions/security\\_legislation\\_review.html](http://www.humanrights.gov.au/legal/submissions/security_legislation_review.html).

The Report to the Sheller Inquiry was tabled in the Parliament by the Attorney-General on 15 June 2006 and is available at: [www.ag.gov.au/agd/WWW/agdhome.nsf/0/C2CE3EBE73794EF8CA2570A5001FAB3C?OpenDocument](http://www.ag.gov.au/agd/WWW/agdhome.nsf/0/C2CE3EBE73794EF8CA2570A5001FAB3C?OpenDocument).

### **Australian Citizenship Bill 2005**

The Commission made a written submission to the Senate Legal and Constitutional Legislation Committee ('the Committee') inquiry into the Australian Citizenship Bill 2005 ('the Bill'). The Commission also appeared before the Committee at a public hearing on 30 January 2006. The Bill is intended to replace the *Australian Citizenship Act 1948* (Cth).

The Commission submitted that certain provisions of the Bill affected human rights recognised under the *International Covenant on Civil and Political Rights*, the *Convention on the Reduction of Statelessness* and the *Convention on the Rights of the Child* and should be amended to provide adequate protection of those rights.

The Commission made additional recommendations relating to the exercise of executive power under the Bill, rights to review of decisions under the Bill, and the rights of children of former Australian citizens and same-sex partners of Australian citizens.

The Commission's submission is available at: [www.humanrights.gov.au/legal/submissions/citizenship\\_bill\\_2005.html](http://www.humanrights.gov.au/legal/submissions/citizenship_bill_2005.html).

The Committee made several recommendations consistent with the Commission's submissions relating to stateless persons and children and recommended that the Bill be further reviewed in relation to stateless persons, in consultation with HREOC and the UNHCR. The Committee's report was tabled in Parliament on 27 February 2006. As at 30 June 2006, the Government had provided no response to that report.

A copy of the Committee's report is available at: [www.aph.gov.au/Senate/committee/legcon\\_ctte/citizenship/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/citizenship/report/report.pdf).

### **Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005**

The purpose of the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005 was to permit the utilisation of the Australian Defence Force to protect states and territories against domestic violence, and to protect Commonwealth interests. The Bill also provided additional powers to members of the Australian Defence Force in certain circumstances.

The Commission's principal concern with the Bill was that the new provisions, providing additional powers to members of the Defence Force, may not adequately safeguard the right to life under article 6 of the ICCPR.

The Commission made a submission to the Senate Legal and Constitutional Legislation Committee inquiry into the Bill. The Commission's principal submission was that for Australia to comply with its international human rights obligations, additional safeguards should be placed on these new powers. The Commission

recommended a number of amendments to the Bill. A copy of the Commission's submission is available at: [www.humanrights.gov.au/legal/submissions/defence\\_leg\\_aid\\_civilian2006.html](http://www.humanrights.gov.au/legal/submissions/defence_leg_aid_civilian2006.html).

The Committee's report was tabled in Parliament on 7 February 2006. A copy of the report is available at: [www.aph.gov.au/Senate/committee/legcon\\_ctte/defence/report/index.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/defence/report/index.htm).

### **Workplace Relations Amendment (WorkChoices) Bill 2005**

On 10 November 2005, the Sex Discrimination Commissioner, on behalf of the Commission, made a submission to the Senate Employment, Workplace Relations and Education Committee Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005.

The Commission expressed concerns that the Bill:

- may undermine the capacity of employees to balance their work and family responsibilities
- did not contain sufficient mechanisms to advance pay equity or ensure equal remuneration for work of equal value and
- may not adequately protect vulnerable employees.

The Commissioner along with representatives of SDU and Legal Section appeared before the Senate Committee in relation to the Commission's submission on 17 November 2005. The Commission's submission and the Commissioner's appearance generated significant media and public interest.

The submission can be found at: [www.humanrights.gov.au/legal/submissions/workplace\\_relations\\_amendment\\_2005.html](http://www.humanrights.gov.au/legal/submissions/workplace_relations_amendment_2005.html).

### **Submission on the Family Law Amendment (Shared Parental Responsibility) Bill 2006**

On 24 February 2006 the Commissioner, on behalf of the Commission, made a submission to the Senate Legal and Constitutional Committee's Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2006.

The submission outlined a number of concerns with the Bill including:

- that the views of the child would in future be given reduced weight
- that the Bill could go further in protecting family members from violence, particularly during and after separation and
- the failure to include a reference to a same sex parent in the definition of a relative.

The submission also identified the difficulties inherent in expecting fathers to play a significant and ongoing role in their children's lives after separation, without implementing laws and policies which allow them to play a more significant role with their children in intact relationships.

The Committee report referred to HREOC's concerns about the division of considerations for determining the best interests of the child into primary and secondary considerations and the Committee recommended that this issue be clarified in the final Bill.

The submission can be found at: [www.humanrights.gov.au/legal/submissions/shared\\_parental\\_responsibility.html](http://www.humanrights.gov.au/legal/submissions/shared_parental_responsibility.html).

### **Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005**

The Commission made a submission to the Commonwealth Senate Finance and Public Administration Committee regarding the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005.

The submission expresses particular concern about the provisions in the Bill relating to: (a) the right of prisoners to vote; and (b) the early closure of the rolls.

The submission highlights that those provisions will prevent the following groups from exercising their fundamental human right to participate in the political process:

- prisoners (a population in which Indigenous people, people with mental illness and people with intellectual disability are overrepresented)
- young people
- people in rural and remote areas (many of whom are Indigenous people).

The Commission recommends removal or amendment of those provisions from the Bill.

The Senate Committee report noted the Commission's concerns but did not take up the Commission's recommendations. The Bill was passed by Parliament on 21 June.

The submission can be found at: [www.humanrights.gov.au/legal/submissions/electoral20060309.html](http://www.humanrights.gov.au/legal/submissions/electoral20060309.html).

### **Villawood Immigration Detention Centre Redevelopment**

The Commission made a submission to the Commonwealth Parliamentary Standing Committee on Public Works regarding the Villawood Immigration Detention Centre Redevelopment.



The submission focuses on the right of all detainees to be treated with humanity and respect. In particular, the submission assists the Standing Committee to identify how the infrastructure of an immigration detention facility can have an impact on those fundamental rights.

The submission refers to the extensive findings and recommendations in the Commission's numerous reports regarding immigration detention centres. In particular, the submission highlights the infrastructure-related conditions which have led to a breach of Australia's human rights obligations in the past.

The Commission recommends that the infrastructure of the Villawood Immigration Detention Centre be re-designed with a view to protecting the human right of every detainee to be treated with humanity and dignity. The submission also recommends using the Human Rights and Equal Opportunity Commission's Immigration Detention Guidelines as a point of reference.

The Standing Committee's report was not tabled in Parliament by 30 June.

The submission can be found at: [www.humanrights.gov.au/legal/submissions/villawood.html](http://www.humanrights.gov.au/legal/submissions/villawood.html).

## Other Submissions

Other submissions were made to the:

- Senate Community Affairs Legislation Committee Inquiry on the Employment and Workplace Relations Legislation Amendment (Welfare to work and other Measures) Bill 2005 and the Family and Community Services Amendment (Welfare to Work) Bill 2005 (16 November 2005)
- Department of Workplace Relations review of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (5 May 2006)
- COAG Health Working Group regarding the National Action Plan on Mental Health 2006–2011 (30 June 2006)
- Australian Government Award Review Taskforce (the Taskforce) in relation to its discussion papers *Award Rationalisation and Rationalisation of Award Wage and Classification Structures* (in January 2006)
- Australian Industrial Relations Commission (AIRC) during the hearing of the Family Provisions Test Case. A decision on the case was handed down by the Full Bench of the AIRC (8 August 2005). New provisions were introduced which provides the right for an employee to request:
  - ◇ an increase in the period of simultaneous unpaid parental leave up to 8 weeks;
  - ◇ an extension of unpaid parental leave from 12 months to 24 months; and
  - ◇ a return from unpaid parental leave on a part-time basis.



## *Chapter 4:*

# ***Complaint Handling Section***

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### **Overview of the work of the Complaint Handling Section**

The President of the Human Rights and Equal Opportunity Commission is responsible for the investigation and conciliation of complaints lodged under federal anti-discrimination and human rights law. Staff of the Commission's Complaint Handling Section (CHS) assist the President to investigate and resolve complaints. The CHS also provides information to the public about the law and the complaint process through the Complaint Information Service and a range of community education and training activities.

Complaint Information Officers within the CHS deal with telephone, TTY, post, e-mail and in-person enquiries from around Australia. Enquirers are often seeking information about whether they can lodge a complaint in relation to a particular situation they have experienced. Where the issue raised appears to be a matter that the Commission can deal with, the enquirer is provided with a complaint form or information about how to lodge a complaint via the Commission's online complaint facility. Where the issue appears to be outside the Commission's jurisdiction, enquirers are provided with contact details for other organisations that may be able to assist them. In 2005–06 11 336 enquiries were dealt with by the Complaint Information Service.

Investigation/Conciliation Officers within the CHS manage complaints that have been accepted by the Commission. The CHS aims to handle all complaints in a timely and effective manner. Actions taken by the CHS to ensure access to the Commission's complaint process and enable ongoing improvement in service delivery are outlined later in this chapter.

In many cases, the investigation of a complaint involves the President writing to the person or organisation being complained about to obtain their version of events. Where it is considered appropriate, complaints will then proceed to conciliation. In many cases conciliation involves the Investigation/Conciliation Officer facilitating a face-to-face meeting of the parties. Officers travel to various locations throughout Australia, including regional and remote areas, to hold these meetings. Conciliation may also be conducted by other means. For example,

officers may have telephone discussions with the parties and convey messages between them or hold a teleconference. If a matter can be satisfactorily resolved between the parties, the complaint is withdrawn and closed.

Where a complaint of unlawful race, sex, disability or age discrimination cannot be resolved through a conciliation process, the complaint is terminated. Complaints may also be terminated where the President is satisfied that an inquiry into the complaint should not be undertaken or continued because, for example, the complaint is lacking in substance or better dealt with by another organisation. 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 apply to have the matter heard and determined by the Federal Court of Australia or the Federal Magistrates Court.

Complaints which allege a breach of human rights or discrimination under the *Human Rights and Equal Opportunity Commission Act 1986* cannot be taken to court for determination. Where complaints under this Act have not been declined or resolved and the President is of the view that the subject matter of the complaint constitutes discrimination or a breach of human rights, the President will report the findings to the Attorney-General for tabling in Parliament.

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

In 2005–06:

- 1 397 complaints were received by the CHS;
- 1 205 complaints were finalised by the CHS;
- 39 percent of finalised complaints were conciliated;
- 93 percent of complaints were finalised within 12 months of lodgement; and
- the average time from lodgement to finalisation of a complaint was 6 months.

### **Key performance indicators and standards**

The CHS has developed key performance indicators and standards which provide the basis for ongoing assessment of complaint handling performance.

- *Timeliness* – the section's stated performance standard is for 80 percent of complaints to be finalised within 12 months of date of receipt. In 2005–06, the CHS finalised 93 percent of matters within 12 months. A detailed breakdown of timeliness statistics by jurisdiction is provided in Table 12. There has been continual improvement in the timeliness of the complaint process over the past four years.

- *Conciliation rate* – the section’s stated performance standard is for 30 percent of finalised complaints to be conciliated. In 2005–06, the CHS achieved a 39 percent conciliation rate. There has also been a continual increase in the conciliation rate over the past four years.
- *Customer satisfaction* – the section’s stated performance standard is for 80 percent of parties to be satisfied with the complaint handling process. Data for the past year indicates that 93 percent of parties were satisfied with the service they received and 54 percent rated the service they received as ‘very good’ or ‘excellent’. Further details of survey results for this reporting year are provided below.

### **Customer satisfaction survey**

The CHS asks for 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 usually conducted by telephone interview. In 2005–06, 56 percent of those who could be contacted (139 complainants and 150 respondents) agreed to participate in the survey. Survey results for this reporting year are summarised below:

- Ninety (90) percent of complainants and 96 percent of respondents felt that staff explained things in a way that was easy for them to understand;
- Ninety-one (91) percent of complainants and 96 percent of respondents felt that forms and correspondence from the Commission were easy to understand;
- Seventy-eight (78) percent of complainants and 77 percent of respondents felt that the Commission dealt with the complaint in a timely manner; and
- Eighty-eight (88) percent of complainants and 91 percent of respondents did not consider staff to be biased.

These results are generally consistent with results achieved in the previous reporting year.

### **Service Charter**

The CHS Charter of Service provides a clear and accountable commitment to service. It also provides an avenue through which complainants and respondents 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 when their complaint is accepted by the Commission and respondents receive a copy when notified of a complaint. The Charter of Service can also be downloaded from the CHS page of the Commission’s website at: [www.humanrights.gov.au/complaints\\_information/charter\\_of\\_services/index.html](http://www.humanrights.gov.au/complaints_information/charter_of_services/index.html)

The Commission received one complaint about its service through this mechanism in the last reporting year.

### Access to complaint services

The CHS aims to facilitate broad community access to information and services through the following measures:

- **Complaint Information Service.** The Complaint Info line (1300 656 419 – local call charge), which is open Monday – Friday between 9.00 am and 5.00 pm, allows people to call and discuss allegations of discrimination. They can also e-mail [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)
- **CHS webpage:** [www.humanrights.gov.au/complaints\\_information/](http://www.humanrights.gov.au/complaints_information/). The webpage provides information about the Commission's complaint handling service and the complaint process. It includes information about how to lodge a complaint, answers to frequently asked questions and examples of complaints. The website also provides a conciliation register that contains de-identified information about the outcomes of conciliated complaints. The CHS webpage received **189 290** page views during this reporting year.
- **Simplified process brochure.** During this reporting year the CHS developed a brochure which provides an easy to read flow chart of the complaint process. This brochure can be accessed on the CHS webpage at: [www.humanrights.gov.au/pdf/complaints/complaint\\_process\\_flyer.pdf](http://www.humanrights.gov.au/pdf/complaints/complaint_process_flyer.pdf)
- **Publications in community languages.** During 2005–06 the CHS revised and updated the Concise Complaint Guide which can be downloaded from the CHS webpage in 14 community languages ([www.humanrights.gov.au/languages/index.html](http://www.humanrights.gov.au/languages/index.html)). During this reporting year the CHS also developed an information poster in 14 community languages and copies of this poster were distributed to 2 500 migrant and community centres around Australia. This poster can also be downloaded from the CHS webpage at: [www.humanrights.gov.au/pdf/complaints/translations\\_posterA3.pdf](http://www.humanrights.gov.au/pdf/complaints/translations_posterA3.pdf)
- **Interpreter and translation services.** In the past reporting year the CHS utilised a range of interpretation and translation services. The main language groups assisted in 2005–06 were Cantonese, Mandarin and Serbian. Auslan interpreters were used on four occasions.
- **Service provision in states and territories.** 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 publications are displayed by these agencies and CHS staff

use agency facilities for conciliation conferences and community education presentations. The Commission has similar informal arrangements with the Tasmanian Anti-Discrimination Commission and the Australian Capital Territory Human Rights Office.

- **Video/DVD on conciliation.** The audio-visual resource, *Pathways to Resolution*, was developed to provide information about conciliation to the general public and those who may be involved in the complaint process. This video/DVD explains how conciliation is conducted as part of the complaint process, outlines how to prepare for conciliation and demonstrates positive approaches to discussing issues and negotiating resolution outcomes. Captioned and uncaptioned versions of the video/DVD are available from the Commission and are also provided on loan to complainants, respondents and advocates 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](http://www.humanrights.gov.au/pathways_to_resolution/index.html)
- **Conciliation circuits.** CHS officers travel throughout Australia to conduct face-to-face conciliation conferences. Along with conferences conducted in the greater Sydney area, officers conducted 30 conferences in regional NSW (including Wollongong, Newcastle, Nowra, Katoomba, Coffs Harbour, Lismore, Taree and Wagga Wagga); 56 in Melbourne, 54 in South Australia (including Adelaide and Port Adelaide); 44 in Queensland (including Brisbane, Mackay, Cairns, Bundaberg, the Gold Coast and Hervey Bay); 22 in Western Australia (including Perth and Albany); 15 in Canberra; two in Darwin and three in Hobart.

## Community education

The CHS contributes to the Commission's function of promoting an understanding and acceptance of human rights through its community education activities.

In this reporting year over 150 organisations throughout all states and territories either attended information sessions on the law and the complaint process run by CHS staff or were visited by CHS staff. These organisations included community legal centres, Aboriginal legal services, multicultural organisations, universities, disability groups, professional associations and unions. Locations visited included: Launceston and Hobart in Tasmania; Coffs Harbour, Grafton, Nowra, Moree, Tamworth and Narrabri in New South Wales; Brisbane; Melbourne; Darwin, Adelaide and Canberra.

## Training

The Commission has two specialised training programs which provide knowledge and skills in complaint investigation and resolution. All complaint handling staff are required to undertake these courses. The CHS also provides investigation and conciliation training for other organisations on a fee for service basis.

During 2005–06 two investigation training courses and two conciliation training courses were held for Commission staff. The conciliation training course held in June 2006 was also attended by staff from anti-discrimination agencies in New South Wales, Queensland, South Australia, Tasmanian and the Northern Territory.

In July 2005 the Commission facilitated a three-day conciliation training course in Darwin for staff from a number of Northern Territory government agencies. In May 2006 the CHS provided complaint investigation and resolution training for a large private education organisation. This course was held in Melbourne and attended by principals and other staff from schools in Victoria, South Australia and the Northern Territory.

The Commission also works 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 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 seven courses have been delivered in various locations around Australia including Brisbane, Sydney, Canberra and Melbourne.

During 2005–06, staff of the CHS attended various seminars and training courses relating to their work. These included seminars on employment law conducted by Sydney University, Australian Government Solicitor Law Group seminars, the Asia Pacific Forum of Human Rights Institutions Conference on Human Trafficking and National Human Rights Institutions, the Eighth LEADR International Mediation Conference, the National Conciliators and Legal Officers Conference and the Asia Pacific Mediation Forum Conference. In this reporting year two CHS officers completed their studies in Certificate IV accreditation in Assessment and Workplace Training.

## Research and conference presentations

The CHS regularly undertakes research with a view to better understand and improve the Commission's complaint handling work.

During 2005–06 the CHS published the paper *Five Years on: An Update on the Complaint Handling Work of the Human Rights and Equal Opportunity Commission*. This paper records the findings of two research projects undertaken



by the CHS in 2004–05. The first section of the paper outlines the findings of a project which further considered the impact of a court determination process on the Commission’s complaint handling function. The second section of the paper summarises the findings of a conciliator survey and provides current and detailed information about the Commission’s conciliation practice. This paper can be downloaded from the CHS’s webpage at: [www.humanrights.gov.au/complaints\\_information/publications/five\\_years\\_on.html](http://www.humanrights.gov.au/complaints_information/publications/five_years_on.html)

In this reporting year the CHS also presented papers at the following national and international conferences: the National Conciliators and Legal Officers Conference held in Melbourne in August 2005; the National Community Legal Centres Conference held in Canberra in October 2005; and the Asia Pacific Mediation Forum Conference held in Suva, Fiji in June 2006.

### **International training and consultation**

In 2005–06 the Commission’s CHS was awarded a tender by the Asia Pacific Forum of National Human Rights Institutions to provide training for staff of the National Human Rights Commission of Mongolia. This project involved the development and presentation of a three-day training course in human rights investigation. The training took place in Ulaanbaatar, Mongolia from 27–29 March 2006. Twenty-two staff from government departments and non-government organisations in Mongolia attended the program which was conducted in English with simultaneous translation into Mongolian.

In this reporting year two CHS officers were selected for, and successfully completed, the United Nation’s training program in conflict prevention. This program involved an eight-week distance learning program, a three-day workshop in Sri Lanka and eight weeks of post workshop mentoring.

The CHS is often called upon to provide placements for staff from overseas human rights institutions and to provide information about the Commission’s complaint handling work to visiting delegations. In January 2006 the CHS hosted a placement for an officer from the Danish Institute for Human Rights. During this reporting year CHS staff also provided information to representatives of human rights institutions and government departments visiting from Vietnam, Papua New Guinea, New Zealand and Denmark.

## Conciliation case studies<sup>1</sup>

### Racial Discrimination Act

In this reporting year the Commission received 259 complaints under the Racial Discrimination Act. The majority of these complaints related to employment (48%), the provision of goods and services (18%) and racial hatred (17%). The CHS finalised 196 complaints under this Act and 19 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Racial Discrimination Act are provided later in this chapter.

#### *1. Complaints of racial hatred, racial discrimination and victimisation in employment*

The two complainants, who are of Nigerian ethnic origin, advised they were employed as factory workers with the respondent manufacturing company. They alleged that their supervisor subjected them to racial hatred and racial discrimination in that he made comments such as *'Black idiot', 'Come here, you f..... African', 'Hey you, black man, you're rubbish', 'You eat like a monkey' and 'Go back to Africa'*. The complainants also alleged that their supervisor verbally and physically threatened them because of their complaints to the Commission. Additionally, the complainants claimed that the company did not respond appropriately to their internal complaints.

In his written response to the Commission, the supervisor denied the allegations. The supervisor claimed that the complainants made their complaints in response to action taken to address their unacceptable workplace behaviour which included challenging his authority and making adverse comments about him in a different language. The company did not respond in writing to the allegations but agreed to participate in a conciliation process.

The complaints against the company were resolved with an agreement that the company would provide the complainants with written apologies and pay each complainant \$17 550. This amount represented compensation for hurt and embarrassment and reimbursement of medical and counselling costs. The company also agreed to establish an anti-discrimination policy and associated complaint process; to provide anti-discrimination training to all staff members; and to encourage the supervisor to attend training and counselling.

#### *2. Alleged race discrimination in the provision of service by an airline*

The complainant, who is of Chinese ethnic origin, alleged that when travelling with a group of students of the same ethnic background, a flight attendant acted in a rude and racist manner towards her and the students. The complainant claimed that when boarding the plane the flight attendant told her the group could not

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<sup>1</sup> *Complaints are generally resolved at conciliation on the basis of 'no admission of liability' by the respondent.*

have their allocated seats near the exit and when she queried this, the flight attendant asked her if she could speak English. The complainant said that despite advising the flight attendant that she had lived in Australia for approximately 30 years, the group was told they could not sit in an exit row and were moved to the back of the plane.

The airline advised that the flight attendant had asked the complainant and her associates if they could speak English because they were sitting in an exit row and she needed to explain the safety briefing card to them. The flight attendant said that she asked the party if they would mind moving from the exit seats because she felt they had not listened to her safety briefing or looked over the safety information cards.

The complaint was resolved through a conciliation process. The airline agreed to pay the complainant \$750 compensation for any embarrassment, provide her with a statement of regret and review staff training in light of the complaint.

### *3. Complaint of race discrimination by Indigenous employee*

The complainant, who is Indigenous, advised the Commission that he had worked in a customer service role with a Commonwealth government department for six months. He claimed that during his employment his immediate supervisor unjustly criticised his work and questioned him in relation to his personal leave even though he had provided medical certificates for the absences. The complainant said that he lodged an internal grievance about his supervisor and his subsequent probation report recommended termination of his employment. The complainant alleged race discrimination and victimisation by the respondent department.

The Commission prioritised the complaint and contacted the department to advise of the allegations. In response, the department undertook to conduct an internal review of the decision not to permanently appoint the complainant. The department contacted the Commission a few days later and advised that the complainant's ongoing employment had been confirmed. The department also advised that the complainant had been offered career counselling and the option of moving to a different work location.

The complainant informed the Commission that the action taken by the department resolved his complaint.

### *4. Alleged race and age discrimination in employment*

The complainant, who is over 45 years of age and of Sri Lankan background, alleged discrimination on the basis of his race and age in his employment as a warehouse assistant with the respondent company. He claimed that another employee who was younger than him and of Anglo-Saxon background was given better hours and provided with more assistance than he was. The complainant also claimed that this employee of Anglo-Saxon background would stare at him

## Chapter 4: Complaint Handling Section

and make comments such as Black bastards and Black arse holes whenever he walked by. Additionally, the complainant alleged that he had not been given promotions and salary increments due to him and had only been paid half of the bonuses paid to other staff.

The company denied discriminating against the complainant on the basis of his race or age. The company said that although the complainant and the Anglo-Saxon employee referred to in the complaint had the same job title, they had different duties and hours of work. The company claimed that the complainant was not treated any differently than his co-workers and was not financially disadvantaged at any time. The company also said that the complainant had not raised any concerns with management about race or age discrimination.

The complaint was resolved through a conciliation process. The complainant decided to resign from his employment and the company agreed to pay the complainant his resignation entitlements and \$10 000 general damages.

## Sex Discrimination Act

In this reporting year the Commission received 347 complaints under the Sex Discrimination Act. The majority of complaints related to employment (85%). Twenty percent of complaints alleged pregnancy discrimination and 19 percent alleged sexual harassment. The Commission finalised 314 complaints under this Act and 44 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Sex Discrimination Act are provided later in this chapter.

### *1. Alleged discrimination in employment on the grounds of sex and family responsibilities*

The complainant claimed that during her interview for a client service position with a Commonwealth government department, she was assured that she would be able to use flex time to attend to her family responsibilities. The complainant said that after the six-week training period she asked to leave work one hour early, two days each week but this request was refused. The complainant claimed she was advised to apply for part-time work but her subsequent request for part-time work was also refused. The complainant said she was told that she must choose between her family and her job and so she resigned.

The department advised the Commission that the complainant's request to leave early two days each week was refused because of phone roster arrangements. The department said the complainant was told that part-time work arrangements may be considered but could not be entered into during her employment probation period.

The complaint was resolved through a conciliation process with an agreement that the respondent would pay the complainant \$10 000 compensation.

### *2. Complaint of sexual harassment in employment*

The complainant was employed as an administrative assistant with the respondent automotive company. The complainant alleged she was sexually harassed by her manager and co-workers. She claimed she was sent e-mails of a sexual nature and asked questions about her boyfriend and sex life. The complainant also alleged that a co-worker pulled his pants down to show her his penis and on one occasion, pushed his penis against her car window as she was leaving the company car park. The complainant said she resigned because of this sexual harassment.

The company denied the allegations and said that the complainant had not made any complaint to management about such behaviour. The company claimed the complainant actively engaged in flirtatious sexual behaviour with her manager and work colleagues including e-mailing pornographic material, showing her bra strap and 'G string' and participating in conversations with sexual content.

The parties resolved the complaint through a conciliation process. The company agreed to provide the complainant with verbal and written apologies, a written reference and \$21 000 compensation.

### *3. Alleged discrimination after advising employer of pregnancy*

The complainant was employed full-time as a machinist with the respondent company. The complainant said that after she told her employer she was pregnant she was given more difficult jobs and fault was found with her work. The complainant also claimed that management made comments about how much she was eating and her weight gain and made her feel lazy when she needed to take breaks to use the bathroom or because she was feeling faint. The complainant resigned from her position.

The company denied the allegations and said that the complainant had asked for the particular jobs she referred to and had never made a request for more frequent breaks during her pregnancy. The company claimed the complainant's work had deteriorated and she had resigned after being given a verbal warning about her work performance and punctuality.

The complaint was resolved at a conciliation conference. The terms of the resolution included an agreement that the respondent would provide the complainant with a written apology, pay her \$2 000 compensation, implement an anti-discrimination policy and train staff in relation to this policy.

### *4. Complaint of sexual harassment in casual employment*

The complainant was employed on a casual basis with the respondent company as a fruit picker. The complainant alleged she was sexually harassed by a co-worker. She claimed that the co-worker regularly touched her without her consent, pinched her arms, kicked her shins, hugged her, attempted to lift up her skirt and on one occasion, pulled down her pants so that her underwear was showing. The complainant said she raised the matter with the general manager but the company failed to address her concerns. The complainant claimed she resigned because of the way she was treated.

The individual respondent denied the allegations. The company confirmed that the complainant had raised her concerns with the General Manager who then discussed the matter with the individual respondent. The company said that even though the individual respondent denied the allegations, the company took action to remind him about expected workplace behaviour.

The complaint was resolved at a conciliation conference. The individual respondent and the company each agreed to pay the complainant \$2 000 general damages and provide her with a letter of regret. The conciliation agreement also included a commitment by the company to further develop its sexual harassment policies and procedures and to provide staff with training in relation to these policies.

## Disability Discrimination Act

In this reporting year the Commission received 561 complaints under the Disability Discrimination Act. The majority of these complaints concerned employment (58%) and the provision of goods, services and facilities (17%). The Commission finalised 512 complaints under this Act and 46 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Disability Discrimination Act are provided later in this chapter.

### *1. Alleged disability and race discrimination in employment*

The complainant advised that he had entered into a two-year contract as a trainee bus driver with a government owned transport service. During the training he developed a non-work related knee problem which required surgery and this meant he was unable to drive buses for several months. The complainant said that during this time he was provided with light duties and was able to complete the requirements of his training contract. He alleged that the employer's occupational health and safety officer did not like him because of his Indian ethnic origin. He claimed that this officer told him to look for another job because he would reactivate his knee problem if he recommenced driving buses. The complainant said that at the end of the training period he was not offered permanent employment even though his medical report said he was fit to return to full duties. He claimed that all other trainees were offered permanent employment. The complainant alleged he was not offered continuing employment because of his race and because of a disability that he may have in the future.

The respondent service denied discriminating against the complainant on the grounds of his race or disability. The respondent advised that the complainant had been engaged on a two-year contract with no guarantee of continuing employment at the conclusion of this period.

The complaint was resolved through a conciliation process. It was agreed between the parties that the respondent would employ the complainant as a bus driver and reinstate all his entitlements as if his employment had been continuous. The respondent also agreed to pay the complainant four months salary that he had lost and \$15 000 in general damages.

### *2. Complaint of disability discrimination in secondary education*

The complainant lodged a complaint against a private secondary school on behalf of her son who has a vision impairment. The complainant said that when her son enrolled she advised the school of her son's disability and the school assured her that it was equipped to deal with this. The complainant claimed that by the second year at school her son was experiencing difficulty reading notes on the board and was not being given work at his desk as requested. She also claimed that due to bullying by other students, her son refused to use equipment he required for his disability. The complainant said she removed her son from the school because the

school had not taken adequate steps to ensure a safe and secure environment for him and had not appropriately accommodated his disability.

In reply, the school acknowledged that the complainant's son had been bullied because of his disability but said that all reasonable steps had been taken to address this issue. The school also claimed that the complainant's son had been provided with reasonable adjustments for his disability throughout his time at the school.

The matter was resolved through a conciliation process. The school agreed to develop an anti-bullying policy specifically dealing with disability and train staff in relation to this policy. The terms of resolution also included an agreement that the school would waive the complainant's debt of \$3 300 and pay the complainant \$4 000 in general damages.

### *3. Alleged disability discrimination in the provision of travel services*

The complainant advised that his wife has a physical disability and uses an electric wheelchair. The complainant lodged the complaint on behalf of his wife, and on his own behalf, as an associate of a person with a disability. The complainant claimed he and his wife had booked a cruise with the respondent company and the company confirmed they had been assigned a wheelchair accessible cabin and that his wife's wheelchair could be used on board. The complainant claimed that on the cruise his wife was unable to leave the ship at a number of ports as the disembarkation platform was unsafe for people using wheelchairs and her wheelchair could not be used on shore. The complainant said he stayed on board with his wife and therefore also missed visiting these ports. Additionally, the complainant alleged that his wife was unable to independently access the main lift on the ship, that toilets outside their cabin were not accessible and that there was a lack of safety and emergency egress instructions for people using mobility aides.

The company denied discriminating against the complainants but agreed to participate in a conciliation process.

The complaint was resolved through a conciliation process. The company agreed to provide the complainants with a written apology and refund their fares and costs. The company also agreed to organise a meeting between the complainants and the company's disability officer to discuss how this situation could have been avoided and to provide information about assistance that could be provided, should they wish to travel again.

### *4. Complaint of discrimination on the ground of mental illness in employment*

The complainant applied for a position as a social worker with a Commonwealth agency and was offered a six month contract, subject to a medical assessment. The complainant said that when she told the agency she had previously undergone



treatment for a mental illness, she was required to undergo a psychiatric assessment. The complainant claimed that the psychiatrist's report said she was fit for the position provided she was closely supervised by a senior social worker. The complainant said that the agency subsequently withdrew the offer of employment saying it could not ensure the required level of supervision. The complainant claimed the required level of supervision would not impose hardship on the respondent as the National Practice Standards for social workers require that new social workers receive a minimum of one hour per week individual supervision and this would be sufficient to comply with the psychiatrist's recommendation.

In reply to the complaint the agency claimed it could not comply with the medical recommendation regarding supervision of the complainant. The agency said this was because supervision must be provided by a Level 2 social worker and they could not guarantee that a Level 2 social worker would be located in the same office as the complainant.

The complaint was resolved by conciliation with an agreement that the respondent would pay the complainant \$5 500 in general damages and ensure that human resources staff participate in EEO training specifically referring to mental health issues.

## Age Discrimination Act

In this reporting year the Commission received 106 complaints under the Age Discrimination Act. The majority of these complaints concerned employment (74%). The Commission finalised 80 complaints under this Act and 34 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Age Discrimination Act are provided later in this chapter.

### *1. Complaint of age discrimination in recruitment process*

The complainant, who is 55 years of age, applied for a graduate Information Technology position with a large government department via a private employment agency. The complainant said that despite having worked for the department for 10 years and having over 30 years relevant experience, his application was rejected. The complainant claimed the employment agency told him that he should not be applying for graduate positions. The complainant alleged discrimination on the basis of his age.

The department denied discriminating against the complainant. The department said it was unaware of the complainant's application as it only became involved in the recruitment process once candidates were short listed by the employment agency, and the complainant did not reach that stage of the process. The employment agency also denied discriminating against the complainant on the basis of his age. The agency said that data in relation to an applicant's age or age group is not sought or considered relevant. The agency claimed that the complainant's application for the graduate position was rejected because of a mistaken belief that he was employed with the department at the time of his application.

The complaint was resolved through a conciliation process with the employment agency agreeing to pay the complainant \$2 000 general damages and contribute \$4 500 towards legal costs he has accrued in relation to the complaint.

### *2. Alleged age and disability discrimination in the provision of goods and services*

The complainant advised the Commission that she is seventy-eight years old and has a range of disabilities which put her at an increased risk of falling. In her complaints against the local council and a building certification authority she claimed that due to building works in a nearby street, the cul-de-sac where she lives is often blocked by trucks and other machinery and she has difficulty accessing the footpaths around her home. She also alleged she was harassed because of her age and disability by builders working on the site and that the local council had ignored her complaints about the matter.

In response, the council advised that it did not have direct responsibility for the building work but had acted on some of the complainant's concerns. The council said it carried out daily patrols and inspections, met with the complainant and

also issued the builders with an infringement notice on the basis of photographic evidence provided by the complainant.

The complaint was resolved at a conciliation meeting. The council agreed to provide the complainant with a statement of regret and pay her \$100 to reimburse costs she incurred in providing the photographic evidence. The council also agreed to formally advise the complainant of its procedures for responding to complaints and invited the complainant to speak about the impact of development activities on aged people with disabilities at the council's next Access and Disability Committee meeting.

### *3. Complaint of age discrimination in termination of employment*

The complainant, who is 66 years of age, said he had worked as a hairdresser with a large retail chain for over 10 years prior to the business being taken over by the respondent company. The complainant claimed that when the new company commenced operations he was placed on a three-month probationary contract and his employment was terminated three weeks later. The complainant alleged he was dismissed because of his age and so that the employer could avoid paying him entitlements due from his previous employment.

The company denied that the complainant's age was a factor in terminating his employment. The company said that the complainant's employment was terminated because of unsatisfactory behaviour which included inconsistent pricing, poor workmanship, being uncooperative and taking extended breaks. The company claimed the complainant had been counselled on several occasions and provided with a written warning.

The complaint was resolved through a conciliation process. The terms of agreement included the company providing the complainant with a statement of regret and \$3 000 in general damages.

### *4. Alleged age discrimination in selection for redundancy*

The complainant, who is over 60 years of age, advised that the small automotive company he worked for was taken over by new management in May 2005. He claimed that four weeks before the takeover the new General Manager conducted interviews with all staff and during his interview, the General Manager told him that he would not be offered a position with the new company because of his age and other reasons. The complainant said that in October 2005 he was advised that his position was to be made redundant and as he was the last person employed, he would be the first to be made redundant. The complainant claimed that when he referred to another person who had commenced employment after him, the General Manager said that this person would not be made redundant as in comparison with the complainant, he was much younger and had a more important job. The complainant alleged that he was selected for redundancy because of his age.

## Chapter 4: Complaint Handling Section

In reply to the complaint the General Manager of the company denied making any reference to the complainant's age in the interview and denied that age was a factor in determining whether the complainant would be offered a position with the company. The company maintained that the complainant's redundancy was due to business needs and performance issues.

The complaint was resolved through a conciliation process with the company agreeing to pay the complainant \$2 500 in general damages.

## Human Rights and Equal Opportunity Commission Act

In this reporting year the Commission received 124 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 (28%) and discrimination in employment based on criminal record (26%). The Commission finalised 103 complaints under this Act and 25 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Human Rights and Equal Opportunity Commission Act are provided later in this chapter.

### *1. Alleged discrimination on the ground of criminal record*

The complainant applied for a client service position with a Commonwealth department and was advised that her application was unsuccessful because she had a criminal record. The complainant claimed she had only been convicted for traffic offences and the court had taken relevant mitigating circumstances into account at that time. The complainant said she had a long history of responsible high level employment which included working as a manager, being promoted and receiving letters of commendation. The complainant alleged that the department had discriminated against her on the ground of her criminal record.

The department advised the Commission that the complainant's criminal record included an offence of driving whilst disqualified. The department contended that the nature and repetition of the offences on the complainant's criminal record demonstrated a lack of responsibility and respect for the legal system. The department claimed the complainant would be unable to fulfil the inherent requirements of the position which required honesty and integrity, accountability to the community, ethical behaviour and compliance with lawful and reasonable directions.

The parties agreed to participate in a conciliation process. As a result of this process the department agreed to offer the complainant the position she had applied for.

### *2. Complaint of discrimination on the ground of trade union activity*

The complainant advised that he had been employed as a pattern maker with the respondent industrial company for 13 years before being made redundant about seven years ago. He claimed that during his previous employment with the company he had been an active trade union member and union delegate. Over the past years the complainant had made three separate applications for employment with the company but was not offered a position. The complainant alleged that he was refused employment because of his trade union activity during his previous employment with the company. The complainant also claimed that he was told he would not be offered employment because he had cost the company a lot of money and because he 'had a history'.

The company denied the alleged comments had been made to the complainant. The company said that in relation to the three positions the complainant applied for, either a more suitable applicant had been appointed or the position had been deemed unnecessary and no-one appointed.

The complaint was resolved through a conciliation process with the company undertaking not to make disparaging remarks about the complainant and agreeing to provide the complainant with a statement of regret. The company also confirmed that the complainant was able to apply for future positions with company.

### *3. Alleged discrimination in employment on the ground of sexual preference*

The complainant is employed by a Commonwealth department in a client service position. The complainant claimed that the department has a policy whereby e-mails containing particular words identified as 'profanities' are blocked for security purposes. The complainant said that the word 'lesbian' is on this list and that e-mails sent to her containing this word have been blocked. The complainant advised that she is a lesbian and said she was offended by the inclusion of this word on the list.

In response to the complaint the department advised that the word 'lesbian' was on the list of blocked words because employees were receiving inappropriate spam e-mails which included this word.

The parties agreed to try to resolve the complaint through a conciliation process. The complaint was successfully resolved and the terms of resolution included an agreement that the department would remove the word 'lesbian' from the list of blocked items and provide the complainant with a letter of regret.

### *4. Complaint of discrimination in employment on the ground of criminal record*

The complainant was offered a position as a Product Manager with a large bank and required to undergo a police record check. The complainant claimed that at a subsequent meeting he was told that an offence had appeared as a result of this police check. The complainant said he told the bank the only offence he was aware of related to a traffic incident that occurred when he was a teenager about thirteen years ago which resulted in loss of his driver's licence for six months. He claimed that the bank said the police check showed a criminal conviction around 1997–1998 and therefore he could not be employed in the Product Manager position. The complainant said he contacted the Australian Federal Police and was told that no offences had appeared as part of his criminal record check.

The bank denied that the complainant's criminal record was the reason why he was not employed. The bank said it did not proceed with the offer of employment because events following the preliminary police check raised concerns about the complainant's honesty and integrity. The bank was of the view that the

complainant could not be trusted in a role where he would have access to confidential customer information.

The complaint was resolved through a conciliation process. The terms of resolution included an agreement by the bank to provide the complainant with \$10 500 in general damages and a verbal apology. The bank also undertook to review its procedures regarding criminal record and recruitment.

## 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.

When comparing complaint data between different agencies and across reporting years, it is important to consider 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

#### *(i) Enquiries received and complaints received and finalised*

There has been a 17 percent increase in the number of enquires received over the past three years and in comparison with the previous reporting year, there was a 14 percent increase in the number of enquires received in 2005–06. In the previous reporting year 15 percent of the issues raised by enquirers related to employment. In 2005–06 this increased to 22 percent.

Over the past three reporting years there has been a 25 percent increase in the number of complaints received. In comparison with the previous reporting year, there was a 13 percent increase in the number of complaints received in 2005–06. Forty percent of complaints received in 2005–06 were lodged under the Disability Discrimination Act, 25 percent under the Sex Discrimination Act, 18 percent under the Racial Discrimination Act, 9 percent under the Human Rights and Equal Opportunity Commission Act and 8 percent under the Age Discrimination Act. This is generally consistent with the distribution of complaints in previous years.

As in previous years, employment was the main area of complaint under all federal anti-discrimination legislation. In 2005–06 complaints regarding employment constituted: 48 percent of complaints under the Racial Discrimination Act; 85 percent of complaints under the Sex Discrimination Act; 58 percent of complaints under the Disability Discrimination Act; and 74 percent of complaints under the Age Discrimination Act. In 2005–06 there was an increase in the number of employment related complaints lodged under all of these Acts.

The majority of complaints received under the Human Rights and Equal Opportunity Commission Act related to alleged breaches of the International Covenant on Civil and Political Rights and alleged discrimination in employment on the ground of criminal record. These have been the main subject areas of complaint for the past four years.



### ***(ii) Conciliation of complaints***

Of the complaints finalised in 2005–06, 39 percent were conciliated. This represents a slight increase in the conciliation rate in comparison with the previous reporting year. Of those matters where conciliation was attempted in 2005–06, 67 percent were able to be resolved. The conciliation success rate has remained the same over the past two reporting years.

Complaints under the Disability Discrimination Act had the highest conciliation rate (46%) and the second highest conciliation success rate (72%). Complaints under the Sex Discrimination Act had a conciliation rate of 44 percent and a conciliation success rate of 61 percent. Complaints under the Age Discrimination Act had a conciliation rate of 34 percent and a conciliation success rate of 87 percent while complaints under the Racial Discrimination Act had a conciliation rate of 19 percent and a conciliation success rate of 46 percent. In this reporting year, 25 percent of finalised complaints under the Human Rights and Equal Opportunity Commission Act were successfully resolved and under this Act complaints had the highest conciliation success rate (74%).

### ***(iii) Demographic data***

Information on the geographical location and ethnicity of complainants is provided in Tables 7, 9 and 10 below.

Demographic data obtained during the complaint process indicates that 49 percent of complaints were lodged by individual females, 47 percent by individual males and four percent by other categories, for example, multiple complainants.

Forty-four percent of complainants reported that they knew about the Commission prior to lodging their complaint. The main sources of information for others were legal centres and lawyers (12%) and family members, friends or support people (11%).

The majority of complainants (65%) indicated that their main source of income at the time of the alleged act was from full, part-time or casual employment.

Approximately 36 percent of complainants were represented in the complaint process. Of this group, 39 percent were represented by privately funded solicitors. Other forms of representation were community legal centres such as Indigenous or disability legal services (20%), other advocacy groups such as working women's centres or disability advocacy services (20%), family members or friends (13%) and trade unions or professional associations (8%). Further data on representation in the complaint process is provided in articles on the CHS webpage at: [www.humanrights.gov.au/complaints\\_information/papers.html](http://www.humanrights.gov.au/complaints_information/papers.html).

Data collected on respondent categories indicates that in the last reporting year approximately 44 percent of complaints were against private enterprise, 13 percent against Commonwealth departments/statutory authorities and 10 percent against state departments/statutory authorities. These have been the main respondent organisation categories for the last three reporting years. Complete information on respondent categories is provided in Table 11 below.

## Complaint Information Service

<b>Table 1: Website enquiries</b>	
Complaint Handling Section webpage views	189 290

<b>Table 2: Telephone, TTY, e-mail, in-person and written enquiries received</b>	
<i>Enquiry type</i>	<i>Total</i>
Telephone	9 627
TTY	9
E-mail	973
In-person	122
Written	605
<b>Total</b>	<b>11 336</b>

<b>Table 3: Enquiries received by issue</b>	
<i>Issue</i>	<i>Total</i>
Race	1 042
Race – racial hatred	364
Sex – direct	548
Sexual harassment	690
Sex – marital status, family responsibilities, parental status, breast feeding	264
Sex – pregnancy	464
Sexual preference, transgender, homosexuality, lawful sexual activity	148
Disability – impairment	1 760
Disability – HIV/AIDS/Hepatitis	30
Disability – workers compensation	135
Disability – mental health	428
Disability – intellectual/learning disability	142
Disability – maltreatment/negligence	25
Disability – physical feature	59
Age – too young	90
Age – too old	422

<b>Table 3: Enquiries received by issue (con't)</b>	
Age – compulsory retirement	11
Criminal record/conviction	238
Political opinion	18
Religion/religious organisations	163
Employment – personality conflicts/favouritism	581
Employment – union/industrial activity	375
Employment – unfair dismissal/other industrial issues	1 353
Employment – workplace bullying	809
Human rights – children	132
Human rights – civil, political, economic, social	395
Immigration – detention centres	30
Immigration – visas	127
Prisons/prisoners	114
Police	118
Court – family court	122
Court – other law matters	161
Privacy – data protection	107
Neighbourhood disputes	86
Advertising	26
Local government – administration	63
State government – administration	233
Federal government – administration	237
Other	1 752
<b>Total*</b>	<b>13 862</b>

\* One enquiry may have multiple issues.

<b>Table 4: Enquiries received by state of origin</b>		
<i>State of origin</i>	<i>Total</i>	<i>Percentage (%)</i>
New South Wales	4 736	42
Victoria	2 066	18
South Australia	779	7
Western Australia	645	6
Queensland	1 652	14
Australian Capital Territory	239	2
Tasmania	180	2
Northern Territory	162	1
Unknown/overseas	877	8
<b>Total</b>	<b>11 336</b>	<b>100</b>

## Complaints Overview

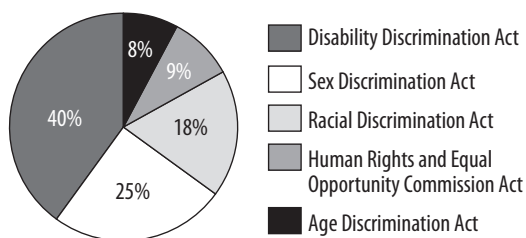
	<i>2002–03</i>	<i>2003–04</i>	<i>2004–05</i>	<i>2005–06</i>
Received	1 236	1 113	1 241	1 397
Finalised	1 308	1 229	1 233	1 205

	<i>2002–03 (percent)</i>	<i>2003–04 (percent)</i>	<i>2004–05 (percent)</i>	<i>2005–06 (percent)</i>
Terminated/declined	56	51	46	44
Conciliated	32	38	38	39
Withdrawn	11	10	16	16
Reported (HREOCA only)	1	1	–	1

<i>State of origin</i>	<i>Total</i>	<i>Percentage (%)</i>
New South Wales	564	40.0
Victoria	275	20.0
South Australia	168	12.0
Western Australia	135	9.5
Queensland	183	13.0
Australian Capital Territory	40	3.0
Tasmania	13	1.0
Northern Territory	11	1.0
Unknown/overseas	8	0.5
<b><i>Total</i></b>	<b><i>1 397</i></b>	<b><i>100</i></b>

<i>Act</i>	<i>Received</i>	<i>Finalised</i>
Racial Discrimination Act (RDA)	259	196
Sex Discrimination Act (SDA)	347	314
Disability Discrimination Act (DDA)	561	512
Age Discrimination Act (ADA)	106	80
Human Rights and Equal Opportunity Commission Act (HREOCA)	124	103
<b>Total</b>	<b>1 397</b>	<b>1 205</b>

**Chart 1: Complaints received by Act**



	<i>RDA (%)</i>	<i>SDA (%)</i>	<i>DDA (%)</i>	<i>ADA (%)</i>	<i>HREOCA (%)</i>	<i>Total (%)</i>
Born in Australia	31	71	63	55	52	58
Born outside of Australia	62	13	15	32	29	25
Unknown	7	16	22	13	19	17

	<i>RDA (%)</i>	<i>SDA (%)</i>	<i>DDA (%)</i>	<i>ADA (%)</i>	<i>HREOCA (%)</i>	<i>Total (%)</i>
Aboriginal	22	2	2	–	3	5
Torres Strait Islander	1	–	–	–	–	–
None of the above	77	98	98	100	97	95

	<i>RDA (%)</i>	<i>SDA (%)</i>	<i>DDA (%)</i>	<i>ADA (%)</i>	<i>HREOCA (%)</i>	<i>Total (%)</i>
Individual male	23	26	7	4	4	15
Individual female	11	3	5	6	5	6
Private enterprise	36	53	44	53	30	44
Commonwealth government department / statutory authority	11	9	11	16	41	13
State government department / statutory authority	10	3	15	10	13	10
Local government	1	1	2.5	2	2	2
Educational institution	3	2	8	2	1	4
Trade union / professional association	1	0.5	1	1	1	1
Not for profit organisation / non government	1	1	2.5	2	1	2
Clubs/incorporated associations	1	0.5	2.5	2	1	2
Other	2	1	1.5	2	1	1

	<i>RDA (%)</i>	<i>SDA (%)</i>	<i>DDA (%)</i>	<i>ADA (%)</i>	<i>HREOCA (%)</i>	<i>Cumulative Total</i>
0 – 3 months	22	19	18	27.5	17	19
3 – 6 months	25	38	35	49	33	54
6 – 9 months	32	28	29	17.5	21	82
9 – 12 months	12	10.5	12	2	9	93
More than 12 months	9	4.5	6	4	19	99
More than 24 months	–	–	–	–	1	100

## Racial Discrimination Act

<b>Table 13: Racial Discrimination Act – complaints received and finalised</b>	
	<i>Total</i>
Received	259
Finalised	196

<b>Table 14: Racial Discrimination Act – complaints received by ground</b>		
<i>Racial Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Colour	112	18
National origin/extraction	140	22
Ethnic origin	54	9
Descent	8	1
Race	226	36
Victimisation	8	1
Racial hatred	79	13
Aids, permits or instructs	–	–
Association	1	–
<b>Total*</b>	<b>628</b>	<b>100</b>

\*One complaint may have multiple grounds.

<b>Table 15: Racial Discrimination Act – complaints received by area</b>		
<i>Racial Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Rights to equality before the law	4	1
Access to places and facilities	5	1
Land, housing, other accommodation	18	3
Provision of goods and services	111	18
Right to join trade unions	–	–
Employment	305	48
Advertisements	–	–
Education	13	2
Incitement to unlawful acts	10	1
Other – section 9	55	9
Racial hatred	107	17
<b>Total*</b>	<b>628</b>	<b>100</b>

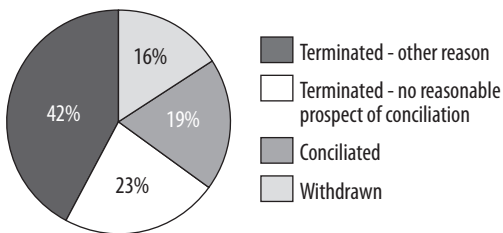
\*An area is recorded for each ground, so one complaint may have multiple and different areas.



<b>Table 16: Racial Discrimination Act – outcomes of finalised complaints</b>	
<i>Racial Discrimination Act</i>	<i>Total</i>
<b>Terminated</b>	<b>120</b>
At complainants request – s.46PE	1
Not unlawful	1
More than 12 months old	3
Trivial, vexatious, frivolous, misconceived, lacking in substance	73
Adequately dealt with already	–
More appropriate remedy available	–
Subject matter of public importance	–
No reasonable prospect of conciliation	42
<b>Withdrawn</b>	<b>29</b>
Withdrawn, does not wish to pursue, advised the Commission	27
Withdrawn, does not wish to pursue, settled outside the Commission	2
<b>Conciliated</b>	<b>36</b>
<b>Administrative closure*</b>	<b>11</b>
<b>Total</b>	<b>196</b>

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

**Chart 2: Racial Discrimination Act – outcomes of finalised complaints**



## Sex Discrimination Act

<b>Table 17: Sex Discrimination Act – complaints received and finalised</b>	
<i>Sex Discrimination Act</i>	<i>Total</i>
Received	347
Finalised	314

<b>Table 18: Sex Discrimination Act – complaints received by sex of complainant</b>		
<i>Sex Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Female	284	82
Male	60	17
Joint/multiple	3	1
<b>Total</b>	<b>347</b>	<b>100</b>

<b>Table 19: Sex Discrimination Act – complaints received by ground</b>		
<i>Sex Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Sex discrimination	418	51
Marital status	34	4
Pregnancy	165	20
Sexual harassment	155	19
Parental status/family responsibility	25	3
Victimisation	15	2
Aids, permits, instructs – s. 105	3	1
<b>Total*</b>	<b>815</b>	<b>100</b>

\*One complaint may have multiple grounds.

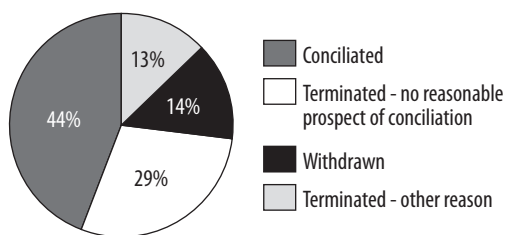
<i>Sex Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Employment	697	85
Goods, services and facilities	67	8
Land	–	–
Accommodation	4	–
Superannuation, insurance	–	–
Education	13	2
Clubs	5	1
Administration of Commonwealth laws and programs	23	3
Application forms etc.	–	–
Trade unions, accrediting bodies	6	1
<b>Total*</b>	<b>815</b>	<b>100</b>

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

<i>Sex Discrimination Act</i>	<i>Total</i>
<b>Terminated</b>	<b>124</b>
At complainants request – s.46PE	–
Not unlawful	5
More than 12 months old	4
Trivial, vexatious, frivolous, misconceived, lacking in substance	27
Adequately dealt with already	1
More appropriate remedy available	1
Subject matter of public importance	–
No reasonable prospect of conciliation	86
<b>Withdrawn</b>	<b>43</b>
Withdrawn, does not wish to pursue, advised the Commission	38
Withdrawn, does not wish to pursue, settled outside the Commission	5
<b>Conciliated</b>	<b>134</b>
<b>Administrative closure*</b>	<b>13</b>
<b>Total</b>	<b>314</b>

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

**Chart 3: Sex Discrimination Act – outcomes of finalised complaints**



### Disability Discrimination Act

<b>Table 22: Disability Discrimination Act – complaints received and finalised</b>	
<i>Disability Discrimination Act</i>	<i>Total</i>
Received	561
Finalised	512

<b>Table 23: Nature of complainant’s disability</b>		
<i>Disability Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Physical disability	174	26
A mobility aid is used (e.g. walking frame or wheelchair)	74	11
Physical disfigurement	11	2
Presence in the body of organisms causing disease (e.g. HIV/AIDS)	12	2
Presence in the body of organisms causing disease (other)	8	1
Psychiatric disability	103	15
Neurological disability (e.g. epilepsy)	40	6
Intellectual disability	22	3
Learning disability	24	4
Sensory disability (hearing impaired)	21	3
Sensory disability (deaf)	13	2
Sensory disability (vision impaired)	26	4
Sensory disability (blind)	17	3
Work related injury	47	7
Medical condition (e.g. diabetes)	48	7
Other	30	4
<b>Total*</b>	<b>670</b>	<b>100</b>

\*One complainant may have multiple disabilities.

<b>Table 24: Disability Discrimination Act – complaints received by ground</b>		
<i>Disability Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Disability of person(s) aggrieved	1 147	88
Associate	99	7
Disability – person assisted by trained animal	13	1
Disability – accompanied by assistant	8	1
Disability – use of appliance	6	–
Harassment	12	1
Victimisation	10	1
Aids, permits or instructs	9	1
<b>Total*</b>	<b>1 304</b>	<b>100</b>

\* One complaint may have multiple grounds.

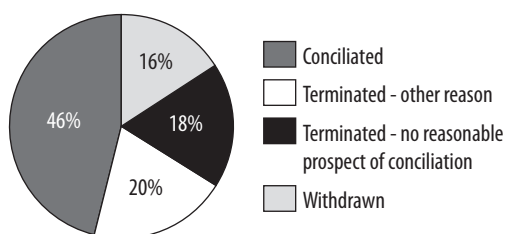
<b>Table 25: Disability Discrimination Act – complaints received by area</b>		
<i>Disability Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Employment	752	58
Goods, services and facilities	227	17
Access to premises	111	9
Land	–	–
Accommodation	45	3
Incitement to unlawful acts or offences	3	–
Advertisements	–	–
Superannuation, insurance	13	1
Education	90	7
Clubs, incorporated associations	27	2
Administration of Commonwealth laws and programs	25	2
Sport	3	–
Application forms, requests for information	–	–
Trade unions, registered organisations	–	–
Unlawful to contravene Disability Standard	8	1
<b>Total*</b>	<b>1 304</b>	<b>100</b>

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

<b>Table 26: Disability Discrimination Act – outcomes of finalised complaints</b>	
<i>Disability Discrimination Act</i>	<i>Total</i>
<b>Terminated</b>	<b>191</b>
At complainants request – s.46PE	–
Not unlawful	10
More than 12 months old	1
Trivial, vexatious, frivolous, misconceived, lacking in substance	87
Adequately dealt with already	1
More appropriate remedy available	3
Subject matter of public importance	–
No reasonable prospect of conciliation	89
<b>Withdrawn</b>	<b>80</b>
Withdrawn, does not wish to pursue, advised the Commission	67
Withdrawn, does not wish to pursue, settled outside the Commission	13
<b>Conciliated</b>	<b>229</b>
<b>Administrative closure*</b>	<b>12</b>
<b>Total</b>	<b>512</b>

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

**Chart 4: Disability Discrimination Act – outcomes of finalised complaints**



## Age Discrimination Act

<i>Age Discrimination Act</i>	<i>Total</i>
Received	106
Finalised	80

<i>Age Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
0 – 14 years	5	5
15 – 24 years	6	6
25 – 34 years	2	2
35 – 44 years	3	3
45 – 54 years	25	23
55 – 64 years	24	22
> 65 years	19	18
Unknown	22	21
<b><i>Total</i></b>	<b><i>106</i></b>	<b><i>100</i></b>

<i>Age Discrimination Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Employment	155	74
Goods, services and facilities	30	14
Access to premises	2	1
Land	–	–
Accommodation	4	2
Incitement to unlawful acts or offences	–	–
Advertisements	–	–
Superannuation, insurance	8	4
Education	4	2
Clubs, incorporated associations	–	–
Administration of Commonwealth laws and programs	6	3

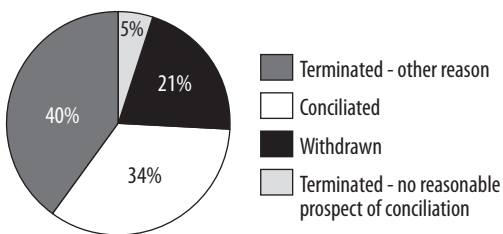
<b>Table 29: Age Discrimination Act – complaints received by area</b>		
Application forms, requests for information	–	–
Trade unions, registered organisations	–	–
<b>Total*</b>	<b>209</b>	<b>100</b>

\* One complaint may have multiple and different areas.

<b>Table 30: Age Discrimination Act – outcomes of finalised complaints</b>	
<i>Age Discrimination Act</i>	<i>Total</i>
<b>Terminated</b>	<b>34</b>
At complainants request – s.46PE	–
Not unlawful	6
More than 12 months old	–
Trivial, vexatious, frivolous, misconceived, lacking in substance	24
Adequately dealt with already	–
More appropriate remedy available	–
Subject matter of public importance	–
No reasonable prospect of conciliation	4
<b>Withdrawn</b>	<b>16</b>
Withdrawn, does not wish to pursue, advised the Commission	14
Withdrawn, does not wish to pursue, settled outside the Commission	2
<b>Conciliated</b>	<b>26</b>
<b>Administrative closure*</b>	<b>4</b>
<b>Total</b>	<b>80</b>

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

**Chart 5: Age Discrimination Act – outcomes of finalised complaints**





## Human Rights and Equal Opportunity Commission Act

<b>Table 31: HREOCA – complaints received and finalised</b>	
<i>Human Rights and Equal Opportunity Commission Act</i>	<i>Total</i>
Received	124
Finalised	103

<b>Table 32: HREOCA – complaints received by ground</b>		
<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)	16	12
Political opinion (ILO 111)	8	6
National extraction (ILO 111)	–	–
Social origin (ILO 111)	–	–
Age (ILO 111)	5	4
Medical record (ILO 111)	–	–
Criminal record (ILO 111)	34	26
Impairment (including HIV/AIDS status) (ILO 111)	–	–
Marital status (ILO 111)	–	–
Disability (ILO 111)	2	2
Nationality (ILO 111)	–	–
Sexual preference (ILO 111)	6	5
Trade union activity (ILO 111)	15	11
International Covenant on Civil and Political Rights	37	28
Declaration on the Rights of the Child	–	–
Declaration on the Rights of Mentally Retarded Persons	–	–
Declaration on the Rights of Disabled Persons	1	1
Convention on the Rights of the Child	3	2
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	3	2
Not a ground within jurisdiction	–	–
Not a human right as defined by the Act	2	1
<b>Total*</b>	<b>132</b>	<b>100</b>

\* One complaint may have multiple grounds.

<b>Table 33: HREOCA – complaints received by area</b>		
<i>Human Rights and Equal Opportunity Commission Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Acts or practices of the Commonwealth	43	33
Employment	87	66
Not act or practice of the Commonwealth (not employment cases)	2	1
<b>Total*</b>	<b>132</b>	<b>100</b>

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

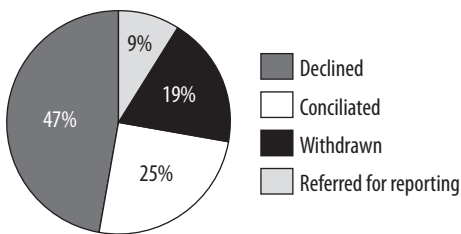
<b>Table 34: HREOCA – non-employment complaints received by sub-area</b>		
<i>Human Rights and Equal Opportunity Commission Act</i>	<i>Total</i>	<i>Percentage (%)</i>
Prisons, prisoner	9	20
Religious institutions	–	–
Family court matters	–	–
Other law court matters	5	11
Immigration	9	20
Law enforcement agency	1	2
State agency	–	–
Other service provider (private sector)	–	–
Local government	–	–
Education systems	–	–
Welfare systems	7	16
Personal or neighbourhood conflict	–	–
Health system	5	11
Other	9	20
<b>Total</b>	<b>45</b>	<b>100</b>

<b>Table 35: HREOCA – Outcomes of finalised complaints</b>	
<i>Human Rights and Equal Opportunity Commission Act</i>	<i>Total</i>
<b>Declined</b>	<b>67</b>
Does not constitute discrimination	9
Human rights breach, not inconsistent or contrary to any human right	6
More than 12 months old	3
Trivial, vexatious, frivolous, misconceived, lacking in substance	29
Adequately dealt with already	–
More appropriate remedy available	1
Withdrawn, does not wish to pursue, advised the Commission	15
Withdrawn, does not wish to pursue, settled outside the Commission	4
Withdrawn or lost contact	–
<b>Conciliated</b>	<b>26</b>
<b>Referred for reporting*</b>	<b>9</b>
<b>Administrative closure**</b>	<b>1</b>
<b>Total</b>	<b>103</b>

\* 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 report.

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

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





## Chapter 5: **Legal Section**

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The Legal Section carries out litigation and other legal work on behalf of the Commission, the President and Commissioners to the highest standard. Some of this work is performed under the Acts administered by the Commission, but primarily in the preparation of notices and reports under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).

The Legal Section also provides internal legal advice on discrimination, human rights and other laws relevant to the work of the Commission, and represents the Commission externally, through providing information and education on human rights matters.

The section also assists 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.

Other 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 consider applications for exemptions under the *Sex Discrimination Act 1984* (Cth) and the *Age Discrimination Act 2004* (Cth); and 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 HREOCA**

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 complaint is unable to be resolved through this process and the President is satisfied after inquiry that a breach has occurred, the matter is reported to the federal Attorney-General. This report can make recommendations to address any damage suffered by the complainant; however, these are not enforceable.

Between 1 July 2005 and 30 June 2006, the following Commission reports were tabled in parliament by the Minister.

### **HREOC Report No. 31**

*Report of an Inquiry into a complaint by Mr Zacharias Manongga Consul for the Northern Territory, Consul of the Republic of Indonesia that the human rights of Indonesian Fishers detained on vessels in Darwin Harbour were breached by the Commonwealth of Australia*

The Indonesian consul in Darwin complained about the conditions of detention of Indonesian Fishers being held on their vessels in Darwin Harbour. At the time, Indonesian fishing vessels apprehended in the Australian Fishing Zone were detained in Darwin Harbour with the crew members on board.

The President and members of the Complaints section visited Darwin to investigate the complaint and met with the respondents, the Department of Immigration and Multicultural and Indigenous Affairs and the Australian Fisheries Management Authority.

The President found the conditions of detention of the Indonesian Fishers breached article 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR) and made several recommendations to prevent further breaches. The report into his inquiry was tabled in Parliament by the Attorney-General on 7 December 2005.

A copy of the report is available at: [www.humanrights.gov.au/human\\_rights/human\\_rights\\_reports/hrc\\_report\\_31/index.html](http://www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_31/index.html)

### **HREOC Report No. 32**

*Report of an Inquiry into a complaint made on behalf of federal prisoners detained in New South Wales correctional centres that their human rights have been breached by the decision to ban distribution of the magazine 'Framed'*

Justice Action made a complaint on behalf of federal prisoners detained in NSW correctional centres against the State of NSW, Department of Corrective Services and the Commonwealth of Australia.

The complaint arose out of the decision of the Department of Corrective Services to ban distribution of the magazine 'Framed' from NSW prisons. Justice Action publishes 'Framed' and has distributed it in prisons in every State for nearly 20 years. Justice Action alleged on behalf of federal prisoners in NSW that the act of banning the magazine constitutes a breach of Article 19 of the ICCPR, and denied that any material in the relevant issues fell within the exemptions provided in Article 19(3) of the ICCPR.

The President found that the decision to ban the distribution of 'Framed' in NSW correctional centres was inconsistent with the rights of federal prisoners in NSW prisons to freedom of expression under article 19 of the ICCPR. The President made several recommendations including that the Department of Corrective Services remove the ban on the distribution of the publication 'Framed' to federal prisoners in NSW. The report into his inquiry was tabled in Parliament by the Attorney-General on 1 June 2006.

A copy of the report is available at: [www.humanrights.gov.au/human\\_rights/human\\_rights\\_reports/hrc\\_report\\_32.html](http://www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_32.html)

### **HREOC Report No. 33**

#### *Report of an Inquiry into a complaint by Tracey Gordon of discrimination in employment on the basis of criminal record*

The complainant alleged that she had been discriminated against by the respondent in her application for employment as a Communications Officer on the basis of her criminal record. The complainant's application for the position was rejected by the respondent because her criminal record contained a conviction for drink driving. The respondent claimed that because of her criminal record the complainant was unable to fulfil the inherent requirements of the position of Communications Officer.

The President found that the respondent had discriminated against the complainant on the basis of her criminal record because it had imposed a character requirement beyond that which could be justified as an inherent requirement of the position of a Communications Officer.

The report of the President's inquiry into the complaint was tabled in Parliament by the Attorney-General on 15 June 2006.

A copy of the report is available at: [www.humanrights.gov.au/human\\_rights/human\\_rights\\_reports/hrc\\_report\\_33.html](http://www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_33.html)

### **HREOC Report No. 34**

#### *Report of an Inquiry into by Mr Daniel Clark against the Minister for Foreign Affairs and Trade of a breach of his human right to freedom of expression*

Mr Clark alleged that the decision of Minister of Foreign Affairs and Trade to withdraw Mr Clark's invitation to participate in a Non-Government Organisation Forum breached his right to freedom of expression under the ICCPR.

The President found the Minister's decision to withdraw Mr Clark's invitation to participate in the Non-Government Organisation Consultations was inconsistent with or contrary to Mr Clark's human rights. The President recommended the

respondent provide a written apology. The minister declined to provide an apology and notified the Commission no action would be taken as a result of the findings.

The report of the President's Inquiry into the complaint was tabled in Parliament by the Attorney-General on 15 June 2006.

The report is available online at: [www.humanrights.gov.au/human\\_rights/human\\_rights\\_reports/hrc\\_report\\_34.html](http://www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_34.html)

## **HREOC Report No. 35**

### *Report of an Inquiry into a complaint by Mr AV of a breach of his human rights while in immigration detention*

Mr AV alleged that his human rights had been breached while he was being detained in the Villawood Immigration Detention Centre.

The President found that excessive and unreasonable force had been used by officers employed at the centre while restraining and searching Mr AV. In particular, the President found that Mr AV had been held against the wall by his throat and had been subjected to an unauthorised strip search. These acts were found to constitute inhuman and degrading treatment and breached Mr AV's right to be treated with humanity and inherent dignity. The acts were therefore inconsistent with and contrary to articles 7 and 10 of the ICCPR.

The President recommended that Mr AV be paid \$4 000 in compensation and that an apology be given to him by the Secretary of the Department of Immigration and Multicultural Affairs (DIMA) on behalf of the Commonwealth. An apology was given to Mr AV by the Secretary of DIMA on 5 April 2006 and compensation was paid to him on 27 June 2006.

The report of the President's Inquiry into the complaint was tabled in Parliament by the Attorney-General on 20 June 2006.

The report is available online at: [www.humanrights.gov.au/human\\_rights/human\\_rights\\_reports/hrc\\_report\\_35.html](http://www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_35.html)

## **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](http://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) so 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.

During 2005–06, the Commission considered 12 potential intervention matters: seven of these matters came before the Commission at the request of a party to proceedings or a third party; and five were considered by the Commission's own motion. The Commission resolved to intervene in six matters and was granted leave to intervene in five of those matters. The six matters are summarised below.

### ***Baird v State of Queensland***

The Commission was granted leave by the Full Federal Court of Australia to intervene in this matter and made written and oral submissions on 20 February 2006. The proceedings were an appeal against the decision of Dowsett J in the Federal Court (*Baird v Queensland* [2005] FCA 495).

The appellants claimed that between 1975 and 1986 they were employed on missions by the Queensland government ('the Government'). They further alleged that during this period they were paid at a level that was below that being paid by other persons employed by the Government to perform similar work and/or below relevant levels established by applicable industrial awards. The applicants are Indigenous people and claimed that the wage differentiation to which they were subjected constituted race discrimination, contrary to ss 9 and 15 (prohibiting discrimination in employment) of the *Racial Discrimination Act 1975*.

The Court at first instance had found that the appellants were not employed by the Government, but rather by the Lutheran Church of Australia ('the Church') which had administered the missions. While the Church was funded by the Government to run the missions, the Court found that the underpayment of wages was not a consequence of the actions of the Government and that the level of funding provided was not 'based on' race.

The Commission's submissions in the appeal set out the background and context of the *Racial Discrimination Act 1975* and addressed the correct interpretation and application of the *Racial Discrimination Act 1975* in the circumstances of the case. The Full Court has reserved its judgment.

The Commission's submissions are available at: [www.humanrights.gov.au/legal/intervention/baird.html](http://www.humanrights.gov.au/legal/intervention/baird.html)

### ***Hurst v State of Queensland***

HREOC was granted leave by the Full Federal Court of Australia to intervene in this matter on 24 February 2006. The proceedings were an appeal against the decision of Lander J in the Federal Court of Australia (*Hurst and Devlin v Education Queensland* [2005] FCA 405). Only the first applicant, Tiahna Hurst, appealed the first instance decision.

Tiahna Hurst is a deaf child who complained that her school's requirement that she be taught without the assistance of an Auslan interpreter indirectly discriminated against her, contrary to the *Disability Discrimination Act 1992* (Cth). At first instance, Lander J found that that requirement was not discriminatory because Ms Hurst was able to 'cope' with it, in the sense that she could 'keep up' with her hearing peers. Because she was able to 'cope', she could not demonstrate that she was 'not able to comply' with the requirement.

The Commission made submissions before the Full Federal Court in relation to whether Ms Hurst was 'not able to comply' with the requirement and the reasonableness of the requirement. Central to HREOC's submissions was the idea that although able to 'keep up', Ms Hurst was not able to realise her full potential.

The Commission's submissions are available at: [www.humanrights.gov.au/legal/intervention/hurst.html](http://www.humanrights.gov.au/legal/intervention/hurst.html)

The Full Federal Court overturned the decision at first instance. It held that a disabled person's inability to achieve his or her full potential, in educational terms, can amount to serious disadvantage.

The Full Federal Court's decision is available at: [www.austlii.edu.au/au/cases/cth/FCAFC/2006/100.html](http://www.austlii.edu.au/au/cases/cth/FCAFC/2006/100.html)

## **Inquest into deaths by petrol sniffing**

In August 2005, the Commission made a written submission to the Northern Territory Coroner in an inquest into three deaths in Central Australia from petrol-sniffing.

The Commission's submissions set out the human rights principles relevant to the inquest and made submissions as to the appropriate scope of the inquest and its recommendations. In particular, it was argued that the Coroner should ensure that systemic aspects of the deaths were fully investigated and reported on to ensure the right to life and the right of children to survival and development were protected.

The Commission's submissions are available at: [www.humanrights.gov.au/legal/intervention/presley\\_etal.html](http://www.humanrights.gov.au/legal/intervention/presley_etal.html)

## **Inquest into the death of Scott Simpson**

The Commission was granted leave to appear in the inquest into the death in custody of Mr Scott Simpson. The inquest was conducted at the State Coroner's Court in Glebe and Westmead from 28 November 2005 to 1 December 2005 and from 20 February 2006 to 3 March 2006.

Mr Simpson had paranoid schizophrenia. He had been held in segregated custody for almost two years at Goulburn and Long Bay correctional centres. He was found dead in his cell on 7 June 2004, apparently by hanging. The Commission submitted that the treatment of Mr Simpson during his incarceration was inconsistent with the rights to humane treatment in articles 7 and 10(1) of the ICCPR in the following respects:

- the prolonged detention of Mr Simpson in segregation, particularly in light of his mental illness;
- the failure to transfer Mr Simpson to hospital; and
- the failure to provide adequate psychiatric care to Mr Simpson while he remained in the correctional environment.

The Commission also submitted that further steps should be taken toward the elimination of obvious hanging points in cells to ensure Australia's compliance with the right to life in article 6 of the ICCPR.

The Coroner's findings were handed down on 14 July 2006. The Coroner's formal finding was that Mr Simpson died on 7 June 2004 when he deliberately hanged himself in his cell at the Long Bay Correctional Centre, Malabar. The Coroner provided an outline of her findings of fact which included:

- Mr Simpson was not provided with adequate medical treatment during his incarceration;

- the time Mr Simpson spent in segregation lead inevitably to a deterioration of his mental state until the crisis point was reached on 7 June 2004;
- that more could have been done to secure a hospital bed for Mr Simpson, but wasn't;
- that Justice Health administrators were reluctant to admit Mr Simpson to D ward, whether unconvinced of the clinical urgency or because of security considerations or a combination of both.

The Coroner made a number of wide-ranging recommendations intended to prevent deaths from happening in similar circumstances in the future.

A copy of the Commission's submissions is available at: [www.humanrights.gov.au/legal/intervention/simpson.html](http://www.humanrights.gov.au/legal/intervention/simpson.html)

### **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. In the alternative, the applicants seek an order that the court authorise such treatment and empower the applicants to provide such authorities and consents as are necessary for that purpose.

The proceedings are likely to raise issues that include the following:

- whether the child can give informed consent to the proposed medical treatment
- if the child is unable to give informed consent to the proposed medical treatment, the scope of the parental power to consent to such treatment

The Commission 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* and was granted leave to intervene on 7 March 2006. The matter was ongoing as at 30 June 2005.

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

### ***The Queen v GJ***

On 3 November 2005, the Commission was refused leave to intervene in an appeal heard by the Northern Territory Court of Criminal Appeal. The appeal had been lodged by the Crown in respect of the sentence imposed on Mr GJ who had been charged, and pleaded guilty, under the *Criminal Code Act* (NT) with having sexual intercourse with a child under the age of 16 years and a common assault against the same child. Both the prosecution and sentencing judge accepted that, based on Mr GJ's understanding of traditional law as it applied in the Ngarinaman community, he believed that intercourse with the child was acceptable because she had been promised to him and had turned 14 years of age. It was also accepted that based on Mr GJ's understanding and upbringing in his traditional law, notwithstanding the child's objections, he believed that the child was consenting to sexual intercourse. A sentence was imposed of five months imprisonment for the assault and 19 months imprisonment for the charge of sexual intercourse with the child which were ordered to be served cumulatively but were suspended on certain conditions after the offender had served one month.

The Commission sought leave to appear as an intervener or, in the alternative, as common law *amicus curiae*. Its written submissions filed in support of its application was to the effect that the recognition of group rights (under article 27 of the ICCPR) cannot lead to a breach of an individual's human rights and fundamental freedoms and that while all attempts should be made to reconcile the individual human rights of women and children with the minority rights of Indigenous peoples to retain and enjoy their culture, international human rights law requires that individual rights must ultimately prevail.

The CCA also allowed the Crown's appeal, set aside the sentence and a new sentence of three years and 11 months' imprisonment was imposed to be suspended after serving 18 months.

The Commission's submissions are available at: [www.humanrights.gov.au/legal/intervention/queen\\_gj.html](http://www.humanrights.gov.au/legal/intervention/queen_gj.html)

The decision of the CCA is available at: [www.nt.gov.au/ntsc/doc/judgements/2005/ntcca/ntcca020.html](http://www.nt.gov.au/ntsc/doc/judgements/2005/ntcca/ntcca020.html)

## **Intervention matters commenced before 2005–06**

### **Inquest into the death of Mulrunji**

The Commission has had an active role in the Inquest being conducted by the Queensland Deputy State Coroner into the death in custody on Palm Island in November 2004 of Mulrunji. The Commission has been involved in the proceedings from the outset and has cross-examined witnesses and made submissions on a wide range of issues to which human rights are relevant.

In particular, the Commission has raised human rights concerns relating to the policing, arrest and detention of Indigenous people. The Commission has particularly focused on the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody and has 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.

That matter is ongoing at the time of publication, with final submissions being heard on 2 August 2006 in Townsville.

### ***Australian Competition and Consumer Commission ('ACCC') v Radio Rentals Limited and Anor (No S844 of 2003)***

The Commission was granted leave to intervene in this case in November 2004. The Federal Court's decision was handed down on 17 August 2005. A report of this decision can be found in the Commission's 2004–05 Annual Report.

### **Family Provisions Test Case**

The Commission was granted leave to intervene in the Family Provisions Test Case in the Australian Industrial Relations Commission (AIRC) on 26 September 2003. The proceedings consisted of a number of applications to vary federal awards to provide workers with more flexibility to balance their work and family responsibilities. The case was heard by the Full Bench in September and December 2004.

The Full Bench of the AIRC handed down its decision on 8 August 2005. The Full bench introduced a new award provision which gives an employee a right to request that his or her employer extend the period of simultaneous unpaid parental leave to eight weeks; extend the period of unpaid parental leave from 12 months to 24 months; and permit an employee to return from parental leave on a part-time basis until the child reaches school age.

A copy of the decision is available at: [www.airc.gov.au/familyprovisions](http://www.airc.gov.au/familyprovisions)

### ***Amicus curiae***

Section 46PV of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) 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](http://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 2005–06, Commissioners were granted leave to appear as *amicus curiae* in three matters, which are summarised below.

### ***Douglas and Others v Queensland and Others***

The Aboriginal and Torres Strait Islander and Social Justice Commissioner and Acting Race Discrimination Commissioner was granted leave on 9 May 2006 to appear as *amicus curiae* in three related matters before the Federal Court of Australia. 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 matters raise similar issues to those arising in the *Baird* litigation, in which the Commission was granted leave to intervene (see above under Interventions). The matters are awaiting confirmation of their hearing dates, pending the decision of the Full Federal Court in *Baird*.

The Commissioner anticipates seeking to assist the Court in relation to the correct interpretation and application of the Racial Discrimination Act.

### ***Forest v Queensland Health, State of Queensland***

The Acting Disability Discrimination Commissioner was granted leave to appear as *amicus curiae* in this matter on 30 March 2006.

The applicant has a psychiatric disorder and claims that his dogs are assistance animals within the meaning of s 9(1) (f) of the DDA as they provide him with physical comfort and reduce his social anxiety.

The applicant claims that he was discriminated against by the respondent because his dog was not permitted to accompany him into the Cairns Hospital reception or a dental surgery operated by the respondent.

The matter is listed for hearing in the Federal Court on 11–14 September 2006 in Cairns.

### ***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 claims 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 proceedings raise a number of issues of interest to the Sex Discrimination Commissioner:

- Whether the process of altering the record of sex on a birth registration is the provision of a service?
- If the answer to this question is yes, the relationship between the *Births, Deaths and Marriages Registration Act 1996* (Vic) and the SDA.

The proceedings are listed for hearing in the Federal Court in Melbourne on 3 August 2006.

### ***Amicus Curiae matters commenced before 2005–06***

As at July 2005, there was one *amicus* matter which was yet to be finalised. This matter has now been finalised in the manner discussed below.

### ***Forest v Tranter Pty Ltd t/as Kuranda Hotel & Barry Smith***

On 30 November 2004, Coker FM granted the Acting Disability Discrimination Commissioner leave to appear as *amicus curiae* in this matter.

The Acting Disability Discrimination Commissioner withdrew his appearance *amicus curiae* in this matter on 24 January 2006 to seek leave to appear as *amicus curiae* in *Forest v Queensland Health, State of Queensland* (see above), which raises the same issues.

## **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 2005–06 are described below.

### **Federal Discrimination Law 2005**

On 12 May 2005, the Commission 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 and remedies, and costs.

The publication significantly revised, expanded and updated the contents of the 2004 edition. It is an invaluable resource for anyone with an interest in this very challenging area of the law. The publication is accessible online via the Commission's website and can be downloaded for free. Printed copies of the publication are also available for sale. For details, see [www.humanrights.gov.au/legal/fed\\_discrimination\\_law\\_05/index.html](http://www.humanrights.gov.au/legal/fed_discrimination_law_05/index.html).

Throughout 2005–06, the Legal Section prepared and published supplements to *Federal Discrimination Law 2005* to take account of recent developments. These supplements are also available as a free download from the Commission's website.

### **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](http://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 2005–06 were as follows:

#### *10 August 2005: Indigenous Rights under Australian law*

This seminar was chaired by the Commission President, the Hon. John von Doussa QC and featured two speakers: Professor Larissa Behrendt, Professor of Law and Indigenous Studies and Director of the Jumbunna Indigenous House of Learning at the University of Technology, Sydney and Jonathon Hunyor, a senior lawyer with the Commission.

*7 November 2005: International Protection of Rights of People with Disability*

This seminar focused on the draft UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities. The seminar featured two speakers: Mr Graeme Innes, then Deputy Disability Rights Commissioner and Rosemary Kayess, an adjunct lecturer in law at the University of NSW and Chairperson of the NSW Disability Discrimination Legal Centre.

*7 April 2006: Developments in Citizenship Law: A Human Rights Perspective*

The seminar focused on recent developments in High Court jurisprudence, as well as the potential human rights implications of the Australian Citizenship Bill. The seminar was chaired by the Human Rights Commissioner Mr Graeme Innes AM and featured two speakers: Professor Kim Rubenstein, Director of the Centre for International and Public Law, ANU College of Law, ANU and Mr Bruce Levett of the New South Wales Bar.

*14 June 2006: Equal Pay for Equal Work? The High Court's Decision in State of NSW v Amery*

This seminar examined the High Court's decision in *State of NSW v Amery*. The seminar was chaired by the Human Rights Commissioner Mr Graeme Innes. The speakers were Dr Christopher Birch SC Barrister & Counsel for the respondents in *State of NSW v Amery* and Simeon Beckett Barrister, President of Australian Lawyers for Human Rights.

## **Review of administrative decisions made by the Commission**

The Commission is at times a party to proceedings in courts or tribunals involving judicial review or merits review of the Commission's administrative decisions. Commission staff are also sometimes party to such proceedings.

### **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 even limits its role to assisting the Court rather than adopting a contentious or adversarial approach.

The Commission was a party to four applications under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) in 2005–06.

## 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. These include decisions made under the *Freedom of Information Act 1982* (Cth), and decisions on applications for temporary exemptions under section 44 of the SDA and section 55 of the DDA.

During the reporting period, there was one active merits review matter – a review of the decision of the Commission under the *Freedom of Information Act 1982* (Cth). Those proceedings are currently adjourned while the applicant conducts an appeal to the Federal Court in relation to a procedural decision of the Administrative Appeals Tribunal.

## International technical assistance work

From 12–16 December 2005, a senior lawyer from the Commission and a colleague from the International Programs Unit of the Commission conducted a series of meetings in Beijing concerning China's response to the recommendations recently made by the UN Committee on Economic, Social and Cultural Rights. This activity formed part of the China-Australia Human Rights Technical Cooperation Program ('HRTCP') and was the second activity on the topic of the *International Covenant on Economic, Social and Cultural Rights* under the HRTCP. This current activity sought to identify those areas where Australian technical assistance could help to address particular areas of concern identified by the UN Committee in its concluding observations.

The meetings held in Beijing were with senior representatives from a range of Chinese agencies that have direct responsibility for the legal and policy changes that the UN Committee recommended in its report. The purpose of the meetings was to establish whether and how the relevant agency intends to respond to the Committee's recommendations, what difficulties the agency expects to encounter in this reform process, and what cooperation activities with Australia might be of assistance in overcoming these difficulties.



## Chapter 6:

# ***Aboriginal and Torres Strait Islander Social Justice***

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### **Statement from the Commissioner**

The past year has seen many developments relating to the human rights of Aboriginal and Torres Strait Islander peoples. The Commission has been engaged in debates across a wide range of issues and through a variety of processes as set out in this report.

From a human rights perspective, developments relating to Indigenous peoples over the past year relate to three main sets of issues. First, the need to ensure the effective participation of Indigenous peoples in decision making that relates to our rights and interests.



***Mr Tom Calma***  
*Aboriginal and Torres Strait  
Islander Social Justice  
Commissioner*

Second, the need to ensure transparency in and accountability for government programs and services relating to Indigenous peoples (including ensuring that government commitments are linked to targets and benchmarks and that progress is measured in terms of whether outcomes meet these targets).

Third, the growing recognition internationally of the rights of Indigenous peoples against which developments in Australia should be considered. These include developments which the Australian government has supported internationally – such as approval of the Program of Action for the Second International Decade for the World’s Indigenous Peoples – yet have failed to act on or match to their domestic activities to date.

Central to the success of government programs is ensuring that the people affected by policies and programs are able to participate effectively in decision making. This is particularly so for Indigenous peoples due to the distinct cultural issues that we face, the diversity between different Indigenous groups and geographies, and the inequalities that we continue to experience compared to all other Australians.

A range of my activities as Social Justice Commissioner over the past year have been concerned with addressing whether Indigenous peoples are able to effectively participate in decision making that affects us.

The *Social Justice Report 2005* continued my monitoring of the newly introduced administrative arrangements for Indigenous affairs at the federal level. This includes the Shared Responsibility Agreement and Regional Partnership Agreement making processes and the delivery of services at a regional and whole of government level through Indigenous Coordination Centres. Overall, the report expresses ongoing concerns about the ability of Indigenous peoples to participate in these new decision making structures. The absence of regional mechanisms to facilitate Indigenous participation, following the closure of the Aboriginal and Torres Strait Islander Commission, remains a key concern which is impeding the new arrangements.

The *Native Title Report 2005* sets out a range of concerns relating to the debates about individual titling over Indigenous communal land, and the need for effective participation of Indigenous peoples in any decisions to open up Indigenous lands.

I have also set out a human rights based approach to engaging with Indigenous communities. This was done in the *Social Justice Report 2005*, with principles to guide the Shared Responsibility Agreement making process to ensure that it does not breach human rights standards. It was also advanced through the convening of an international workshop on engaging with Indigenous peoples held in Brisbane in August 2005, along with the Secretariat of the United Nations Permanent Forum on Indigenous Issues. The report of this workshop has received wide interest, including through the United Nations.

The Commission has also supported the development of good governance structures among Indigenous organisations, such as by supporting the development of a national organisation comprised of the chief executive officers of native title representative bodies and native title services.

Ensuring effective Indigenous participation also needs to be matched with accountability and transparency for government activities. All governments in Australia have made, and continue to make, significant commitments to addressing the situations faced by Indigenous peoples. This is particularly through the Council of Australian Governments and bilateral agreements that are beginning to emerge between the federal government and the states and territories.

Indigenous peoples do not suffer from a lack of commitment by governments. We suffer from a lack of targeted action that matches the scope of these commitments made towards our communities and our situation. In short, we suffer from a lack of implementation by governments.

The *Social Justice Report 2005* considers this from the perspective of the health inequality experienced by Aboriginal peoples and Torres Strait Islanders. I propose

a 25-year campaign to eliminate the life expectancy gap between Indigenous and non-Indigenous peoples within a generation. This requires targeted action from governments so that we can measure whether the commitments and the rhetoric are being matched by effort. The challenge set in this report is being taken up by a coalition of non-government organisations and the health sector. The Commission also hosted visits from international guests to discuss the rights based approach to health and the importance of social determinants of health status to continue the focus on these issues over the past year. We can expect much debate about this important issue over the next twelve months.

The Commission has also undertaken a range of research and consultation projects during the past year which highlight important issues that do not receive sufficient research or policy attention. We completed stage one of research on the situation of Indigenous juveniles with cognitive disabilities and the effect of this on contact with criminal justice systems. Stage two of this research will be conducted in the coming year and focus on early intervention strategies. The Commission also negotiated funding to conduct a national workshop of Indigenous women and service providers to consider the issues faced by Indigenous women upon exiting prison. This process will culminate in a national round table in 2006.

These developments all take place in the context of significant and rapid developments in the international human rights system and its treatment of Indigenous issues.

In June 2006 the new Human Rights Council approved the Declaration on the Rights of Indigenous Peoples by overwhelming majority. The Declaration now goes to the United Nations General Assembly for final approval and entry into force. It is likely to be in force by the end of 2006, and will provide significant guidance for all countries in how they frame policies towards indigenous peoples.

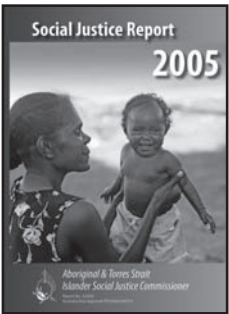
Late last year the General Assembly also approved the Program of Action for the second International Decade of the World's Indigenous People. Through this, all countries commit to working in partnership with Indigenous peoples to promote the objectives of the Decade. These include: promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of processes regarding policies and programs; promoting the full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles; adopting targeted policies and programs for the development of indigenous peoples, including concrete benchmarks; and developing strong monitoring mechanisms and enhancing accountability for the protection of indigenous peoples and the improvement of their lives.

These internationally agreed objectives are also the key challenges that I have identified Indigenous peoples continue to face in Australia. Commitment without action will continue to be unacceptable over the coming year – at the international and the local level.

## Monitoring and Reporting

The Social Justice Commissioner produces two reports annually on the human rights situation faced by Aboriginal and Torres Strait Islander peoples: the *Social Justice Report* and *Native Title Report*. These provide an annual state of the nation review of progress on Indigenous policy and human rights compliance.

### *Social Justice Report 2005*



Under section 46C(1)(a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), the Commissioner is required to submit annually 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 2005* was transmitted to the Attorney-General on 16 December 2005 and tabled in Parliament on 14 February 2006. A launch and press conference was held in Canberra on 16 February 2006.

The Report considers progress in achieving improvements in the health status of Aboriginal and Torres Strait Islander peoples. It sets out a campaign of achieving Aboriginal and Torres Strait Islander health status and life expectation equality within the next generation (approximately 25 years).

The Commissioner states in the report:

*There is no greater challenge to the Australian values of decency, fairness and egalitarianism than the inequality in health status between Aboriginal and Torres Strait Islander peoples and the non-Indigenous population. It is a well known fact that a large gap in health equality exists in Australia. The gap in life expectation between Aboriginal and Torres Strait Islander peoples and the non-Indigenous population is estimated to be 17 years.*

This campaign seeks to place time-frames on the goal and aims of the *National Strategic Framework for Aboriginal and Torres Strait Islander Health* and the commitments of the *Council of Australian Governments* (COAG) to overcome Aboriginal and Torres Strait Islander disadvantage. It provides a long-term vision for government activity.

There has been significant work to address many public health issues affecting Aboriginal and Torres Strait Islander peoples, notably commitments to environmental health workers, food and housing. However, there is no overarching strategic response to public health issues (notably health infrastructure) faced by Aboriginal and Torres Strait Islander peoples.



This campaign would link existing commitments to adequate funding and resources and set the goal of health equality *within* a 25-year period.

The *Social Justice Report* also examines the implementation of the new arrangements for Indigenous affairs, in a post-ATSIC environment. It considers the new arrangements from the perspective of whether they ensure the effective participation of Aboriginal and Torres Strait Islander peoples in decision making that affects their daily lives.

From a human rights perspective, Aboriginal and Torres Strait Islander people must be assured of the opportunity to participate effectively in all aspects of policy development and service delivery that impact upon them.

There have been substantial efforts made in the first 12 months of the new arrangements to identify processes for engaging with Indigenous peoples. Despite this, significant gaps remain in Indigenous representation at local, regional and national levels. Also, no mechanisms have been established to ensure the distinct issues of Torres Strait Islanders on the mainland are addressed.

The report also considers how shared responsibility agreements impact on the well-being of Indigenous peoples and whether they are consistent with human rights standards. A key principle that emerges throughout the considerations for agreement making is that of **free, prior and informed consent**. The elements of this principle include the lack of coercion, intimidation and manipulative actions; that consent has been sought in advance and consultation processes have been respected; information is provided on the scope of the activity; and that consultation and participation are undertaken in good faith.

The report, an executive summary and media pack can be accessed from the Commission's website at: [www.humanrights.gov.au/social\\_justice/sjreport05/index.html](http://www.humanrights.gov.au/social_justice/sjreport05/index.html).

### ***Native Title Report 2005***

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*).

The *Native Title Report 2005* was transmitted to the Attorney-General on the 16 December 2005 and tabled in Parliament on 14 February 2006. A launch and press conference was held in Canberra on 16 February 2006.

The *Native Title Report 2005* focuses on the issues and the potential impacts of the Australian Government's proposal to encourage



individual leases on Indigenous communal lands by making changes to land rights legislation. The report analyses the National Indigenous Council's *Indigenous Land Tenure Principles* (NIC Principles) which are the central platform of the Australian Government's strategy for Indigenous land, as well as analysing arguments and research on the impacts of individualising communal title.

The key feature of the Australian Government's strategy is to take 99-year head leases over Indigenous townships in order to sublease individual land lots back to community members, government entities and business enterprise. The Government's stated objective for changing land tenure arrangements is to encourage economic development on Indigenous land. This will include enterprise development, both Indigenous and non-Indigenous and Indigenous housing projects.

The first chapter of the Report provides a chronology of events and government statements that led to the release of the NIC Principles. It includes an analysis of the Principles, especially Principle 4 that outlines involuntary measures should traditional owners 'unreasonably withhold' consent to the leasing scheme.

The second chapter defines Indigenous communal land types and outlines existing leasing options on Indigenous communal lands in each Australian jurisdiction. The Report notes that under existing arrangements, it is currently possible to lease Indigenous lands in every state and territory. This existing provision effectively rules out the need for a regime to change land tenure arrangements as outlined in the NIC Principles.

The second and third chapters detail the international experience of individual titling on Indigenous communal lands, identifying the negative outcomes that have resulted for Indigenous peoples, including:

- significant loss of land by Indigenous peoples
- complex succession problems – that is, who inherits these land titles upon the death of the owner – in relation to both freehold and leasehold interests
- creation of smaller and smaller blocks (partitioning) as the land is divided amongst each successive generation, and
- the constant tension between communal cultural values with the rights granted under individual titles.

Countries that have implemented these strategies, including the United States and New Zealand, are now reversing these policies.

Chapter four explores the extent to which the NIC Principles comply with international human rights.

It puts the case that the process for developing the NIC Principles is not consistent with Australia's obligations to ensure the civil, political, economic, social and cultural rights of its citizens. Human rights principles emphasise Indigenous

participation in decision making, and the right to give 'free, prior and informed consent'. The chapter further outlines guidelines for engagement with Indigenous peoples based on these principles.

The Report, an executive summary and media pack can be accessed from the Commission's website at: [www.humanrights.gov.au/social\\_justice/ntreport05/index.html](http://www.humanrights.gov.au/social_justice/ntreport05/index.html).

### **Community Guide and CD-Rom**

35 000 Community Guides for the *Native Title Report* and *Social Justice Report* were printed. 25 000 of these were distributed through the *National Indigenous Times* and the *Koori Mail* in early March 2006.

The reports, community guide, media summaries and other materials, have also been made available on a CD-Rom.

### **Research and Policy**

The Social Justice Commissioner advocates for the recognition of the rights of Indigenous Australians and seeks to promote respect and understanding of these rights among the broader Australian community.

### **Indigenous Youth with cognitive disabilities and the juvenile justice system**

In 2005, the Commissioner prepared a report providing an overview of the issues relating to Indigenous young people with cognitive disabilities and/or mental health issues in Australian juvenile justice systems. The report recommended that the National Crime Prevention Program and the National Community Crime Prevention Program be continued and expanded in order to fund specific projects to address Indigenous young people with cognitive disabilities and/or mental health problems who are at risk of entering the juvenile justice system. Specifically, the report recommended that the Commonwealth Attorney-General's Department could consider providing resources for the training of field officers and other relevant staff in mental health issues and cognitive disabilities in young people. Further, it was recommended that social and emotional wellbeing programs that specifically target Aboriginal and Torres Strait Islander children be provided with adequate funding and resources.

It was also proposed that further research be conducted that would look at a number of issues including: the impact of diversionary programs on Indigenous young people; and the links between young people with cognitive disabilities and their early disengagement with education. The report is available online at: [www.humanrights.gov.au/social\\_justice/cognitive\\_disabilities.pdf](http://www.humanrights.gov.au/social_justice/cognitive_disabilities.pdf).

In 2006, the Commissioner will undertake Stage 2 of this project. Stage 2 of the project will examine the impact of a range of early intervention strategies including police diversionary programs and assess whether such programs are having an impact on reducing offending behaviour among Indigenous young people with a cognitive disability or mental health issue. A report will be submitted to the Commonwealth Attorney-General's Department for consideration in late 2006.

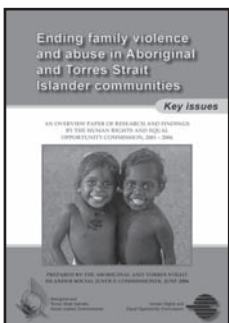
### Indigenous women in corrections

Stemming directly from recommendations made in the *2004 Social Justice Report*, the Commissioner is planning to host a two-day national workshop with key government and non-government stakeholders working with Indigenous women after their release from prison.

The workshop participants will seek to identify gaps in service delivery for Indigenous women exiting prison and strategies to overcome such gaps. The workshop will focus on housing, reconnecting with family and community, and healing for Indigenous women post release. The recommendations from the workshop will be tabled later in the year at a national roundtable. The roundtable will identify best practice examples of pre and post release support for Indigenous women exiting prison. The Commission will encourage government officials who have the power to effect changes in service delivery in prisons to attend.

This project has been funded by the Department of Families, Community Services and Indigenous Affairs and the Attorney-General's Department.

### Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – key issues



Following public interest and community outrage about family violence in Indigenous communities, the Commissioner co-hosted the 'Ending violence in Indigenous Communities' Forum with ANTaR, Oxfam Australia, Australian Indigenous Doctors' Association, Australian Medical Association and the Australian Principals' Associations Professional Development Council at Parliament House, Canberra on 19 June 2006. Indigenous people who work directly with family violence provided examples of successful community projects.

The Commission released an overview paper in June 2006 of research and findings on domestic violence in Indigenous communities, titled *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*. The paper summarises the key challenges in addressing family violence and abuse that have been identified and reported on by the Commission from 2001 to 2006. The paper can be used as a reference tool for government officials, researchers and Indigenous communities to help ensure that policy

responses are built on solid evidence and facts. The resource is available online at: [www.humanrights.gov.au/social\\_justice/familyviolence/index.html](http://www.humanrights.gov.au/social_justice/familyviolence/index.html).

On 26 June 2006, the Commissioner attended the National Ministerial Summit on Family Violence in Indigenous Communities held by the Minister for Indigenous Affairs in Canberra. The Commissioner was the only non-government representative at the Summit.

## **Economic development on Indigenous land forum**

On 27 February 2006 the Commissioner convened the inaugural meeting of senior executives and chairs of national entities with responsibility for progressing economic interests on Indigenous land. The group will meet again in November 2006. The purpose of the meeting was to share information and to identify ways to work collaboratively to enhance the economic interests of traditional land owners.

## **Education and Promotion**

### **Right to Health Campaign**

In March 2006, the Commissioner invited key Indigenous health organisations, reconciliation and human rights organisations to a briefing on the *Social Justice Report 2005* to enlist their support for the Indigenous health equality campaign and in lobbying the governments of Australia to endorse the campaign. A Steering Committee formed at the briefing has met regularly. The Commission hopes to host an Indigenous Health Summit in November 2006 to identify the key challenges in achieving Aboriginal and Torres Strait Islander health equality within a generation.

### **Lecture by Professor Sir Michael Marmot**

In early 2006, the Commissioner invited Professor Sir Michael Marmot to present a lecture on Social Determinants and the health of Aboriginal and Torres Strait Islander peoples.

Professor Sir Michael Marmot, who also contributed to the *2005 Social Justice Report*, gave a lecture on the subject at the University of Sydney on 14 June 2006.

Professor Marmot, MBBS, MPH, PhD, FRCP, FFPHM is currently the Director, International Centre for Health and Society, and Professor of Epidemiology and Public Health, University College London, and has worked for the World Health Organisation. He is a co-editor of *Social Determinants of Health* (1999), a definitive survey of the main social determinant of health. Professor Marmot's presentation is available online at: [www.humanrights.gov.au/social\\_justice/index.html](http://www.humanrights.gov.au/social_justice/index.html).

### **Visit by Paul Hunt, United Nations Special Rapporteur on the right to health**

The Commissioner agreed to support the University of New South Wales (through the Australian Human Rights Centre and Diplomacy Training Centre) and Oxfam Australia in co-hosting the visit to Australia in May 2006 of the United Nations Special Rapporteur on the Right to Health, Professor Paul Hunt. The Special Rapporteur's visit to Australia was not an official, government endorsed visit to examine the situation in Australia. Rather, he was brought to Australia by the University of New South Wales' Diplomacy Training Program which undertakes training in human rights advocacy in the Asia Pacific Region.

The Commissioner hosted a workshop with Professor Hunt in Sydney in early May, as well as hosting a two-day workshop of Indigenous health and policy experts in Darwin on the right to health and incorporating this into national policy processes (this workshop occurred as part of the Diplomacy Training Program's Indigenous training program).

### **Engaging the marginalised: Partnerships between Indigenous peoples, governments and civil society – workshop**

On 15 August 2005, the Commissioner co-hosted a workshop with the Secretariat of the United Nations Permanent Forum on Indigenous Issues at the International Engaging Communities conference in Brisbane. 160 delegates participated in the workshop, titled Engaging the Marginalised: Partnerships between Indigenous Peoples, Governments and Civil Society.

The workshop centred on the challenges and opportunities of recognising cultural diversity; developing policies and programs that are non-discriminatory, inclusive, targeted and effective; providing an enabling environment for participation and the empowerment of Indigenous peoples at all levels; and adopting approaches that are (Indigenous) people centred. The report of the workshop was presented to the United Nations Permanent Forum on Indigenous issues in May 2006. The report and other resources are available online at: [www.humanrights.gov.au/social\\_justice/conference/engaging\\_communities/index.html](http://www.humanrights.gov.au/social_justice/conference/engaging_communities/index.html).

### **Workshop on the Overcoming Indigenous Disadvantage, Key Indicators Report 2005**

On Friday 16 September 2005, the Social Justice Commissioner co-hosted a workshop on the Steering Committee for Government Service Provision's Overcoming Indigenous Disadvantage, Key Indicators 2005 Report. The workshop was co-hosted with the Productivity Commission and Reconciliation Australia, and attended by approximately 100 people. The workshop specifically considered issues relating to Indigenous governance, health, education, and a human rights based approach to benchmarking Indigenous disadvantage. The presentations made at the workshop are available online at: [www.humanrights.gov.au/social\\_justice/conferences.html](http://www.humanrights.gov.au/social_justice/conferences.html).

## Legislative Development

### The operation of Prescribed Bodies Corporate

On 23 January 2006 the Commissioner presented a submission to the federal Attorney-General on the proposed amendments to the *Native Title Act 1993* (Cth) specific to the operation of Prescribed Bodies Corporate.

Prescribed Bodies Corporate are required under the Native Title Act to hold and/or manage native title rights following a successful determination. However, there have been a number of difficulties relating to the operation of bodies corporate, namely a lack of funding for these organisations and questions over the appropriateness of their structures. The submission addressed these concerns and provided comment on the appropriateness of the bodies corporate structure; education and training options for personnel; and difficulties with decision making processes.

### The Native Title Claims Resolution Review

On 13 February 2006 the Commissioner presented a submission to the federal Attorney-General on the proposed changes to the Claims Resolution Review process as part of the proposed amendments to the *Native Title Act 1993* (Cth).

The submission addressed three areas of the review:

1. The relative under funding of Native Title Representative Bodies and Land Services bodies as compared with other entities in the native title system;
2. The necessity to redirect funding from third party respondents already protected under the Native Title Act, to Native Title Representative Bodies and Land Services bodies; and
3. The relative capacity of the National Native Title Tribunal, the Federal Court, Native Title Representative Bodies, Land Services bodies and respondent parties to assist native title holders to achieve the best possible outcomes.

The submission expressed concern at the lack of native title claimant-holders representation in the review process. It requested that an Indigenous representative be appointed to the review steering committee and that Indigenous stakeholders be given the opportunity to provide comments on the consultant's final report.

### Third Party Respondent funding

On 14 February 2006 the Commissioner presented a submission to the federal Attorney-General on Third Party Respondent funding as part of the proposed amendments to the *Native Title Act 1993* (Cth).

The submission supported the proposed guidelines which provide a tighter definition of potential respondents and a more rigorous test to determine what activity will be funded on behalf of third parties. The submission recommended that funding additional historians and anthropologists to provide reports to respondents is unnecessary as it duplicates resources and consumes time.

### **Native Title Representative Bodies**

On the 27 February 2006, the Commissioner presented a submission to the federal Attorney-General on the effect of the proposed changes to Native Title Representative Bodies as part of the suite of submissions regarding the proposed amendments to the *Native Title Act 1993* (Cth).

The submission outlined concerns that under the new provisions that bodies incorporated under the *Corporations Act 2001* will not be representative of Aboriginal and Torres Strait Islander peoples. Under the proposed de-recognition processes the Commissioner argued that if the Australian Government intends to reduce the notice period from 90 to 60 days it should include avenues for review of de-recognition. The Commissioner welcomed the proposed reforms to provide funding up to six years and with links to the recognition period of representative bodies.

### **Western Australia Alternative Settlement Framework**

On the 24 February 2006 the Commissioner presented a submission to the Western Australian Government on the proposed Western Australia Alternative Settlement Framework for Native Title.

The framework provides an alternative, non-litigated settlement regime for the resolution of native title claims. The framework requires the surrender of native title claims on the basis of the existing standards set by Yorta Yorta and Miriuwung Gajerrong. The submission welcomed processes which lead to agreement making and non-litigated settlement of claims. The submission argued that while the framework provided some rights in exchange for the extinguishment of native title, these rights were very limited in nature and did not provide for the adequate recognition of important procedural rights.

### **International activities**

#### **Draft Declaration on the Rights of Indigenous Peoples**

The Commissioner attended the 11th session of the Commission on Human Rights Working Group on the Draft Declaration on the Rights of Indigenous Peoples (DDRIP) in November/December 2005 and February 2006.



After many years of negotiations, agreement was reached on approximately two-thirds of the Declaration's provisions during this session. Where agreement was not reached, the lines of disagreement were narrowed significantly. At the end of the February meeting, the Chairperson of the Working Group released his report on the session. This included proposals for a finalised Declaration (the 'Chairman's text'). He recommended that the Declaration be approved by the Commission on Human Rights and sent forward for adoption.

In June 2006, the Chairman's text for the Declaration was considered by the new United Nations Human Rights Council (which replaced the Commission on Human Rights). By overwhelming majority the Council adopted the Declaration and has recommended to the United Nations General Assembly that it do so as well. It is anticipated that the Declaration will be considered for final adoption by the General Assembly in November 2006.

Information about the Declaration, including the Chairman's text is available on the HREOC website at: [www.humanrights.gov.au/social\\_justice/drip/index.html](http://www.humanrights.gov.au/social_justice/drip/index.html).

### **Permanent Sovereignty over natural resources and Indigenous peoples' relationship to land**

The Office of the United Nations High Commissioner for Human Rights invited and funded the Commissioner to participate in an expert seminar on Indigenous peoples' permanent sovereignty over natural resources and on their relationship to land from 25–27 January 2006 in Geneva. The seminar took place immediately prior to the resumed session of the DDRIP (as discussed above). The Commissioner was elected Chairperson of the Workshop and also made a presentation on current approaches to Indigenous land and resource ownership in Australia. The report of the workshop is available online at: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/123/79/PDF/G0612379.pdf?OpenElement>

### **Indigenous engagement on international human rights dialogues**

In November 2005, the Office of Indigenous Policy Coordination provided \$8 500 funding for the Commissioner to host a two-day workshop of Indigenous groups and government to prepare for the 11th session of negotiations on the Draft Declaration on the Rights of Indigenous Peoples.

In early 2006, the Office of Indigenous Policy Coordination also confirmed that it would transfer \$50 000 per annum to the Commissioner to inform and engage with Indigenous peoples in international human rights dialogues.

The Commissioner has identified the following priorities for this funding in the 2005–06 and 2006–07 financial years:

- Convening domestic preparatory meetings ahead of significant international meetings, most notably the Permanent Forum and Working Group on the Draft Declaration on the Rights of Indigenous Peoples, as well as to consider significant developments, such as the 2nd International Decade on the World's Indigenous People;
- Establishing processes for disseminating information within Australia about international developments; and
- Support for attendance of Indigenous delegates to the United Nations Permanent Forum on Indigenous Issues (held annually in New York in May).

In April 2006, the Commissioner convened a domestic preparatory meeting on the Permanent Forum on Indigenous Issues. The meeting sought input from Indigenous peak representative bodies and non-government organisations. It is intended that this meeting will be convened two or three times per year, ahead of significant international negotiations and forums.

In April 2006, the Commissioner also announced co-funding support for five organisations to attend the 5th session of the United Nations Permanent Forum on Indigenous Issues in New York. These organisations were:

- Aboriginal Legal Rights Movement;
- Menzies School of Health Research (with support for the nominated candidate from the Australian Indigenous Doctors Association and Telethon Institute for Child Health Research);
- Foundation for Aboriginal and Islander Research Action;
- National Aboriginal Community Controlled Health Organisation; and
- New South Wales Aboriginal Land Council.

A report of the participation of Aboriginal and Torres Strait Islander delegations and the outcomes of the Permanent Forum will be distributed by HREOC in late 2006. Discussions are underway to seek third party funding to enable greater participation of Indigenous youth, women and men in international indigenous activities.

### Speeches

A selection of public addresses made by the Social Justice Commissioner during 2005–06 is listed below. Speeches can also be accessed on the Commission's websites at: [http://www.humanrights.gov.au/speeches/social\\_justice/index.html](http://www.humanrights.gov.au/speeches/social_justice/index.html)

*Utilising Indigenous socio-economic data in policy development*, Indigenous Socioeconomic Outcomes: Assessing the Recent Evidence Conference, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 12 August 2005.

Australian Institute of Health and Welfare and Australian Bureau of Statistics – The Health and Welfare of Aboriginal and Torres Strait Islander Peoples 2005, Launch speech, Tandanya, Adelaide, 26 August 2005.

*Overcoming Indigenous Disadvantage – Key Indicators Report 2005: A human rights perspective*, Workshop hosted by HREOC, Reconciliation Australia and Productivity Commission, Overcoming Indigenous Disadvantage Report 2005, The Mint, Sydney, 16 September 2005.

*Professional Issues in Aboriginal Mental Health*, Conference, Charles Sturt University, Wagga Wagga Campus, 29 September 2005.

*Addressing the needs of Aboriginal and Torres Strait Islander peoples as the victims of crime*, Human Rights and Victims Rights Conference, 16 November 2005.

*Examples of arrangements to accommodate indigenous peoples' rights over natural resources native title and land rights in Australia*, Expert seminar on Indigenous Peoples' Permanent Sovereignty over Natural Resources and on their Relationship to Land, Office of the United Nations High Commissioner for Human Rights, 26 January 2006, Palais des Nations, Geneva, Switzerland.

*Indigenous Health Equality and Indigenous social justice issues*, Address to the Australian Catholic Bishops Social Justice Council, Sydney, 11 March 2006.

Launch of the 2005 Social Justice and Native Title Reports, Museum of Sydney, Sydney, 31 March 2006.

*From rhetoric to reconciliation: addressing the challenge of equality for Aboriginal and Torres Strait Islander peoples in criminal justice processes*, Elliott Johnston Tribute Lecture, Flinders University Law School, Adelaide, 23 May 2006.

*Tradition and Change – An Integrated Approach to Economic and Community Development on Indigenous Land*, Native Title Conference 2006, Australian Institute of Aboriginal and Torres Strait Islander Studies, Darwin, 25 May 2006.

*Addressing family violence in Aboriginal and Torres Strait Islander Communities – Key issues*, Forum on ending family violence in Indigenous communities, Parliament House Canberra, 19 June 2006

Speech to OIPC National Indigenous Men's Community Leadership Forum, Canberra, 20 June 2006.

*Evaluating the External Forces which exert an influence on government policy direction*, Collaborative Indigenous Policy Development Conference, Brisbane 27 June 2006.



## Chapter 7: **Disability Rights**

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### **Statement from the Commissioner**

With my appointment as Human Rights Commissioner in December 2005, I also took over from Dr Sev Ozdowski as Commissioner responsible for leading the Commission's work to eliminate disability discrimination and promote equality for people with disabilities in Australia.

Two major disability rights projects completed under Dr Ozdowski's leadership during 2005–06 are discussed in this report.

A joint venture with the Mental Health Council of Australia and the Brain and Mind Research Institute Australia resulted in a very comprehensive report *Not for Service: Experiences of injustice and despair in mental health care in Australia*. This report has been very influential in gaining commitments from governments to improve the delivery of mental health services, and so promote more equal and effective participation in social and economic life (including in employment) for Australians affected by mental health problems. We will continue to follow issues in this area as closely as possible.

Also completed under Dr Ozdowski's leadership and conducted very much at his personal initiative was the National Inquiry into Disability and Employment, the report of which was released in February this year. There has already been a welcome degree of acceptance and implementation by the Commonwealth of some of the recommendations of this inquiry. We will continue to pursue the implementation of other recommendations.

In particular, the Commission called for the Commonwealth to adopt an 'accessible procurement' policy for the equipment and facilities it uses (similar to those adopted in the US) so that accommodating disability becomes part of the ordinary way things are done, instead of having to be worked out each time with extra expense and delay. It has been encouraging to see the Victorian Government embark on the development of such a policy and I hope to see other Australian governments follow suit.



**Mr Graeme Innes, AM**  
*Acting Disability  
Discrimination Commissioner*

We also hope to see progress in clarifying the interaction between equal opportunity and occupational health and safety requirements so that fear and uncertainty in this respect does not continue to present a major barrier to employment opportunities.

During the Inquiry, people with disabilities raised major concerns over the costs of participation in employment and the impact of the 'welfare to work' changes now being implemented nationally. The Commission has expressed similar concern to the federal government.

It appears that many people with disabilities who want to participate in employment have been using income support payments to meet some of the extra costs associated with the work, such as transport, added health costs or the costs of personal support services. Unfortunately much of the public discussion of this issue seems to suggest that these payments are acting as an incentive to *avoid* working. For these people reducing eligibility for income support may well reduce the ability and incentive to work rather than increasing it as the Government intends. We hope to see this concern addressed in further refinement and review of the Government's reforms in this area.

One of the important features of the DDA, which makes it very different from other Australian discrimination laws, is its provision for disability standards, to define in more detail what access and equality mean and when they have to be achieved.

This year saw entry into force of standards for education, and standards on access to premises moving close to completion after more than ten years of negotiation and consultation. I commend the Government for its continued support of the long and demanding process of developing disability standards.

Experience has shown that with many disability issues it isn't enough for the law just to tell people not to discriminate. An individual right not to be discriminated against is, in many areas under the DDA, not really much good at all in itself, until it is translated into broader and more detailed specifications and actions.

Standards are one way of doing that work of translation. The power to grant temporary exemptions with conditions designed to promote movement towards improved access and equality has been another means to the same end.

In common with each of my predecessors having responsibility for disability discrimination issues at the Commission, a central theme in my approach is to look for ways to achieve greater cooperation and involve as many people as possible in sharing knowledge and resources and finding a common interest in situations which start from conflicting positions. My background as a mediator and conciliator leads me to that approach. So too does an awareness of the complexity and scale of the task we are engaged in when seeking to eliminate discrimination as far as possible. This report shows continued progress in that task and I am confident that with your cooperation we will see still more progress in the next few years towards a society fit for all of us.

## Promotion of awareness, understanding and compliance

Most of the Commission's awareness and compliance promotion work in the disability area is connected to policy work and legislative development and is reported on under those headings accordingly.

Public use of the disability rights area of the Commission's website continues to be strong, with 961 653 page views recorded on the disability rights web pages in this period. Information is continuously being added, for example with answers to 'frequently asked questions' and information on recent complaint outcomes. Publications are also distributed in print and other formats on request.

An important feature of the Commission's work is in seeking partnerships with industry bodies to promote improved access. In April 2006 the Commission launched a guide developed together with peak industry body, Meeting Events Australia (MEA), for event organisers to make their events more accessible to Australians with a disability. The guide covers issues such as: choosing a venue; transport to and from the venue; promoting and registering for events; catering; staff training; the use of technology, and contacts for people looking for more detail. It also discusses the legal responsibilities event organisers have under anti-discrimination law.

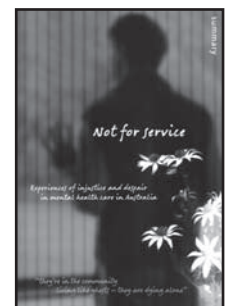
## Research and policy

### Mental health and human rights

In October 2005 the Minister for Health launched *Not for Service: Experiences of injustice and despair in mental health care in Australia*, a report of consultations conducted by the Mental Health Council of Australia and the Brain and Mind Research Institute in association with the Human Rights and Equal Opportunity Commission (HREOC). At the launch, Human Rights Commissioner Dr Sev Ozdowski said:

*More than 10 years ago, HREOC conducted an inquiry into the rights of Australia's mentally ill and found multiple breaches of basic human rights ('The Burdekin Report'). In particular, the inquiry found that people were being inappropriately locked up in mental asylums and mistreated while they were there. In the interim, the mental health system has moved away from institutionalisation to care predominantly occurring in the community. While it is hard to disagree with this approach, the fact is that while institutions are being closed down, community supports are not being adequately built up.*

*Commonwealth, State and Territory bureaucrats routinely report that work is underway to improve mental health services, but I have seen little real progress in the past three years in my role as federal Human Rights*



*Commissioner. Governments are not sufficiently matching their words with dollars and accountability for the money they do allocate to mental health services is seriously lacking. It is also clear that there is a lack of political and departmental leadership on the issue. Federal, State and Territory Governments and their departments need to stop the blame game and start working together to drive real change and make mental health care an urgent priority.*

In February 2006 the Council of Australian Governments (COAG) issued a communiqué recognising the need for leadership and additional resources from all governments to address mental health problems in the Australian community and asking senior officials to prepare a national action plan to be brought forward for its consideration no later than June 2006. HREOC welcomed this, noting that the community would be watching eagerly to see COAG's discussions translated into specific commitments backed by substantial resources and that it was encouraging to see that Australia's governments were now picking up the same themes which people with a mental illness, their families and other experts in the field had been speaking about for some years.

In April 2006 HREOC welcomed funding announcements of an additional \$1.8 billion over 5 years, while looking forward to more detail from the Commonwealth and additional funding from states and territories.

### **Employment and Disability Inquiry**

The Final Report of the Human Rights and Equal Opportunity Commission's National Inquiry into Employment and Disability was tabled by the Attorney-General in Federal Parliament on 14 February 2006.

People with disability represent a significant proportion of Australia's working age population (16.6%), yet they participate in the workforce at lower rates, they are less likely to be employed when they do attempt to participate, and they will earn less if they do get a job.

The Inquiry found that governments needed to do more to provide support, services and incentives to employers and to people with disability to ensure true equality of opportunity. Governments also needed to provide leadership to the private sector, and the community at large, by improving public sector employment practices and developing clear information strategies to address employer concerns about potential costs and risks associated with employment and disability.

HREOC has been encouraged by the positive response shown by the Commonwealth Government to many of the ideas raised during the inquiry – including the forthcoming launch of a one-stop shop information and advice service on employment and disability, reform of the Workplace Modifications Scheme, and commencement of a scheme of insurance cover for work trials –



and looks forward to further constructive work with government, employers and disability community representatives in advancing equal opportunity and more effective participation in the labour market for Australians with disabilities.

### **Discussion of possible international convention**

Significant progress was made during 2005–06 in work towards a possible international convention on human rights and disability through a working group of the United Nations General Assembly. HREOC has continued to participate in the sessions of this working group as part of the Australian Government delegation. In August 2005 Commissioner Sev Ozdowski commented:

*These negotiations have been a good model for how UN processes can be more participatory and effective than they have sometimes been in the past. The process and its outcomes so far show that reform of UN activities on human rights doesn't mean you have to throw the baby out with bathwater. Organisations representing people with disabilities have been able to participate extensively in the process, rather than this being restricted to governments only. Contributions from Australian disability organisations in particular have been widely recognised as important and constructive. National human rights institutions, including Australia's Human Rights and Equal Opportunity Commission, have also worked together to contribute innovative ideas on monitoring of human rights.*

Work towards the forthcoming session in August 2006, at which it is hoped a draft Convention may be finalised for transmission to the General Assembly, has focused on developing innovative models for monitoring and implementation rather than simply reproducing models from existing human rights instruments.

### **Access to electronic commerce**

In July 2005 the Commission released a report on the progress banks have made towards ensuring their electronic financial services are accessible for customers with disabilities. The review shows that while industry is clearly making considerable progress and committing resources to improving access, customers with disabilities are not yet fully aware of, or benefiting from, the changes taking place.

In 2002, following an inquiry conducted by the Commission into access to electronic commerce and related issues, the Australian Bankers' Association released voluntary industry standards about how to make ATMs, internet, telephone and EFTPOS financial services more accessible to people with disabilities. This included detailed specifications on how to make internet banking accessible for blind people and how to design ATMs so that people using wheelchairs can use them.

As a follow-up to this review the Commission has been seeking more information from individual financial institutions on how customers with disabilities can keep abreast of developments and find out information such as the location of their nearest accessible ATM.

The Commission has also been working with the banking industry on access issues raised by the move towards improved authentication and security systems.

### **Cinema Captioning**

The Commission has continued to work with industry and disability community organisations to promote increased access to captioning at cinemas and has also been discussing with the Film Finance Corporation possible measures to promote captioning of Australian produced films.

### **Copyright and access to written materials**

In January 2006 the Commission wrote to the Attorney-General to recommend that amendments to the Copyright Act to permit practices of format shifting, already widespread among consumers in such areas as copying CDs to MP3 players, should extend to removing restrictions on translating materials into formats accessible for people with disabilities.

It is very pleasing to note that the Attorney-General acted swiftly to accept this approach, as indicated in his press release of Sunday 14 May. The Commission welcomed this while noting that further measures are needed to secure truly equal information access for people with print disabilities. The Commission intends to pursue further discussions with industry and government of possibilities for expansion by publishers of direct access to copyright material in accessible formats, including through a central repository or network as is now available in the United States.

### **Electoral access**

The Commission wrote in February 2006 to Ministers responsible for electoral matters to recommend that the forthcoming trial of electronic voting include a specific focus on disability access issues, in view of the potential for technology in this area to make possible access to secret ballots for people with disabilities, in particular people with a vision impairment, consistent with our human rights obligations. Further constructive discussions have been held between Government, the Australian Electoral Commission, representatives of people with disabilities and the Commission on these issues in recent months.

## Health access

Following from the national forum on access to health services for people with disabilities convened by the Commission in May 2004, and a further meeting in June 2005 with the Royal Australian College of General Practitioners, the Commission has been working with the College and with disability advocacy organisations on projects aimed at improving the availability of height-adjustable examination beds, and improving information for health care providers on service to people with different types of disability. The Department of Health has also been discussing options for acting on the proposal which came out of the Commission's 2004 forum for promoting and funding an annual health check for people with intellectual disabilities. The Commission also met with the Minister for Health to brief him on access issues which have been raised by the disability community.

## Telecommunications

*Code on disability information:* During 2005 and early 2006, the Commission participated in the development of a code that will require manufacturers and importers of telecommunications equipment to provide standardised information about features of their equipment that will assist people with disabilities. Such features include adjustable volume controls, high-contrast displays, selectable screen fonts, and buttons and controls that are easy to use by people with disabilities. The code was developed by a Committee established by the Australian Communications Industry Forum (ACIF) that included representatives from industry, the disability sector, and regulators. The Code was recently registered by the Australian Communications and Media Authority (ACMA) and compliance with it is mandatory. Although the Commission was hoping that the Code would require the provision of more comprehensive and detailed information that would assist people with disabilities choose telecommunications equipment that best meets their needs, it does represent a good starting point for further work in this area and its development provided an opportunity for increased understanding for the issues involved in improving access to telecommunications.

*Payphone accessibility:* As at June 2006 the Commission was close to release (with ACIF) of guidelines on accessibility of payphones. Despite the rapid uptake of mobile phones, payphones are still an important communications tool, especially for people in rural areas where there is poor mobile coverage and for people on low incomes. People with disabilities are represented in both groups and recent reports have highlighted a range of significant barriers to access that currently exist.

## Web access

Website accessibility continues to be a significant concern for various groups of people with disabilities. The WorldWide Web Consortium is presently revising its *Web Content Accessibility Guidelines*, Version 1.0 which are referred to (as the accepted international benchmark) in the Commission's *Web Accessibility Advisory Notes* and which seek to provide guidance on the level of accessibility required for compliance with the DDA.

The Commission has indicated concerns regarding our ability to give similar endorsement to proposed version 2.0 of the Guidelines both in terms of content and the process of consultation adopted to date. Although the Commission does not have the power to certify codes such as this for the purposes of compliance with Australian law, which would add further weight to our views on issues such as this with standard setting bodies, it is expected that our views will have some influence.

## Exemptions

Under section 55 of the DDA, the Commission has power to grant temporary exemption from provisions of the Act which make discrimination unlawful. The exemption applications policy is available on the Commission's website or on request.

The Commission sees the temporary exemption mechanism as an important means for managing the process of transition over time, from discriminatory and inaccessible systems and environments, to inclusive, accessible non-discriminatory systems and environments.

Exemption processes are open to public participation through online publication of the Commission's notice of inquiry and details or text of applications, and also publication of submissions from interested parties.

## Airport Direct

On 15 February 2006 the Commission decided to refuse an application for a temporary exemption from the operation of relevant provisions of the Disability Standards for Accessible Public Transport and the DDA, to permit deferral of provision of wheelchair access on a public transport service to be known as Airport Direct operating from Shepparton to Melbourne. The Commission was not satisfied in this matter that the application went beyond a request for certification of unjustifiable hardship which has not been regarded as the appropriate purpose of the temporary exemption power.

## **AirNorth**

On 15 February 2006 the Commission decided to grant a further exemption concerning access to aircraft operated by AirNorth, for a period of two years, regarding lack of access to aircraft seats for people requiring wheelchair access, where this is prevented by limited aisle width; lack of access to aircraft or seats for passengers requiring lifting, where this cannot be performed in compliance with the requirements of applicable occupational health and safety laws due to space constraints of the particular aircraft; and requirements for notice of disability access requirements, where these requirements are reasonable in the circumstances. The exemption is conditional on AirNorth continuing to provide its *Greater Freedom Fare* (as detailed in its application) where a person would not be able to travel without an assistant; reporting to the Commission on any instances where a passenger has been unable to travel or has been required to travel with an assistant because of restrictions permitted by this exemption; and reporting on any feasible technical solutions to difficulties faced by passengers with disabilities boarding and being seated safely, and in particular on consideration of solutions being trialled by other aviation operators in Australia.

## **Australasian Railways Association**

On 29 July 2005 the Australasian Railways Association (ARA) lodged an application for temporary exemption for its members from a range of provisions of the Disability Standards for Accessible Public Transport, on condition that its members meet a proposed set of revised compliance requirements seen by ARA as clearer and more certain, and/or more appropriately adapted to circumstances of rail public transport operations, than those provided by the existing terms of the Standards. In accordance with the Commission's policy on exemption applications a notice of inquiry and call for submissions on the ARA's application was published in August 2005 together with a copy of the application. The application and the body of submissions received (69 in number) is large and more complex than other applications received to date. In response to issues raised by submissions, ARA lodged a revised application in February 2006. The Commission convened a meeting in April 2006 between ARA, the Accessible Public Transport Jurisdictional Committee (comprising representatives of Federal, State and Territory Departments of Transport) and disability community representatives to discuss the revised application. As at June 2006 the Commission is preparing a paper for further public consultation on this matter.

## **Action Plans under the Disability Discrimination Act**

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

As at 30 June 2006, 368 plans were registered with the Commission (increased from 337 in June 2005), comprising 41 business enterprises, 46 non-government organisations, 36 Commonwealth Government and 52 state and territory Government departments and agencies, 143 local governments and 50 education providers. The register of Action Plans, and 329 individual plans provided electronically to the Commission, is available on the website. This register 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.

## **Legislative reform and assessment**

### **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 adoption of Disability Standards as offering potential to increase certainty and clarity of rights and responsibilities for relevant parties and thereby advance the objects of the Act. The Commission has a function under the DDA to advise the Attorney-General regarding the making of Standards. To date, it has performed this function by practical participation in Standards development processes rather than by way of formal reporting.

### ***Access to premises***

The Commission has continued to work intensively with the Australian Building Codes Board and industry, community and government members of the Building Access Policy Committee established by the Board, towards finalisation of Disability Standards on Access to Premises. This work has occurred in conjunction with upgrading of the access provisions of the Building Code of Australia to promote improved access for people with disabilities and to provide industry, local government and other parties with a clearer and more coherent set of rights and responsibilities. As at June 2006 Ministers were considering revised proposals from the Australian Building Codes Board taking into account the results of the Regulation Impact Statement process on the draft standards issued in 2005.

### ***Education***

The Disability Standards for Education came into effect in August 2005. The Commission has been discussing with the Attorney-General's Department and the Department of Education, Science and Technology possible further measures for promotion and implementation of the Standards.

### ***Public transport***

Discussions have continued through the Accessible Public Transport National Advisory Committee of processes and issues for the five-year review of the Disability Standards for Accessible Public Transport. The Commission has stated its view that the aim should be to have this review complete, or at least well under way, by the five-year point in 2007. The Commission has been encouraging jurisdictions to make public the results of their monitoring of progress in implementing the Standards as the first five-year compliance targets approach.

In addition to work on the Australasian Railways Association exemption application in relation to the Standards, significant issues regarding aviation access have arisen during 2005–06 including through complaints under the Disability Discrimination Act. As at June 2006 the Commission had asked the Department of Transport and Regional Services to convene a meeting involving aviation industry participants and regulatory bodies and disability community representatives to seek to resolve these issues.

### **Productivity Commission review**

The Commission met with the Attorney-General's Department during 2005–06 to assist in developing amendments to the Disability Discrimination Act in implementation of the Government's response to the review of the Act by the Productivity Commission, and to identify any associated amendments to the DDA which might appropriately be pursued as part of the same process.

## Speeches

Following is a selection of speeches made by Commissioners Ozdowski and Innes during 2005–06. Speeches and papers are available on the Commission's website at: [www.humanrights.gov.au/disability\\_rights/speeches/speeches.html](http://www.humanrights.gov.au/disability_rights/speeches/speeches.html)

*Advancing human rights of children and young people with disabilities*, ACROD NSW Sub-committee on Children, Young People and their Families, Sydney, 5 June 2006, Commissioner Innes

Roundtable on Information Access for People with Print Disabilities, Brisbane, 22 May 2006, Commissioner Innes

National Deafness Sector Summit, Perth, 20 May 2006, Commissioner Innes

*Adaptable Departments – disability action plans and what makes them work*, A DACV, EOCV, HREOC forum: Royal Australasian College of Surgeons, Melbourne, 17 May 2006, Commissioner Innes

*Opportunity knocks; Workers with a disability*, University of Southern Queensland, Toowoomba, 24 November 2005, Commissioner Ozdowski

Deafness forum of Australian 2005 Captioning Awards, North Ryde, 12 November 2005, Commissioner Ozdowski

Round table on Disability Action Plans with State Government Departments, Hobart, 3 November 2005, Commissioner Ozdowski

Launch: *Not for Service*, Brain and Mind Research Institute, University of Sydney, October 19 2005, Commissioner Ozdowski

ABC Conference, Building Australia's Future, Adelaide, 13 September 2005, Deputy Disability Discrimination Commissioner Innes

3rd National Conference on Human Rights and Mental Health, Thursday 8 September, Parliament House Canberra, Commissioner Ozdowski

*Advancing equality in education and beyond*, Eastern Metropolitan Region Student Disability Conference, 1 September 2005, Melbourne, Commissioner Ozdowski



## Chapter 8:

# Human Rights

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### Statement from the Commissioner

I am thrilled to be the new Human Rights Commissioner, continuing the good work of Dr Sev Ozdowski and beginning a new range of projects.

In the last six months of Dr Ozdowski's term as Human Rights Commissioner, he completed two important projects.

Firstly, Dr Ozdowski finished a detailed research project into discrimination in employment against people with a criminal record. The research had a very practical focus. It looked at the difficulties faced by people who had served their time in prison and who were looking to participate in society once again. It also looked at the dilemmas faced by employers deciding whether to hire someone with a criminal record. The results of the research were guidelines for employers and for people with a criminal record to help them all navigate this very uncertain area of law. There has been great demand for those guidelines by both employers and community groups.

Secondly, Dr Ozdowski launched the *Rights of Passage* report which describes how Australia's youth perceive human rights in the twenty-first century. The report is the result of extensive consultation with young people in Australia. It also reflects some of the views expressed in the many entries to the *Human Writes* essay competition and the *Rights in Perspective* art competition.

Both these projects highlight the importance of talking directly to people about the problems they face and the views they have, so that the Commission's work properly reflects current human rights issues in Australia. Dr Ozdowski was committed to raising the level of public discussion about human rights in Australia and to keeping the government accountable. I intend to build on those foundations during my term.

For one, I will continue to support the *Rights in Perspective* art competition and *Human Writes* essay competition. What better way



**Mr Graeme Innes, AM**  
Human Rights Commissioner

to continue engaging children in Australia in a dialogue about human rights? This year we are working with the Australian Red Cross to try and spread the reach of this initiative.

Within days of starting my term I began work on the National Inquiry into Discrimination against Same-Sex Couples regarding Financial and Work-Related Entitlements – *'Same-Sex: Same Entitlements'*.

National inquiries are an extremely important device in pursuing the Commission's agenda. They allow us to explore national issues in a detailed and sustained manner and to obtain input from a range of groups and individuals around the country. The Commission is then able to reflect these views, as well as to compile relevant research into a report to Parliament and make recommendations for change.

We launched the *Same-Sex: Same Entitlements* Inquiry in April 2006 and we have already had an overwhelming response from the public. Even at this early stage of the project, it is abundantly clear to me that discrimination against gay and lesbian couples has had an enormous impact on so many Australians who just want to be treated in the same way as their heterosexual neighbours.

Another important way of raising the profile of human rights in Australia is by participating in discussions about law reform. Some of those discussions take place in the context of Parliamentary inquiries examining new bills. Other discussions occur in the context of inquiries about existing legislation by law reform commissions and similar bodies. In the first half of 2006, the Human Rights Unit has written seven submissions to various Parliamentary Committees and other bodies. And we have concentrated on converting those submissions into a form that the media can use – either by doing media interviews or by submitting opinion pieces – so that the human rights message is spread beyond the walls of Parliament House, Canberra.

Immigration detention and the treatment of asylum seekers and refugees in Australia will continue to be a focus for me. While there have been some improvements over recent years, there is still much work to be done. I have started consultations with community groups and will be visiting immigration detention centres in the year ahead.

During the first six months of my term I have come to realise how challenging the job of Human Rights Commissioner is going to be. The term 'human rights' encompasses so many different issues and there is no legislative instrument other than the *Human Rights and Equal Opportunity Commission Act* itself, which neatly sets out the human rights problems facing Australians.

So, my role as Human Rights Commissioner is to explain the importance of universal human rights, identify the relevance of those human rights to all people in Australia and to come up with practical ways to protect and promote those rights. Not an easy task, but I look forward to the challenge.

## National inquiries

### ***'Same-Sex: Same Entitlements'* – National Inquiry into Discrimination against Same-Sex Couples regarding Financial and Work-Related Entitlements**

On 3 April 2006, the Commission launched the National Inquiry into Discrimination against Same-Sex Couples regarding Financial and Work-Related Entitlements – *'Same-Sex: Same Entitlements'*. A Discussion Paper, Background Brief, Guide to Submissions and Terms of Reference were published on the same day.

The purpose of the Inquiry is to make sure that all Australian couples have the same financial and work-related benefits and entitlements under law, whether or not those couples are made up of two women, two men, or a man and a woman.



The Inquiry has three goals. Firstly, to identify all the Commonwealth, State and Territory laws that exclude same-sex couples from financial and work-related entitlements available to heterosexual couples.

Secondly, to document the impact of those laws on same-sex couples by collecting stories from people who are affected by the laws.

Thirdly, to make recommendations to the federal government about how to amend the laws to eliminate that discrimination.

The Inquiry methodology includes a call for public submissions, public hearings and community forums, and consultation with non-government organisations, community groups, government and State and Territory Equal Opportunity Commissions and Anti-Discrimination Boards.

As at 30 June 2006, the Inquiry had received 340 written submissions. The public hearings and community forums will take place between July and October 2006.

Following the close of the submission and consultation processes, the Inquiry will prepare a report containing findings and recommendations.

A webpage on the Commission's website – [www.humanrights.gov.au/samesex/](http://www.humanrights.gov.au/samesex/) – provides updated information about the Inquiry and its progress, as well as links to any of the submissions made to the Inquiry.

## Monitoring and adhering to human rights

### Immigration Detention, asylum seekers and refugees

Monitoring the conditions of immigration detention facilities and the rights of immigration detainees, asylum seekers and newly arrived refugees continues to be a priority for the Commission.

Between October and November 2005, Commissioner Ozdowski visited the Perth, Maribyrnong and Baxter immigration detention facilities. Each of those visits was followed up through correspondence with the Department of Immigration and Multicultural and Indigenous Affairs (as it was then).

Commissioner Innes continues to engage with the Department of Immigration and Multicultural Affairs (as it is now) and will be conducting visits in the next reporting year, amongst other activities.

### Discrimination in employment on the grounds of criminal record

On 11 November 2005, the Attorney-General launched *On the Record – Employer Guidelines for the Prevention of Discrimination in Employment on the Basis of Criminal Record*.

The Guidelines provide practical information about the rights and responsibilities relating to discrimination in employment on the basis of criminal record in the context of the *Human Rights and Equal Opportunity Commission Act 1986*.

In recent years, the Commission received a significant number of complaints from people alleging discrimination in employment on the basis of criminal record. The complaints indicated a great deal of misunderstanding by employers and people with criminal records about discrimination on the basis of criminal record.

In August 2004 the Human Rights Commissioner commenced a research project to examine more closely the extent and nature of this discrimination, to clarify the rights and responsibilities of employers and employees, and to consider measures which may be taken to protect people from this form of discrimination.

In December 2004 the Commissioner issued a *Discussion Paper on Discrimination in Employment on the basis of Criminal Record*, calling for submissions. These submissions, together with a series of consultations on the issue of criminal record discrimination, highlighted further the need for practical guidance for employers and employees in this area. The Guidelines launched by the Attorney-General on 11 November 2005, are a result of this research and consultation process.

For ease of reference, the Commission also published a short document outlining some *Key Points* from the Guidelines.

In addition, an *Information Brochure on Discrimination in Employment on the Basis of Criminal Record* was published for people with a criminal record and their advocates, covering similar issues as the Guidelines, but from a job applicant or employee perspective.

The materials can be accessed from the website at: [www.humanrights.gov.au/human\\_rights/criminalrecord/on\\_the\\_record/](http://www.humanrights.gov.au/human_rights/criminalrecord/on_the_record/)

## Submissions to Inquiries

Submissions to Parliamentary and other inquiries are an important tool for the education and promotion of human rights both to the government and the community as a whole.

Between January and June 2006, the following submissions were prepared by the Human Rights Unit:

- Submission to the Commonwealth Senate Finance and Public Administration Committee regarding the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005. See [www.humanrights.gov.au/legal/submissions/electoral20060309.html](http://www.humanrights.gov.au/legal/submissions/electoral20060309.html).
- Submission to the Commonwealth Parliamentary Standing Committee on Public Works regarding *Villawood Immigration Detention Centre Redevelopment*. See [www.humanrights.gov.au/legal/submissions/villawood.html](http://www.humanrights.gov.au/legal/submissions/villawood.html).
- Submission to the Senate Legal and Constitutional Legislation Committee on the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006. See [www.humanrights.gov.au/legal/submissions/migration20060522.html](http://www.humanrights.gov.au/legal/submissions/migration20060522.html).
- Submission to the Joint Standing Committee on Electoral Matters regarding an *Inquiry into Civics and Electoral Education*. See [www.humanrights.gov.au/legal/submissions/electoral\\_civics.html](http://www.humanrights.gov.au/legal/submissions/electoral_civics.html).
- Submission to the Australian Law Reform Commission Discussion Paper No. 70, *Sentencing of Federal Offenders*. See [www.humanrights.gov.au/human\\_rights/index.html#submissions](http://www.humanrights.gov.au/human_rights/index.html#submissions).
- Submission to the NSW Parliamentary Committee on Children and Young People's *Inquiry into Children, Young People and the Built Environment*. See [www.humanrights.gov.au/human\\_rights/index.html#submissions](http://www.humanrights.gov.au/human_rights/index.html#submissions).
- Submission to the Family Law Council regarding its *Discussion Paper on Relocation*.

## Education and promotion of human rights



### ***Rights of Passage: Young People and Human Rights Dialogue***

On 29 November 2005, Commissioner Ozdowski launched *Rights of Passage – A Dialogue with Young Australians about Human Rights*.

*Rights of Passage* provides current information about young people's perceptions of their enjoyment of human rights in Australia. The purpose of the report was to inform future education initiatives, especially for young people in the school environment.

The research phase for the *Rights of Passage* project included:

- a national survey distributed to 1050 young people in 26 high schools and youth centres in all states and territories, of which 437 (41.6%) were returned
- focus groups conducted in 16 schools and youth centres in New South Wales, Queensland and South Australia and the Australian Capital Territory with 160 participants aged between 11 and 19
- a literature review undertaken by a research consultant, Dr Stephen Bochner, (Visiting Professor, School of Psychology, University of New South Wales, Sydney)
- a national art and essay competition (see below)

The findings documented in *Rights of Passage* indicate that human rights knowledge depends on the experiences of the individual and varies with demographic differences. As a general principle therefore, human rights education programs should be tailored to the developmental and personal characteristics of the target audience.

The findings also demonstrate that young people find it difficult to navigate the wealth of information on human rights-related topics, and require greater guidance at the school level. Activity-based education programs, such as 'hands-on' anti-bullying strategies, allow the culture or the values espoused by the school to filter from the top down. Young people are much more likely to respond to the 'do as I do' approach. This highlights the need for human rights education programs targeting youth to provide support to the educators as well as the students.

Finally, the lack of knowledge about some key human rights issues in Australia, such as the way in which domestic legislation protects rights, or of social issues such as Indigenous disadvantage, suggests that additional human rights education campaigns are needed.

*Rights of Passage* is available online at: [www.humanrights.gov.au/human\\_rights/rights\\_of\\_passage/](http://www.humanrights.gov.au/human_rights/rights_of_passage/)

## Competitions for Young People: *Human Writes* Essay Competition and *Rights in Perspective* Art Competitions

As noted above, as part of the *2005 Dialogue with Young Australians* about Human Rights, the Commission launched the *Human Writes* essay competition and *Rights in Perspective* art competition.

The Commission received close to 150 entries in total. Both the essay and art competitions had a junior (10–14 years old) and senior (15–18 years old) category, with a winner and a runner-up in each of those categories.



The winners and runners-up were announced by the Human Rights Commissioner on 29 November 2005, in conjunction with the launch of *Rights of Passage – Dialogue with Young Australians about Human Rights*. The winners received an iPod Mini or digital camera and the runners-up were both given a \$50 CD or book voucher.

The national art and essay competitions have been identified as an effective way to increase positive engagement on human rights with educators and young people. The Commission relaunched the competitions in March 2006. Winners of the 2006 competitions will be announced by December 2006.

## Speeches and consultations

A selection of public addresses made by each Human Rights Commissioner during 2005–06 is listed below. Some speeches can be accessed on the Commission's website at: [www.humanrights.gov.au/speeches/human\\_rights/index.html](http://www.humanrights.gov.au/speeches/human_rights/index.html)

### Commissioner Innes

*The Human Rights and Equal Opportunity Commission and the Protection of Human Rights at the Federal Level* Address at the ANU Conference on Australian Bills of Rights: The ACT and Beyond, Canberra, 21 June 2006

Launch of the *Same-Sex: Same Entitlements* Inquiry, Sydney, 3 April 2006

### Commissioner Ozdowski

*Democracy, Human Rights & Social Issues* *Human Rights, Mental Health & Anti-Terror Laws in Australia*, Mitchell Theatre, Sydney Mechanics School of Arts, Sydney, 2 December 2005

Launch of *Rights of Passage*, Sydney, 29 November 2005

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*UNAA National Action Plan Forum*, Hobart, 4 November 2005

*What a Bill of Rights could deliver for Australia*, Don Chipp Foundation Defending Democracy Public Forum, NSW Parliament, Sydney, 19 October 2005

*The Human Rights and Equal Opportunity Commission and Immigration Detention*, UNICEF, Sydney, 24 August 2005

*Children in Immigration Detention – Recent Developments*, Sydney Leadership Forum, Parramatta Town Hall, Parramatta, 6 July 2005



## Chapter 9: **Race Discrimination**

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### **Statement from the Commissioner**

This report covers my second year acting as Race Discrimination Commissioner. It also coincides with the 30th year of the *Racial Discrimination Act* (RDA). As with any anniversary, the 30th anniversary of the RDA in October 2005 provided an opportunity to reflect on the achievements of the RDA, as well as the political and social changes that such legislation signifies.



**Mr Tom Calma**  
*Acting Race Discrimination  
Commissioner*

The RDA, implemented in October 1975, was Australia's first federal law dealing with human rights. It implemented a basic principle of international law: the principle prohibiting discrimination against people on the basis of their race, colour, or national or ethnic origin.

In 2005 I chose to reflect on the significance of this legislation in a number of ways. First, I developed a range of educational resources to ensure a broad understanding of the normative principles on which the legislation is based. One such resource was the production of a new edition of *Face the Facts*, a publication which provides factual, easy-to-read information about refugees and asylum seekers, migration and multiculturalism and Indigenous people.

Second, I felt it was important to bring together the stories of a diverse range of Australians and provide an opportunity for them to tell their personal histories of race relations over the past thirty years. This has been done in the *Voices of Australia* magazine. While some of the stories capture the pain of racism, over all, *Voices of Australia* is about people's strength and hopefulness – it's about the day-to-day process of getting on with each other and growing together as individuals and as a nation.

About the same time as HREOC was celebrating the anniversary of the RDA and by way of contrast to the optimistic tone of many of the stories in the *Voices* magazine, another completely different story was unfolding in the Cronulla area of Sydney.

What started off on the morning of 11th December 2005 as a call for locals to show unity against violence at the beach, turned into a 5 000 strong crowd participating in what is now known as the Cronulla riots. What the nation witnessed on national news that night was the brutal attack of people perceived as being of 'middle-eastern appearance' or simply of 'ethnic origin'. Extremist white supremacists seized the day and used it as a platform for distributing anti-multiculturalism, anti-immigration and anti-Muslim literature.

Reprisal attacks followed the riot with 2 000 people gathering outside Sydney's largest mosque seeking revenge. From the mosque many drove to Cronulla and surrounding beachside suburbs smashing parked cars and shop windows, bashing locals and in one instance stabbing a man outside a local golf club.

The story of the Cronulla riot is one that many are still trying to make sense of. Is it simply a local tale in which a close knit community, relatively homogenous in their anglo-celtic origins, came together to protest against Lebanese and Arab young people, whom they accused of engaging in antisocial behaviour? Or is it a story with much deeper ramifications for race relations in Australia? In the opinion pieces and speeches I have delivered on this topic in the past year I express the view that we should not look at local issues in isolation from national and international factors. By understanding the interaction of the local and the global we come to understand how, what might start out as a conflict around antisocial behaviour or simply ways of playing games on a beach, transforms into something far more sinister dividing entire sections of a society.

It was the search for this understanding of the relationship between the local and the global that led HREOC to undertake the *Ismaʿ* project back in 2003, (*Ismaʿ* is Arabic for listen). The consultations on which this project was based revealed a disturbing increase in the level of discrimination and vilification against Arab and Muslim Australians following the September 11 attacks in America in 2001. I have continued the work of the *Ismaʿ* project in the current reporting period, particularly through the *Engaging Muslim Communities and Police* project and the Muslim Women's project.

In both of these projects I aim to inform Muslim community members of the legal avenues and services available to them as victims of racial and/or religious hatred. Unfortunately for Muslim Australians living in NSW, SA, WA, and NT I must tell them there is no legal redress against attacks on them based on their religion. Nor has federal legislation been enacted to provide such redress. In a time when many in the community are feeling under attack for their religious beliefs this is a significant gap in Australia's laws and I will continue, in the coming year, to argue forcefully for the federal Government to fill this legal vacuum.

This is just some of the work I will be doing in the coming year to support the Muslim community in defending themselves against religious abuse and hatred. While this targeted work is necessary to ensure the concerns of particular communities are addressed, it is equally important that there are strategies in place to educate the general community about the principles of non-discrimination enshrined in the RDA.

One such strategy I will be developing in the coming year is the Sport and Racism strategy. Our work to date in this area, largely research based, has been directed to gaining a thorough understanding of the current strategies adopted by sporting bodies and government agencies towards addressing racism in sport. With this knowledge I will be in a good position to position HREOC's future work in this area. I am keen to develop future policy strategies aimed at both addressing racism within sport as well as promoting an inclusive and non-discriminatory attitude by players, supporters and the broader viewing public.

## Research and Policy

### Review of Commonwealth Government's Multicultural Policy

On 22 August 2005 the Commission made a submission to the Commonwealth Government's review of its multicultural policy. The submission responds to questions posed by the Government's review committee. In summarising the current climate of race relations in Australia the Commission identified four of the most significant issues:

- the impact of terrorism and national security measures on Muslim and Arab communities
- the treatment of refugees and newly arrived immigrants
- the disparity between Indigenous and non-Indigenous people in their respective enjoyment of economic, social and cultural rights
- racial discrimination in employment.

The Commission stated that political and community leaders at a federal, state, territory and local level should encourage Australians to uphold the principles of multiculturalism, including respect for the right of all Australians to express their own culture and beliefs and responsibility to support the basic structures and principles of Australian society that guarantee freedom and equality for all.

### Muslim Community Projects

In March 2006 the Department of Immigration and Multicultural Affairs (DIMA) approved two Muslim community projects. These projects are part of a number to be carried out by government agencies and funded by DIMA following the Prime Minister's Summit with Muslim community leaders on 23 August 2005. The first project to be undertaken by HREOC is the September 2006 Muslim Women's Forum, which will focus on human rights and responsibilities.

The second project, *Engaging Muslim Communities and Police*, aims to facilitate dialogue between Muslim communities and police to assist police in responding to incidents of racial or religious hatred and abuse. The project is being conducted

in NSW and Victoria and has involved extensive consultations with community representatives, police and Muslim communities. The project will culminate in two forums, in Victoria and NSW, in August 2006. The Commission will also develop resources to assist police and the Muslim community in dealing with discrimination.

## Education and Promotion

### *Voices of Australia*



Launch of *Voices* at Parliament House Canberra. Left to right (back row): Tom Calma, John von Doussa, Dean Widders, Margaret Donaldson, Simone Krauss and Omeima Sukkarieh, with teachers and students of Arawang Primary School, Waramanga ACT

To celebrate the 30 year anniversary of the *Racial Discrimination Act 1975*, the Commission produced a magazine and CD entitled *Voices of Australia – 30 years of the Racial Discrimination Act 1975-2005*. This is a collection of true stories about Australians living together. It includes a history of the Racial Discrimination Act, a timeline of Australia's race relations history and a plain English guide to the Racial Discrimination Act. The magazine and CD were launched by the Federal Attorney-General at Parliament House Canberra on 31 October 2005. Over 30 000 copies of *Voices* have been distributed nationally.

As part of the project the Commission and the National Rugby League produced a poster featuring well known rugby league players of diverse cultural backgrounds working together as friends and equals on the sporting field. The poster promoted the *Voices of Australia* project and aimed to encourage people to combat racism. Over 18 000 posters have been distributed. In addition the stories of ten high profile national rugby league players were included in the *Voices* magazine and are available on the HREOC and NRL website.



### *Face the Facts*



On 28 October 2005 the Commission launched the fourth edition of its publication *Face the Facts*. This booklet provides facts to counter common misconceptions and provides answers to some of the most common questions about Indigenous people, migrants and refugees in Australia. It is aimed at educating media representatives, school students and the general community. Over 30 000 copies of the booklet have been distributed nationally to schools, media outlets, community organisations and government agencies.

The online version of *Face the Facts* is designed for teachers and students to access detailed statistical information and further reading sources. The Commission has produced an educational module for secondary schools based on the *Face the Facts* booklet.

## Sport and Racism project

The Department of Immigration and Multicultural Affairs (DIMA) funded the Commission to survey and compile a list of the existing strategies to combat racism within sport that have been adopted by selected national sporting organisations, codes, government and non-government sporting agencies and human rights institutions.

The project also aims to gather any available baseline data on the level of participation by culturally and linguistically diverse communities and individuals in sport and gather any information on any projects which aim to increase Indigenous and CALD participation.

The project's report (due in November) will provide the basis for DIMA to consider future policy strategies aimed at both addressing racism within sport, as well as promoting an inclusive and non-discriminatory attitude by players, supporters and the broader viewing public.

## Speeches

A selection of public addresses made by the acting Race Discrimination Commissioner and his senior staff during 2005–06 is listed below. Speeches can also be accessed on the Commission's websites at: [www.humanrights.gov.au/speeches/race-discrim/index.html](http://www.humanrights.gov.au/speeches/race-discrim/index.html)

A seminar hosted by NEEOPA (National Equal Employment Opportunity Practitioners Association) and attended by Equal Opportunity Practitioners in private industry and government was addressed by Director of the Race Discrimination Unit, Sydney, 26 October 2005.

2005 edition of *Face the Facts* launched by Commissioner Calma at the NSW Fire Brigade, Sydney, 28 October 2005.

The *Voices* Magazine and Audio CD were launched by the Attorney-General, the President and Commissioner Calma in Old Parliament House, Canberra, 31 October 2005.

National Symposium *Responding to Cronulla: Rethinking Multiculturalism* organised by Griffith University and University of the Sunshine Coast addressed by Commissioner Calma, Brisbane, 21 February 2006.

## Chapter 9: Race Discrimination

Launch of *A Media Guide: Islam and Muslims in Australia* as part of Harmony Day, Director of the Race Discrimination Unit was a key speaker, Melbourne, 17 March 2006.

SAVE – Australia Inc seminar titled “Diversity, Disadvantage, Discrimination: Migrants, Refugees, and Racism in Australia” addressed by Commissioner Calma, Sydney, 31 March 2006.

A roundtable of key stakeholders in the *Muslim Community and Police* Project addressed by Commissioner Calma, Sydney, 27 April 2006.

2006 National Civics and Citizenship Education Forum addressed by Commissioner Calma, Canberra, 1 June 2006.

## Chapter 10: *Sex and Age Discrimination*

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### **Statement from the Commissioner**

The demographic changes facing Australia and our continuing economic growth have rapidly changed the climate in which Australians work and live. The Government's social and economic policy changes have contributed to the velocity of this change. A tightening labour market has been accompanied by further work intensification and longer working hours for many. At the same time the increasing longevity of Australians, the ageing of the workforce and the increasing proportion of retirees have placed increased pressure on Australians to both work and care more; to care not only for their children, often including adult children in need, but also for their parents and other family members.



**Ms Pru Goward**  
*Sex Discrimination Commissioner  
and Commissioner responsible  
for Age Discrimination*

Thirty years of continuous improvement in the educational outcomes of women and girls is also flowing through to changing expectations of younger women in the workforce, women who, in their thirties, seek increasingly to combine paid work with motherhood.

Over the past twelve months the work of my policy Unit has strongly reflected these broader changes. There is great interest in the Age Discrimination Act amongst the business community and increasing discussion of the challenges facing older workers. There is growing recognition that Australia's fertility rate is a reflection of the difficulty many women have in combining motherhood with paid work. Broader public concern about the extended working lives of Australians, the need for self-funded retirement and the consequences of greater but less certain work effort for family life, childhood development and social stability has also fuelled interest in my work and views on a range of issues from child care to WorkChoices legislation and elder care.

My engagement in public media debates about these and other issues of national importance and my heavy public speaking schedule (I have delivered more than 100 speeches all over Australia during the year)

reflect the relevance of gender equality to these debates and public demand for information and analysis.

In the 2006 Federal Budget the Commission was provided with additional funding of \$1.150 million over four years to promote the Age Discrimination Act and conduct relevant research. In the remaining months of this financial year I have recruited staff to create combined Sex and Age Discrimination Units, known as 'SAGE', and have been developing a promotions strategy.

The substantive work of the Unit has revolved around our national project, *Striking the Balance: Women, Men, Work and Family*. Primarily this is concerned with the impact of unpaid work and responsibilities on gender equality and also on the role working arrangements have in determining the share of unpaid responsibilities. All members of the Unit have contributed to the project under the guidance of the Unit's director, Sally Moyle and Dr Sarah Squire, our policy officer.

Since the release of our *Striking the Balance* discussion paper in June 2005, we have conducted a total of 44 consultations and focus groups around Australia. These have included consultations in every State and Territory and with employers, employer bodies, middle executives, unions, community men's groups, community women's groups, regional bodies, carers' associations and aged care and disability lobby groups. The discussions were frank and remarkably personal and, in conjunction with the 181 written submissions, form the basis of the final paper, due for release later in 2006.

The project has deliberately sought to engage men, to seek advice from men and reflect their concerns as well as those of women. This strategy, along with my contribution to the discussion about post-separation parenting arrangements, has not always meant an easy relationship between me and some people in the emerging men's movement but I believe it is necessary to persist in seeking to reconcile the perceived competing interests of men and women. My efforts will not lessen and I believe others will join me. Men's and women's interests are not in competition and will only be achieved in cooperation.

Our continuing research partnerships are also designed to improve our understanding of the connections between unpaid caring responsibilities and economic outcomes.

The Unit has partnered with the National Foundation for Australian Women (NFAW) and the Women's Electoral Lobby Australia (WEL) to develop comprehensive data about women's pay and conditions. This should enable researchers and policy makers to monitor women's progress in paid work, including the impact of changing economic and social conditions on the choices women make about work and on pay equity. Other research partnerships are similarly concerned with the relationship between work, family friendly working conditions and outcomes for children.



The Unit has made written submissions to a number of parliamentary inquiries, including the Family Law Amendment (Shared Parental Responsibility) Bill 2006, the Workplace Relations Amendment (WorkChoices) Bill 2005, the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005; Family and Community Services Amendment (Welfare to Work) Bill 2005, the Age Discrimination Amendment Bill 2006 and the Sex Discrimination (Teaching Profession) Bill 2004. The Unit and I provided submissions to the Australian Industrial Relations Commission's Family Provisions Test Case and the Australian Government Award Review Taskforce. Some of these submissions received media attention while others were reflected in inquiry findings.

The Unit and I undertook a range of additional activities in the education and awareness fields this year. It is all part of meeting the Sex Discrimination Act's objective to promote awareness of gender equality between men and women. At the request of the Attorney-General's Department we have developed culturally appropriate materials on pregnancy and potential pregnancy discrimination for Indigenous women at work, hosted an international workshop on Trafficking in Women and jointly hosted a round table on judicial responses to gender and the law which was useful for our own understanding of the issues as well as those invited to attend from academia, law firms and community groups.

Our continuing international work, particularly with women's organisations in China and Vietnam, reminds us that Australia is uniquely well placed to work with our neighbours in gender policy and the development of a regional approach to matters of common concern such as trafficking.

In my five years as Commissioner there has never been a slow and steady one where we have quietly worked away at issues of concern to Australian women. The issues are of great public concern and Australians expect that I will, with my Unit, contribute to public awareness and policy development with rigorous, evidence driven argument. To do so unstintingly over the year requires a hard working team with policy and people strengths and dedication to match. This Unit of four people also replies to an enormous amount of public correspondence as well as assiduously reading and researching international thinking on the issues of concern to us. I am deeply indebted to them all, especially Sally Moyle, the Unit's director, who is leaving the Human Rights and Equal Opportunity Commission after eight years in a variety of senior roles. We will miss her dearly.

I am grateful for the opportunity to have served the Australian public for another year and for their support for our work.

## Research and Policy

### ***Striking the Balance* project**

On 22 June 2005, the Commissioner launched the *Striking the Balance: Women, men, work and family* Discussion Paper. Since the launch, the Sex Discrimination Unit (SDU) has held a total of 37 consultations and focus groups around Australia. Employees, employer groups, unions, men's and women's community groups and other interested individuals expressed their thoughts and experiences of combining paid work and family responsibilities. The SDU has also received 181 written submissions from individuals and groups which included employers, employer groups, unions, women's and men's community groups, academics, legal groups, and state, territory and federal governments and agencies. A round table meeting was conducted in January 2006 with advisory panel members from relevant academic, industry and community fields to inform the development of a final *Striking the Balance* paper.

The SDU is currently drawing on these submissions, consultations and round table discussions to complete the final stage of the *Striking the Balance* project.

### **Research Benchmarking Women's Wages and Conditions**

On behalf of the Commission, the SDU teamed up with the National Foundation for Australian Women (NFAW) and the Women's Electoral Lobby Australia (WEL) in June 2006 to undertake research into the current position of Australian women in the workforce. The research is to provide comprehensive data about women's pay and conditions to enable researchers and policy makers to monitor women's progress in paid work. The research will be completed by October 2006.

### **ARC linkage project '*Parental Leave in Australia*'**

The SDU, on behalf of the Commission, is an industry partner to the Australian Research Council (ARC) linkage project '*Parental Leave in Australia: Access, utilisation 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 for parental leave; and assess broader implications for gender equality. Lead researchers are Dr Gillian Whitehouse and Dr Marian Baird.

An initial analysis of the research and a progress report were presented at a forum organised by the Commission as part of its in-kind support, held on 18 May 2006. Approximately 25 people attended the forum including academics, Commonwealth government officers, employer groups, legal practitioners, representatives from community legal centres and representatives from women's groups and NGOs.

### **ARC linkage project 'Impact of Parents' Employment on Children's Well-being'**

The SDU, on behalf of the Commission, is an industry partner to the ARC linkage project *'Impact of Parents' Employment on Children's Well-being: The influence of employment quality, time and activities with children, and parenting practices.'*

Lead investigators are Dr Michael Bittman, Dr Jan Nicholson and Dr Lyndall Strazdins. Other industry partners are the Queensland Commission for Children and Young People, the Queensland Office for Women, the NSW Commission for Children and Young People.

The SDU has attended meetings with the investigators and industry partners in February and June 2006 at which preliminary findings were presented and discussed.

### **ARC linkage project 'Australia's response to Trafficking in Women'**

The SDU, on behalf of the Commission, is an industry partner to an ARC Linkage project *'Australia's response to Trafficking in Women: Towards a model for regulation of forced migration in the Asia Pacific Region'*. The project is investigating gaps in Australia's legal and policy response to trafficking in women.

Lead investigators are Professor Bernadette McSherry, Associate Professor Susan Kneebone and Dr Julie Debeljak. Other industry partners are ACIL Australia Pty Ltd, the federal Attorney General's Department and World Vision Australia. The research is progressing.

## **Education and Promotion**

### **Materials for Indigenous Women on Pregnancy and Work**

Following a recommendation in the 1999 Commission report *Pregnant and Productive: It's a right not a privilege to work while pregnant*, the SDU was requested by the federal Attorney-General's Department to produce culturally specific education materials on pregnancy, potential pregnancy and breastfeeding discrimination in the workplace for Indigenous women.

The project was funded by the Attorney-General's Department, the Office of Indigenous Policy Coordination and the Office for Women and was carried out in partnership with the National Network of Indigenous Women's Legal Services.

The materials consist of fact sheets about pregnancy and work and a brochure about unlawful discrimination and Indigenous women, including information on parental leave and returning to the workplace when children are very young. Following the launch, which is planned for late August 2006, the materials will be distributed to agencies including Aboriginal Legal and Medical Services, community legal services, Women's Legal Services and relevant government agencies.

## Judicial Awareness Raising

On 9 February 2006, the SDU, along with the President and the Director of the Legal Section, attended a meeting with the Committee Secretariat of the National Judicial College Consultative Committee. The Commission advised the Committee on the design of social and cultural awareness training for the judiciary and has agreed to continue discussions with the Committee on the relevant resources that it produces.

To inform its position on the matter, on 1 February 2006, the President and the SDU hosted a round table discussion on judicial responses to gender which informed the Commission's position on gender issues and the law. The discussion was attended by academics, lawyers and community workers.

## Trafficking in Women Workshop

Between 20 and 23 November 2005 the SDU, on behalf of the Commission, co-hosted a three-day workshop for National Human Rights Institutions (NHRIs) and NGOs entitled *Human Trafficking and National Human Rights Institutions: Cooperating to end impunity for traffickers and to secure justice for trafficked people*. The Asia Pacific Forum of National Human Rights Institutions (APF) partnered with the Commission in hosting the workshop, which was jointly funded by NZAid, the Commission and the Asia Regional Cooperation to Prevent People Trafficking (ARCPPT), an AusAID funded counter-trafficking program. The themes explored during the workshop included: researching and investigating trafficking; NHRIs engaging with the law and the administration of justice; working with NGOs and civil society to support victims and their rights; and internal, cross border and regional collaboration.

The workshop was attended by representatives from Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, Republic of South Korea, Sri Lanka and Thailand. Also in attendance were representatives from the United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region (UNIAP), the International Organisation for Migration (IOM), the ARCPPT and regional and national civil society organisations from Australia, Nepal and Thailand.

Australian Government departments were also invited to observe proceedings over the course of the Workshop. These included AusAID, the Attorney-General's Department and the Australian Federal Police. Approximately 35 participants and observers were in attendance each day.

## Seminar on Women's Human Rights

On 10 October 2005, the Commissioner hosted a seminar on women's human rights featuring two guest speakers, Amena Shams, an activist with the Revolutionary Association of the Women of Afghanistan (RAWA) and Carmela Baranowska, a Walkley Award Winning Filmmaker. The seminar was well attended by approximately 55 people.

## Education materials for the Age Discrimination Act

In the 2006 Budget, the Commonwealth Government allocated the Commission an additional \$1.150 million over four years to counter age discrimination in the workforce. Work has begun on a national campaign to raise awareness among older people about age discrimination. The SDU has commissioned a research project to identify key issues facing older people and will be used to determine the focus of the national community awareness strategy.

Two policy officers will be recruited to work on age discrimination.



## Legislative Development and Submissions

Submissions were made by the Sex Discrimination Commissioner on behalf of the Commission to a number of parliamentary and other committees. For details, see Chapter 3.

### *Age Discrimination Amendment Act (2006)*

The *Age Discrimination Amendment Act 2006* (Cth) was given royal assent on 22 June 2006. The *Age Discrimination Act 2004* (Cth) contained a general exemption from Commonwealth Acts and regulations which expired on 23 June 2006. The Age Discrimination Amendment Act replaced the general exemption with a more limited number of exemptions. These exemptions will continue to protect age-related provision in certain Commonwealth Acts and regulations such as targeted employment programs.

### **Sex Discrimination Act (Teaching Profession) Bill 2004**

The Sex Discrimination Act (Teaching Profession) Bill 2004 (Cth) passed through the House of Representatives on 12 May 2005 and was introduced into the Senate on 14 June 2005. The Bill proposes to alter the provision in the Sex Discrimination Act that prohibits discrimination on the basis of sex in areas including education. The Bill seeks to permit the provision of teaching scholarships to persons of one sex.

The Commissioner made a submission to the Senate Inquiry into the provisions of the Sex Discrimination Amendment (Teaching Profession) Bill in 2004 opposing the proposed amendments. The Bill remains on the Senate notice paper awaiting further debate.

## International Activities

The Commissioner and the SDU took part in a number of international programs throughout 2005–06 including:

- Working with the Commission's International Programs Unit on domestic violence activities as part of the Australia-China Human Rights Technical Cooperation Program. The Commissioner and an SDU Policy Officer attended and presented at a workshop on domestic violence in Shanghai between 25 and 29 July 2005.
- Between 30 August and 2 September 2005, the Commissioner attended the Thirteenth Annual Workshop of the Framework on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region in Beijing.
- Between 29 August and 1 September 2005, the Commissioner attended the Tenth Anniversary Commemoration of the Fourth World Conference on Women in Beijing. The theme of the conference was 'Beijing + 10: Towards Gender Equality and Common Development'.
- The Commissioner participated in the Tenth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions (APF), hosted by the National Human Rights Commission of Mongolia in Ulaanbaatar between 24 and 26 August 2005.
- Between 19 July and 10 October 2005 the Director of the SDU spent three months in Vietnam working as a legal systems specialist on a project designed to assist the Viet Nam Women's Union in developing and drafting of the Law on Gender Equality. While working on the project, the Director of the SDU was approached to assist the development and facilitate the delivery of an International Workshop on Implementation and Enforcement Mechanisms for Gender Equality Legislation. The Director of the SDU and the Commissioner attended this workshop which was held on 12 and 13 December 2005 in Hanoi.
- The Commissioner attended an Australian and New Zealand Leadership Forum in Auckland on 5 and 6 May 2006. The Commissioner also attended a number of meetings organised by the New Zealand Equal Opportunity Commissioner Judy MacGregor.

## Speeches

Commissioner Goward and the SDU were involved in approximately 130 meetings and made over 103 speeches during 2005–06. A selection of speeches by Commissioner Goward, listed below, can be accessed on the Commission's website at: [www.humanrights.gov.au/speeches/sex\\_discrim/index.html](http://www.humanrights.gov.au/speeches/sex_discrim/index.html)

*Work Life Balance*, AIM Breakfast address, Sydney, 11 May 2006

*Towards Prosperity*, Towards Prosperity Conference, Adelaide, 2 May 2006

*Do we still need Feminism?*, The Brisbane Institute, Brisbane, 14 March 2006

*After the Barbecue: Perspectives on work-life balance in Australia*, Work Life Balance Conference, Perth, 22 February 2006

*Violence Against Women: A Men's Issue*, Commemoration of the International Day for the Elimination of Violence Against Women White Ribbon Day, Canberra, 25 November 2005

*A 360 Degree Review: Flexible Work Practices – Confronting myths and realities in the legal profession*, Victorian Women Lawyers, Melbourne, 11 November 2005

*Efficiency, Effectiveness and Equity in Public Administration*, Institute of Public Administration National Conference, Tasmania, 4 November 2005

*The Family Friendly Business – is it profitable?*, Women Chiefs of Enterprises International, Australian National Conference, Adelaide, 28 October 2005

*Striking the balance: Carers and the Future*, Focus on Carers Conference, Carers Association of SA, Adelaide, 18 October 2005

*Balancing work and family and how this affects men*, Australasian Men's Health Forum, Sydney, 12 October 2005

*Economic Determinism, Women, Men, Work and Family*, Reserve Bank Central Banking Management Program, Sydney, 30 September 2005

*Age shall not weary them: Making sense of demographic shifts*, Diversity Council Australia Inaugural Diversity Conference, Sydney, 7 September 2005

*Trafficking in women: Where have we come from and where to from here?*, Project Respect Forum, Melbourne, 12th August 2005

*Work and family*, Australian Social Policy Conference, Social Policy Research Centre, UNSW, Sydney, 20 July 2005

*EEO: Future Directions*, MGSM 17th Women, Management and Employment Relations Conference, Sydney, 21 July 2005





## *Chapter 11:*

# *International Activities*

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### **International training, consultation and assistance**

While the Commission's agenda is primarily directed towards human rights issues within Australia, the Commission also participates in a range of international human rights activities, often at the invitation of the Federal Attorney-General or Government agencies.

The Commission briefs diplomats, hosts visiting international delegations and briefs them on the Commission's role within the Australian democratic system, undertakes training and provides technical assistance for Australian Government activities in other countries.

The Commission has taken a lead role in providing technical assistance to the Commonwealth Government as part of its human rights dialogue with China and anticipates taking a substantial role in the fledgling Australia-Vietnam dialogue.

Such programs, along with the Commission's participation in other international fora, such as the Asia Pacific Forum of National Human Rights Institutions, enable the Commission to assist in strengthening human rights protection in other countries. The international work also provides staff development and gives wider international perspectives which enhance the Commission's domestic work.

In 2005–06, as in past years, most of this has taken the form of technical cooperation programs with other countries. These training 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).

In undertaking these activities, the Commission engages a variety of institutions and professionals relevant to the protection and promotion of human rights. For example, government agencies and civil society groups in other countries that are involved in the protection and promotion of human rights, and interested in how the Australian experience could be relevant to their country. The activities seek to strengthen the capacity of those institutions to protect human rights through the increased 'professionalism' of agencies involved in enforcing or implementing laws and the rule of law.

Most of the international training activities undertaken by the Commission centre on practical issues that affect the lives of individuals, such as domestic violence, police conduct, prison management, investigation techniques, human trafficking and so on. Notwithstanding this practical focus, efforts are made to ensure that the activities are firmly grounded in human rights principles set out in international law.

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

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 Australia's annual inter-governmental Dialogue on Human Rights with China.

The high-level dialogue on human rights was initiated following discussions in August 1997 between Premier Li Peng and Prime Minister John Howard, under which the two countries agreed to undertake a program of technical cooperation to strengthen the administration, promotion and protection of human rights in China.

The Commission participates in dialogue meetings and will attend the 2006 dialogue in July in Canberra.

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.

The program aims to provide an important information base of human rights principles, ideas and strategies which can be drawn upon in the development of Chinese policies and practices. The program includes activities conducted in both China and Australia. Each activity in the program is implemented as a cooperative venture between HREOC and particular Chinese organisations. Following are some selected examples of activities implemented in the 2005–2006 HRTC Program.

- In November 2005 a delegation from the Ministry of Foreign Affairs and other relevant agencies undertook a study visit to examine Australian experience in compliance with the International Covenant on Civil and Political Rights.
- In November 2005 a Model United Nations was held in Shaanxi Province, in cooperation with the United Nations Association. The activity simulated the proceedings of the UN Commission on Human Rights in the debate and adoption of resolutions on selected human rights issues.
- In December 2005 an Australian team undertook consultations in Beijing with the Ministry of Foreign Affairs and other relevant Chinese agencies on measures to strengthen China's compliance with the International Covenant on Economic, Social and Cultural Rights.

- In February 2006 two officials from the Ministry of Foreign Affairs arrived in Australia to undertake postgraduate studies in human rights at the University of Melbourne.
- In March 2006 an Australian team undertook consultations with China's national prosecution agency, the Supreme People's Procuratorate, on measures for protection of the rights of children in the criminal justice system.
- In April 2006 a workshop on human rights and family planning was held in Xinjiang Autonomous Region, in cooperation with the National Population and Family Planning Commission of China.
- In April 2006 a delegation from the All China Women's Federation visited Australia to study the role of organisations that provide legal assistance and support for women affected by domestic violence.
- In May 2006 a delegation from the Supreme People's Court of China visited Australia to study measures for protection of the rights of juveniles in the court system.
- In May 2006 a workshop on the rights of detainees was held in Fujian Province, in cooperation with the Ministry of Public Security. The workshop was designed during a study visit to Australia in February 2006 by officials of the Ministry of Public Security.
- In June 2006 a workshop on community corrections and non-custodial sentencing options was held in Beijing in cooperation with the Ministry of Justice.
- During 2005–06 the HRTC Program also included cooperation with the Department of Education of the Tibet Autonomous Region, focussing on access to education for minorities.

### **Australia-Vietnam Dialogue**

The Commission also participates in the annual Australia-Vietnam Dialogue on International Organisations and Legal Issues, including human rights. During the fourth session, held in Australia in December 2005, the two governments confirmed their desire to establish a formal program of technical cooperation in the field of human rights.

In August 2005, the Commission participated in a Program Design Mission to Vietnam, for consultations with Vietnamese authorities that produced the design of the technical cooperation program. Pending formal approval by both governments, implementation of the program is expected to commence later in 2006. The Vietnamese agencies expected to participate in the program are the Ministry of Foreign Affairs, the Ministry of Justice, the Supreme People's Court and the Vietnam Women's Union.

## Asia Pacific Forum

The Asia Pacific Forum of National Human Rights Institutions was established in 1996 as an association under the umbrella of the Australian Human Rights and Equal Opportunity Commission. The Commission hosted the Secretariat of the Forum until the Forum became a separate legal entity in 2002. It continues to provide accommodation and corporate support services to the secretariat, which coordinates the activities of the 15 member institutions from the Asia Pacific region.

The Australian Government, through the Minister for Foreign Affairs and Trade, and the Australian Agency for International Development (AusAID) has provided financial support for the Forum. Additional funding is provided by a range of donors including the United Nations High Commissioner for Human Rights on a project-by-project basis.

The annual meetings and workshops of the Forum are among the largest and most comprehensive regular human rights meetings in the Asia Pacific region. They are a mechanism for the practical advancement of human rights, particularly because they bring together national human rights institutions, the United Nations, governments and non-government organisations in a practical and largely non-political setting.

In August 2005, the Commission participated in the 10th Annual meeting of the Asia Pacific Forum of National Human Rights Institutions held in Ulaanbaatar, Mongolia.

In November 2005, the Commission's Sex Discrimination Unit and the APF co-hosted a three-day workshop for national human rights institutions and non-government organisations on human trafficking. The workshop focused on research and investigation into trafficking; engaging with the law and obtaining justice for trafficked people; working with civil society to support victims and their rights; and internal, cross-border and regional cooperation.

The Commission's Complaint Handling Section was awarded a tender by the Asia Pacific Forum to provide training for staff of the National Human Rights Commission of Mongolia. This project involved the development and presentation of a three-day training course in human rights investigation. The training program took place in Ulaanbaatar, Mongolia from 27–29 March 2006. Twenty-two staff from government departments and non-government organisations in Mongolia attended the program which was conducted in English with simultaneous translation into Mongolian.

## International visitors

In addition to formal programs of bilateral technical cooperation, the Commission frequently receives international visitors and participates in meetings with representatives of organisations concerned with human rights.

- In September 2005 the Commission hosted a meeting with a delegation of North Korean family planning officials visiting Australia under a program of the United Nations Population Fund.
- In April 2006 the Commission hosted a meeting with 20 Indonesian officials as part of a 12-week training program coordinated by the Castan Centre for Human Rights Law at Monash University. The trainees were drawn from government ministries, non-government organisations and academic institutions.
- In June 2006 a delegation from the Government of Laos visited the Commission. Their visit was part of a human rights study tour coordinated by the Department of Foreign Affairs and Trade.
- In June 2006 a parliamentary delegation led by the President of the Senate of Malaysia visited the Commission under the auspices of a program of the Federal Parliament of Australia.

## International conferences and meetings

The Commission has also maintained involvement in a number of multilateral bodies concerned with the protection and promotion of human rights. International conferences and meetings the Commission participated in during 2005–06 included:

- In August 2005 and February 2006, Commissioner Innes, as part of the Australian Government delegation, attended sessions of a working group of the United Nations General Assembly working towards a possible international convention on human rights and disability.
- In November/December 2005 and February 2006, Commissioner Calma attended the 11th session of the Commission on Human Rights Working Group on the Draft Declaration on the Rights of Indigenous Peoples.
- In August/September 2005, Commissioner Goward attended the Tenth Anniversary Commemoration of the Fourth World Conference on Women in Beijing.

For further information about Commissioners' international activities, see the chapter of the specific Commissioner.



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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.

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 2005–06

#### **General**

Human Rights and Equal Opportunity Commission *Annual Report 2004–05* (tabled report)

*HREOC Report No. 31 – Report of an inquiry into a complaint by Mr Zacharias Manongga Consul for the Northern Territory, Consul of the Republic of Indonesia that the human rights of Indonesian Fishers detained on vessels in Darwin Harbour were breached by the Commonwealth of Australia* (2005)

*HREOC Report No. 32 – Report of an inquiry into a complaint made on behalf of federal prisoners detained in New South Wales correctional centres that their human rights have been breached by the decision to ban distribution of the magazine 'Framed'* (2006)

*HREOC Report No. 33 – Report of an inquiry into a complaint by Ms Tracy Gordon of discrimination in employment on the basis of criminal record* (2006)

*HREOC Report No. 34 – Report of an inquiry into a complaint by Mr Daniel Clark against the Minister for Foreign Affairs and Trade of a breach of his human right to freedom of expression* (2006)

*HREOC Report No. 35 – Report of an inquiry into a complaint by Mr AV of a breach of his human rights while in immigration detention* (2006)

*Quarterly Human Rights Law Bulletin*: providing an update on domestic and international human rights law

*The Complaint Guide* brochure

2005 Human Rights Award and Medals brochure

#### **Aboriginal and Torres Strait Islander Social Justice**

*Social Justice Report 2005* (tabled report)

*Native Title Report 2005* (tabled report)

*Social Justice Report 2005 and Native Title Report 2005* community guide and CD-Rom

*Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues*

*Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems*

## ***Human Rights***

*Rights of Passage: A Dialogue with Young Australians about Human Rights*

*Not For Service: Experiences of Injustice and Despair in Mental Health Care in Australia* (published by the Mental Health Council of Australia; compiled by the MHCA and the Brain and Mind Research Institute in association with HREOC)

*On the Record: Guidelines for the prevention of discrimination in employment on the basis of criminal record*

## ***Disability Rights***

*WORKability II: report of the National Inquiry into Disability and Employment*

*Accessible Events – a Guide for Organisers*

## ***Race Discrimination***

*Voices of Australia* magazine and CD-Rom

*Face the Facts*

## *Appendix 3*

### **Freedom of Information**

The Freedom of Information Act gives the general public legal access to government documents.

#### ***Freedom of Information statistics***

During 2005–06, the Commission received 13 requests for access to documents under the Freedom of Information Act. All 13 applications related to access to documents relating to complaint files of the Commission.

A total of 13 applications were processed in this financial year.

#### ***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:

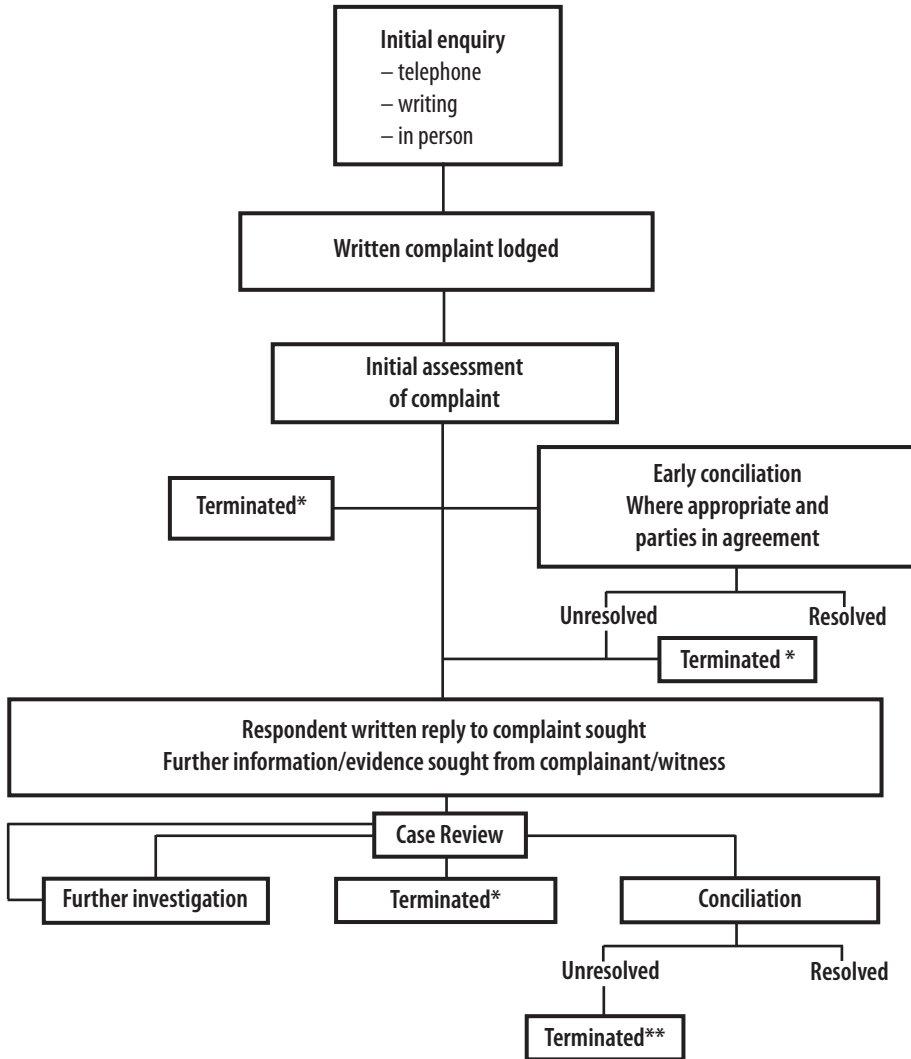
Freedom of Information Officer  
Human Rights and Equal Opportunity Commission  
GPO Box 5218  
Sydney, NSW 2001

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 Age, Racial, Sex and Disability Discrimination Acts are terminated, the complainant may apply to have the allegations heard and determined by the Federal Court or the Federal Magistrates 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 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. During the year, the APS Commission provided training on the Scheme to new staff and supervisors.

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 training.

Training is identified through an individual's training and development plan in conjunction with the Performance Management Scheme. Training encompasses a range of development activities including: professional development courses, on-the-job training and the opportunity to represent the organisation at seminars/ fora. These may broaden the skills and experience of staff, and where overseas/ interstate travel is involved, may also provide an opportunity to reward staff for their performance. As part of the Commission's staff development strategy, staff are also provided with support under our Studies Assistance policy. The policy provides for access to study leave and financial assistance 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. The Commission's Workplace Diversity Committee continued to implement a revised Diversity Plan.

Throughout the year, the Commission supported diversity events, including International Women's Day, NAIDOC Week and Harmony Day.

Other strategies under the plan focus on supporting staff with family responsibilities. Family friendly workplace policies were enhanced in the current Certified Agreement which increased paid parental leave and provided access to extended leave following maternity or parental leave. Staff can apply for part-time employment up until the school age of their child. A Family Support Service was also introduced in the year. Staff can access the Service to obtain information on dependent care including child care and elder care options.

In March 2006, the Commission received an award to recognise long term support of the Jobsupport Program, which supports staff with intellectual disabilities in the workplace. The award recognises a staff member's 15 years of employment with the Commission and was presented to the Commission by the Minister for Workplace Participation, Dr Sharman Stone at an awards ceremony.

### ***Occupational health and safety***

It is the policy of the Commission to promote and maintain the highest degree of health, safety and wellbeing of all staff. The Commission monitors health and safety through its OH&S Committee, which includes a staff health and safety representative and four corporate support staff who meet 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. The Commission had no compensation claims lodged in the year and has no ongoing cases.

A hazards survey is conducted annually and the committee monitors 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.

New ergonomic chairs were supplied to all staff during the year. Several staff also had their workstation assessed by a qualified physiotherapist. A software program called 'Workpace' assists staff in taking regular pause breaks throughout the day. The Commission offers support to staff through the promotion of QUIT smoking programs and flu vaccinations.

The Commission introduced a Healthy Lifestyle Program to promote health and fitness as a means of achieving work/life balance and improving the health and wellbeing of our employees.

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 23 December 2005 and is in operation for three years. 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 2006 was 95, including both ongoing and non-ongoing staff. Productivity savings funded a 10.5% salary increase to

staff, delivered in three instalments over the life of the Agreement. An additional 1.5% will be payable if expected productivity savings are achieved.

The agreement maintains core employment conditions and supports family friendly policies. The current Agreement enhanced paid parental leave, access to extended leave following maternity or parental leave and access to part-time employment up until the child reaches school age. The Agreement also introduced a Healthy Lifestyle Program to encourage staff to undertake healthy activities. New allowances were introduced for staff undertaking roles such as fire warden or health and safety representative. Salary progression within classification levels is subject to performance assessment. Salary ranges are reflected in the table on page 178. The Commission has six staff covered by Australian Workplace Agreements, including two senior executive service (SES) level staff members.

### ***Consultancy services***

The Commission did not engage any reportable consultancy services during 2005–06.

### ***Purchasing***

The Commission's purchasing procedures adhere to the Commonwealth Procurement Guidelines issued by the Department of Finance and Administration and updated to incorporate policy changes effective 1 January 2005. The procedures address a wide range of procurement situations, allowing managers to be flexible when making procurement decisions, while complying with the Commonwealth's core procurement principle of value for money. There were no contracts exempt from publishing through AusTender in 2005–06.

There was no competitive tendering and contracting during 2005–06 that resulted in a transfer of providers of goods and services from a Commonwealth organisation to a non-government body.

### ***Ecologically sustainable development and environmental performance***

The Commission uses energy saving methods in its operations and endeavours to make the best use of resources. Purchase and/or leasing of 'Energy Star' rated office machines and equipment with 'power save' features is encouraged, and preference is given to environmentally sound products when purchasing office supplies.

The Commission has implemented a number of environment friendly initiatives to reduce environmental impact. Waste paper, cardboard, printer cartridges and other materials are recycled subject to the availability of appropriate recycling schemes. The Commission also uses new generation low mercury triphosphor fluorescent tubes.

### ***Audit Committee***

Consistent with the principles of good corporate governance and the requirements of the FMA Act the Commission maintains an audit committee to advise the CEO on the compliance with external reporting requirements and the effectiveness and efficiency of internal control and risk management mechanisms.

### ***Fraud control***

The Commission has 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.

### ***Staffing overview***

The Commission’s average staffing level for the year was 95.3 staff, with a turnover of 17 percent for ongoing staff. An overview of the Commission’s staffing profile as at 30 June 2006 is summarised in the table below.

<i>Classification</i>	<i>Male</i>	<i>Female</i>	<i>Full time</i>	<i>Part time</i>	<i>Total Ongoing</i>	<i>Total Non-ongoing</i>
Statutory Office Holder	3	1	3	1	–	4
SES Band 2	–	1	–	1	1	–
SES Band 1	–	1	–	1	1	–
EL2 above the barrier (\$97,891)	1	1	1	1	2	–
EL 2 (\$81,468–\$93,827)	8	10	15	3	18	–
EL 1 (\$70,637–\$77,461)	5	12	13	4	13	4
APS 6 (\$56,742–\$63,598)	7	21	26	2	22	6
APS 5 (\$51,015–\$55,100)	3	3	6	–	2	4
APS 4 (\$45,738–\$49,662)	1	8	7	2	5	4
APS 3 (\$41,038–\$44,293)	3	14	15	2	16	1
APS 2 (\$37,022–\$39,955)	–	1	1	–	1	–
APS 1 (\$31,836–\$35,186)	1	–	–	1	1	–
<b><i>Total</i></b>	<b><i>32</i></b>	<b><i>73</i></b>	<b><i>87</i></b>	<b><i>18</i></b>	<b><i>82</i></b>	<b><i>23</i></b>

## 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.facsia.gov.au/disability/cds/index.htm](http://www.facsia.gov.au/disability/cds/index.htm)

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 is committed to implementing best practice 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. In March 2005, the Commission launched a National Inquiry on Employment and Disability and released an interim report *WORKability I: Barriers – People with Disability in the Open Workplace*, in August 2005 and a final report *WORKability II: Solutions – People with Disability in the Open Workplace*, was tabled in parliament in February 2006. Results of the Inquiry can be found within the Disability Rights section of the Annual Report and at [www.humanrights.gov.au/disability\\_rights/employment\\_inquiry/index.htm](http://www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm). Follow-up work will involve reviewing progress in implementing the report's recommendations.

### Commonwealth Disability Strategy Performance reporting June 2006

Further details on programs and policies outlined against the performance indicators can be found in 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 which document that the impact of the proposal was considered prior to the decision-making stage.

*Current level of performance 2005–06*

- 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 Disability Rights Unit (DRU) compliance is 100 percent.
- All submissions to Inquiries are taken in a range of formats, including verbal/audio (transcribed by the Commission), e-mail 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 listserv.
- Through the use of the Commission's website and e-based networks the Commission provides extensive information on new and revised policies and programs and seeks feedback at any stage on their effect.

*Performance Examples*

- The Sex Discrimination Unit (SDU) project *Striking the Balance: Women, men, work and family* is examining how Australians undertake their caring responsibilities across the life course and what sorts of support for that caring role is needed. The project encompasses all forms of caring, including caring for people with disability. People with disability and people caring for others with disability are key stakeholders in the project, and the needs of these groups of people are considered throughout the project.

***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 2005–06*

- 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.

- ◊ 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, 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 listserv.
- Public consultation events all occur in accessible venues with hearing augmentation and sign language interpreters available.

### *Performance Examples*

- The Commission conducted a National Inquiry into Employment and Disability during the year and details on the consultation with stakeholder groups are available within the annual report and on the Commission's website. The Inquiry received 133 written submissions, conducted five group consultations and published five Issues Papers for public comment.
- The SDU has conducted consultations on the *Striking the Balance: Women, men, work and family* discussion paper over the last 12 months. During that process, the SDU consulted with People with Disabilities Australia (PWD). A representative from PWD was on the community advisory panel.
- The Commission's submission regarding the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (the Bill) considered the impact on people with disabilities and the submission regarding Inquiry into Civics and Electoral Education considered the measures needed to provide appropriate education in accessible formats.

### *Goals 2006–07*

- Monitor progress in implementing the recommendations in the Commission's report on *WORKability II: Solutions – People with Disability in the Open Workplace*.

### ***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 2005–06*

- 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/e-mails/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 2005–06*

- Commission complaints information is available in electronic and alternative formats. E-mail 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/e-mail/written enquiries to the CHS are related to disability issues.
- 150 groups attended a CHS information 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 2006–07*

- Increase targeted community education and liaison with disability groups and advocacy organisations in all states, in particular regional areas.
- 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 2005–06*

- 561 complaints were received under Disability Discrimination Act (DDA) legislation for 2005–06. Refer to the Complaint 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. 57 percent of responses to a survey question on demographics indicated the complainant had a disability.
- 77 requests for assistance were recorded, including assistance with language interpreters and sign language interpreters, provision of information in alternative format, TTY and assistance with writing.

- There were no formal complaints received regarding accessibility of the Commission complaint handling service or premises. Performance measure = 100 percent.
- The Commission's premises are accessible. Premises used for remote and regional conciliation conferences are accessible. Performance measure = 100 percent.
- The Complaint Handling Section 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.
- The Commission's premises are accessible. Premises used for remote conciliation conferences are accessible. Performance measure = 100 percent.
- 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 2005–06*

- 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 percent.
- Ad hoc CHS training sessions specifically address relevance to people with disabilities who use complaint handling services. Performance measure = 100 percent.
- 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 percent.

***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 2005–06***

- 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 percent.

**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 2005–06***

- The Corporate Plan includes reference to the APS Values and social justice principles to ensure access to the Commission's services.
- The Commission's Certified Agreement 2005–2008 contains a commitment to the acceptance of diversity in the workplace and preventing and eliminating discrimination. Most of the Commission's policies on employment are contained within the Certified Agreement.
- The Workplace Diversity Plan outlines strategies to maximise employment and developmental opportunities for people with disabilities. The Plan is available to all staff on the Commission's intranet.

- The Commission's E-mail/Internet Policy is reviewed regularly. It specifically refers to the inappropriate use of e-mails that may demean people with disabilities.
- No formal complaints/grievances were 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 and another staff member with CCTV equipment.

### *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 2005–06*

- Performance in providing accessible formats for recruitment material = 100 percent.
- 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, 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](http://www.humanrights.gov.au/jobs/index.html)) received 41 903 page views during the last financial year.
- There were no requests for Braille during 2005–06. 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 2005–06*

- 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 2005–06*

- Due to the small number of staff in the agency, training is coordinated 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 allow staff to advise any specific requirements 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 2005–06*

- 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 1992*.
- 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 2005–06*

- There is an established process in the HREOC Certified Agreement 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 percent.

*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

### Matters relating to the Electronic Presentation of the Audited Financial Statements

This audit report relates to the financial statements published in both the annual report and on the website of the Human Rights and Equal Opportunity Commission for the year ended 30 June 2006. The Chief Executive is responsible for the integrity of both the annual report and its web site.

The audit report refers only to the financial statements, schedules and notes named below. It does not provide an opinion on any other information which may have been hyperlinked to or from the audited financial statements.

If users of this report are concerned with the inherent risks arising from electronic data communications, they are advised to refer to the hard copy of the audited financial statements in the Human Rights and Equal Opportunity Commission's annual report.

### Scope

#### **The financial statements and Chief Executive's responsibility.**

The financial statements comprise:

- Statement by the Chief Executive and Chief Finance Officer;
- Income Statement, Balance Sheet and Statement of Cash Flows;
- Statement of Changes in Equity;
- 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 2006.

The Commission's Chief Executive is responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of the Commission, and that comply with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, Accounting Standards and other mandatory financial reporting requirements in Australia. The Commission's Chief Executive is also responsible 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 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, 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.

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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 have performed procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with 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 position, and of its financial performance and cash flows.

The audit opinion is based on 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 Chief Executive.

***Independence***

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the ethical requirements of the Australian accounting profession.

**Audit Opinion**

In my opinion, the financial statements of the Human Rights and Equal Opportunity Commission:

- (a) have been prepared in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and
- (b) give a true and fair view of the Human Rights and Equal Opportunity Commission's financial position as at 30 June 2006 and of its performance and cash flows for the year then ended, in accordance with:
  - (i) the matters required by the Finance Minister's Orders; and
  - (ii) applicable Accounting Standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office



P Hinchey  
Senior Director  
Delegate of the Auditor-General

Sydney  
24 August 2006



HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

**Statement by the Chief Executive Officer  
and Chief Finance Officer**

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In our opinion, the attached financial statements for the year ended 30 June 2006 have been prepared 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*, as amended.



**John von Doussa, QC**  
Chief Executive Officer

24<sup>th</sup> August 2006



**Diana Temby**  
Chief Finance Officer

24 August 2006

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**HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION**

**Income Statement**

*for the year ended 30 June 2006*

		2006	2005
		\$	\$
	Notes		
<b>INCOME</b>			
<b>Revenue</b>			
Revenues from government	4A	12,702,000	11,893,000
Goods and services	4B	3,804,936	2,818,146
Other revenue	4C	43,789	3,211
<b>Total revenue</b>		<b>16,550,725</b>	<b>14,714,357</b>
<b>Gains</b>			
Other gains	4D	42,000	38,000
<b>Total Gains</b>		<b>42,000</b>	<b>38,000</b>
<b>TOTAL INCOME</b>		<b>16,592,725</b>	<b>14,752,357</b>
<b>EXPENSES</b>			
Employees	5A	7,829,157	8,416,963
Suppliers	5B	6,901,049	6,425,539
Depreciation and amortisation	5C	370,176	279,216
Finance costs	5D	14,629	12,601
Write-down and impairment of assets	5E	51,720	208,778
Net loss from disposal of assets	5F	3,486	23,214
<b>TOTAL EXPENSES</b>		<b>15,170,218</b>	<b>15,366,311</b>
<b>OPERATING RESULT</b>		<b>1,422,507</b>	<b>(613,954)</b>

The above statement should be read in conjunction with the accompanying notes.

## HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

### Balance Sheet

as at 30 June 2006

		2006	2005
		\$	\$
<b>ASSETS</b>	Notes		
<b>Financial Assets</b>			
Cash and cash equivalents	6A	913,789	1,989,232
Receivables	6B	4,266,254	299,441
<b>Total financial assets</b>		<u>5,180,043</u>	<u>2,288,673</u>
<b>Non-Financial Assets</b>			
Infrastructure, plant and equipment	7A	2,307,050	2,441,920
Intangibles	7B	11,119	2,292
Other non-financial assets	7C	407,679	534,707
<b>Total non-financial assets</b>		<u>2,725,848</u>	<u>2,978,919</u>
<b>TOTAL ASSETS</b>		<u>7,905,891</u>	<u>5,267,592</u>
<b>LIABILITIES</b>			
<b>Non-Interest Bearing Liabilities</b>			
Lease incentives	8A	242,692	234,389
<b>Total non-interest bearing liabilities</b>		<u>242,692</u>	<u>234,389</u>
<b>Provisions</b>			
Employees	9A	1,736,160	2,120,020
Other provisions	9B	1,582,674	338,941
<b>Total provisions</b>		<u>3,318,834</u>	<u>2,458,961</u>
<b>Payables</b>			
Suppliers	10A	525,231	195,167
Other payables	10B	132,500	-
<b>Total payables</b>		<u>657,731</u>	<u>195,167</u>
<b>TOTAL LIABILITIES</b>		<u>4,219,257</u>	<u>2,888,517</u>
<b>NET ASSETS</b>		<u>3,686,634</u>	<u>2,379,075</u>
<b>EQUITY</b>			
Contributed equity		1,099,000	1,099,000
Reserves		1,778,800	1,893,580
Retained surpluses or (accumulated deficits)		808,834	(613,505)
<b>TOTAL EQUITY</b>		<u>3,686,634</u>	<u>2,379,075</u>
<b>Current assets</b>		5,587,722	2,643,359
<b>Non-current assets</b>		2,318,169	2,624,233
<b>Current liabilities</b>		3,463,560	2,210,242
<b>Non-current liabilities</b>		755,697	678,275

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 2006

		2006	2005
		\$	\$
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>	Notes		
Goods and services		3,995,484	3,260,007
Appropriations for outputs		12,702,000	11,893,000
Net GST received from ATO		133,255	344,567
<b>Total cash received</b>		<b>16,830,739</b>	<b>15,497,574</b>
<b>Cash used</b>			
Employees		(8,213,017)	(8,595,681)
Suppliers		(6,315,719)	(6,492,640)
<b>Total cash used</b>		<b>(14,528,736)</b>	<b>(15,088,321)</b>
<b>Net cash from operating activities</b>	11	<b>2,302,003</b>	<b>409,253</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of infrastructure, plant and equipment		15	1,000
<b>Total cash received</b>		<b>15</b>	<b>1,000</b>
<b>Cash used</b>			
Purchase of infrastructure, plant and equipment		(366,336)	(666,477)
Purchase of intangibles		(11,125)	(31,000)
<b>Total cash used</b>		<b>(377,461)</b>	<b>(697,477)</b>
<b>Net cash used by investing activities</b>		<b>(377,446)</b>	<b>(696,477)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash used</b>			
Other		(3,000,000)	-
<b>Total cash used</b>		<b>(3,000,000)</b>	<b>-</b>
<b>Net cash used by financing activities</b>		<b>(3,000,000)</b>	<b>-</b>
<b>Net decrease in cash held</b>		<b>(1,075,443)</b>	<b>(287,224)</b>
Cash at the beginning of the reporting period		1,989,232	2,276,456
<b>Cash at the end of the reporting period</b>	6A	<b>913,789</b>	<b>1,989,232</b>

The above statement should be read in conjunction with the accompanying notes.

## HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

Statement of Changes in Equity  
for the year ended 30 June 2006

	Accumulated Results		Asset Revaluation Reserve		Contributed Equity/Capital		Total Equity	
	2006	2005	2006	2005	2006	2005	2006	2005
	\$	\$	\$	\$	\$	\$	\$	\$
<b>Opening Balance</b>	(613,505)	181,649	1,893,580	2,255,186	1,099,000	1,099,000	2,379,075	3,535,835
Adjustment for errors	(168)	-	-	-	-	-	(168)	-
Adjustment for changes in accounting policies	-	(181,200)	-	-	-	-	-	(181,200)
<b>Adjusted Opening Balance</b>	(613,673)	449	1,893,580	2,255,186	1,099,000	1,099,000	2,378,907	3,354,635
<b>Income and Expense</b>								
Revaluation adjustment	-	-	(114,780)	(361,606)	-	-	(114,780)	(361,606)
<b>Subtotal income and expenses recognised directly in equity</b>	-	-	(114,780)	(361,606)	-	-	(114,780)	(361,606)
Net Operating Result	1,422,507	(613,954)	-	-	-	-	1,422,507	(613,954)
<b>Total income and expenses</b>	1,422,507	(613,954)	(114,780)	(361,606)	-	-	1,307,727	(975,560)
<b>Transactions with Owners</b>								
<i>Distributions to owners</i>								
Returns on capital	-	-	-	-	-	-	-	-
<b>Contributions by owners</b>								
Appropriation (equity injection)	-	-	-	-	-	-	-	-
<b>Subtotal transactions with owners</b>	-	-	-	-	-	-	-	-
<b>Transfers between equity components</b>								
	-	-	-	-	-	-	-	-
<b>Closing Balance at 30 June</b>	808,834	(613,505)	1,778,800	1,893,580	1,099,000	1,099,000	3,686,634	2,379,075

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 2006

	2006 \$	2005 \$
<b>BY TYPE</b>		
Other Commitments		
Operating leases <sup>1</sup>	11,697,738	15,609,440
Other commitments <sup>2</sup>	396,382	109,691
<b>Total other commitments</b>	<b>12,094,120</b>	<b>15,719,131</b>
<b>Commitments receivable</b>	<b>(6,013,219)</b>	<b>(11,442,112)</b>
<b>Net commitments</b>	<b>6,080,901</b>	<b>4,277,019</b>
<b>BY MATURITY</b>		
<b>Operating Lease Commitments</b>		
One year or less	2,354,133	2,478,927
From one to five years	9,284,866	10,108,042
Over five years	58,738	3,022,471
<b>Other Net Commitments</b>		
One year or less	396,382	87,220
From one to five years	-	22,471
Over five years	-	-
<b>Commitments receivable</b>	<b>(6,013,219)</b>	<b>(11,442,112)</b>
<b>Net Commitments by maturity</b>	<b>6,080,901</b>	<b>4,277,019</b>

NB: Commitments are GST inclusive where relevant.

1. Operating leases included are effectively non-cancellable and comprise:

<i>Nature of lease</i>	<i>General description of leasing arrangement</i>
Leases for office accommodation	Lease payments are subject to annual increase in accordance with the schedule of agreed percentage increases listed in the lease agreement between the agency and the lessor. The initial periods of office accommodation leases are still current.
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.
Leases in relation to computer equipment held as at 30 June 2006	The lessor provides all computer equipment and software designated as necessary in the supply contract. The contract allows for variations to the duration of the rental period and to the equipment rented.
Other commitments	Consisting of agreements with other entities for services, outgoings and agreements equally proportionately unperformed.

The above schedule should be read in conjunction with the accompanying notes.

## HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

### Schedule of Contingencies

as at 30 June 2006

	2006 \$	2005 \$
Contingent liabilities	-	-
Contingent assets	-	-
<b>Net contingent liabilities</b>	<b>-</b>	<b>-</b>

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 12: Contingent Liabilities and Assets**.

The above schedule 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 2006

### Note 1: Summary of Significant Accounting Policies

#### 1.1 Objectives of the Human Rights and Equal Opportunity Commission

The Commission is an Australian Public Service organisation and 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.

All Commission activities contributing towards the outcome are classified as departmental. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Commission in its own right.

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.

#### 1.2 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 Orders (Financial Statements for reporting periods ending on or after 1 July 2005)*);
- Australian Accounting Standards issued by the Australian Accounting Standards Board that apply for the reporting period; and
- Interpretations issued by the AASB and UIG that apply for the reporting period.

This is the first financial report to be prepared under the Australian Equivalents to International Financial Reporting Standards (AEIFRS). The impacts of adopting AEIFRS are disclosed in note 2.

The Income Statement and Balance Sheet have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets, which, as noted, are at fair value or amortised cost. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial report is presented in Australian dollars and values are rounded to the nearest dollar unless disclosure of the full amount is specifically required.

Unless alternative treatment is specifically required by an accounting standard, assets and liabilities are recognised in the Commission's balance sheet 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 12).

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the income statement when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

#### 1.3 Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in this note, the Commission has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of infrastructure, plant and equipment has been taken to be fair value as determined by an independent valuer.

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.



## Human Rights and Equal Opportunity Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2006

#### 1.4 Statement of Compliance

The financial report complies with Australian Accounting Standards, which include Australian Equivalents to International Financial Reporting Standards (AIFRS).

Australian Accounting Standards require the Commission to disclose Australian Accounting Standards that have not been applied, for standards that have been applied but are not yet effective.

The AASB has issued amendments to existing standards, these amendments are denoted by year and then number, for example 2005-1 indicates amendment 1 issued in 2005.

The table below illustrates standards and amendments that will become effective for the Commission in the future. The nature of the impending change within the table, has been out of necessity abbreviated and users should consult the full version available on the AASB's website to identify the full impact of the change. The expected impact on the financial report of adoption of these standards is based on the Commission's initial assessment at this date, but may change. The Commission intends to adopt all standards upon their application date.

Title	Standard affected	Application date*	Nature of impending change	Impact expected on financial report
2005-1	AASB 139	1 Jan 2006	Amends hedging requirements for foreign currency risk of a highly probable intra-group transaction.	No expected impact.
2005-4	AASB 139, AASB 132, AASB 1, AASB 1023 and AASB 1038	1 Jan 2006	Amends AASB 139, AASB 1023 and AASB 1038 to restrict the option to fair value through profit or loss and makes consequential amendments to AASB 1 and AASB 132.	No expected impact.
2005-5	AASB 1 and AASB 139	1 Jan 2006	Amends AASB 1 to allow an entity to determine whether an arrangement is, or contains, a lease.  Amends AASB 139 to scope out a contractual right to receive reimbursement (in accordance with AASB 137) in the form of cash.	No expected impact.
2005-6	AASB 3	1 Jan 2006	Amends the scope to exclude business combinations involving entities or businesses under common control.	No expected impact.
2005-9	AASB 4, AASB 1023, AASB 139 and AASB 132	1 Jan 2006	Amended standards in regards to financial guarantee contracts.	No expected impact.
2005-10	AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 and AASB 1038	1 Jan 2007	Amended requirements subsequent to the issuing of AASB 7.	No expected impact.
2006-1	AASB 121	31 Dec 2006	Changes in requirements for net investments in foreign subsidiaries depending on denominated currency.	No expected impact.
	AASB7 Financial Instruments: Disclosures	1 Jan 2007	Revise the disclosure requirements for financial instruments from AASB132 requirements.	No expected impact.

\* Application date is for annual reporting periods beginning on or after the date shown

## Human Rights and Equal Opportunity Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2006

#### 1.5 Revenue

##### *Revenues from Government*

Amounts appropriated for Departmental outputs appropriations for the year (adjusted for any formal additions and reductions) 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.

Appropriations receivable are recognised at their nominal amounts.

##### *Other revenue*

Revenue from the sale of goods is recognised when the risks of ownership have been transferred to the buyer; the seller retains no managerial involvement nor effective control over the goods; the revenue and transaction costs incurred can be reliably measured; and it is probable that the economic benefits associated with the transaction will flow to the Commission.

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 revenue is recognised when the amount of revenue, stage of completion and transaction costs incurred can be reliably measured and the probable future economic benefit will flow to the Commission. 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, which have 30 day terms, 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 no longer probable.

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.

#### 1.6 Gains

##### *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 1.7).

##### *Other gains*

Gains from the disposal of non-current assets are recognised when control of the asset has passed to the buyer.

#### 1.7 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.

##### *Restructuring of Administrative Arrangements*

Net assets received from or relinquished to another Commonwealth agency or authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

##### *Other distributions to owners*

The FMO's require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2005-06 by agreement with Finance, the Commission relinquished control of surplus output appropriation funding of \$3,000,000 which was returned to the Official Public Account in accordance with the working cash limit agreed between Finance and the Commission. The returned surplus output appropriation is still available to the Commission for use when required and is therefore reported in this accounts as departmental output appropriation receivable.

#### 1.8 Employee benefits

As required by the FMO's, the Commission has early adopted AASB 119 Employee Benefits as issued in December 2004.

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

## Human Rights and Equal Opportunity Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2006

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 and Administration as at 30 June 2006. 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 (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Commonwealth. The PSSap is a defined contribution scheme. The liability for defined 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.

From 1 July 2005, new employees are eligible to join the PSSap scheme.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the financial year.

### 1.9 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. An operating lease is a lease that is not a finance lease. 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 either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount.

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 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 straight line basis which is representative of the pattern of benefits derived from the leased assets.

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.

### 1.10 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

### 1.11 Financial Risk Management

The Commission's activities expose it to normal commercial financial risk. As a result of the nature of the Commission's business and internal and Australian Government policies, dealing with the management of financial risk, the Commission's exposure to market, credit, liquidity and cash flow and fair value interest rate risk is considered to be low.

## Human Rights and Equal Opportunity Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2006

#### 1.12 Derecognition of Financial Assets and Liabilities

As prescribed in the Finance Minister's Orders, the Commission has applied the option available under AASB 1 of adopting AASB 132 and 139 from 1 July 2005 rather than 1 July 2004.

Financial assets are derecognised when the contractual rights to the cash flows from the financial assets expire or the asset is transferred to another entity. In the case of a transfer to another entity, it is necessary that the risks and rewards of ownership are also transferred.

Financial liabilities are derecognised when the obligation under the contract is discharged or cancelled or expires.

For the comparative year, financial assets were derecognised when the contractual right to receive cash no longer existed. Financial liabilities were derecognised when the contractual obligation to pay cash no longer existed.

#### 1.13 Impairment of Financial Assets

As prescribed in the Finance Minister's Orders, the Commission has applied the option available under AASB 1 of adopting AASB 132 and 139 from 1 July 2005 rather than 1 July 2004.

Financial assets are assessed for impairment at each balance date.

##### *Financial Assets held at Amortised Cost*

If there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in profit and loss.

##### *Financial Assets held at Cost*

If there is objective evidence that an impairment loss has been incurred on an unquoted equity instrument that is not carried at fair value because it cannot be reliably measured, or a derivative asset that is linked to and must be settled by delivery of such an unquoted equity instrument, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

##### *Available for Sale Financial Assets*

If there is objective evidence that an impairment loss on an available for sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in profit and loss, is transferred from equity to the profit and loss.

##### *Comparative Year*

The above policies were not applied for the comparative year. For receivables, amounts were recognised and carried at original invoice amount less a provision for doubtful debts based on an estimate made when collection of the full amount was no longer probable. Bad debts were written off as incurred.

Other financial assets carried at cost which were not held to generate net cash inflows, were assessed for indicators of impairment. Where such indicators were found to exist, the recoverable amount of the assets was estimated and compared to the assets carrying amount and, if less, reduced to the carrying amount. The reduction was shown as an impairment loss.

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 2006.

#### 1.14 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).

#### 1.15 Contingent Liabilities and Contingent Assets

Contingent Liabilities and Assets are not recognised in the Balance Sheet but are discussed in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or 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 or asset is recognised. A liability or asset is recognised when its existence is confirmed by a future event, settlement becomes probable (virtually certain for assets) or reliable measurement becomes possible.

#### 1.16 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. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

## Human Rights and Equal Opportunity Commission

### Notes to and forming part of the Financial Statements for the year ended 30 June 2006

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.

#### 1.17 Property, Plant and Equipment (PP&E)

##### *Asset Recognition Threshold*

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$1,500, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the Commission where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Commission's leasehold improvements with a corresponding provision for the 'makegood' taken up.

##### *Revaluations*

##### *Basis*

Land, buildings, plant and equipment are carried at fair value, being revalued with sufficient frequency such that the carrying amount of each asset is not materially different, at reporting date, from its fair value. Valuations undertaken in each year are as at 30 June.

Fair values for each class of asset are determined as shown below:

Following initial recognition at cost, valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not materially differ with the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through profit and loss. Revaluation decrements for a class of assets are recognised directly through profit and loss except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

##### *Depreciation*

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), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2006	2005
Leasehold improvements	Lease term	Lease term
Plant and equipment	4 to 10 years	4 to 10 years

##### *Impairment*

All assets were assessed for impairment at 30 June 2006. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Commission were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

No indicators of impairment were found for assets at fair value.

#### 1.18 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 (2004-05: 2 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2006.

**Human Rights and Equal Opportunity Commission**

**Notes to and forming part of the Financial Statements**  
for the year ended 30 June 2006

**1.19 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.

**Note 2: The Impact of the transition to AEIFRS from previous GAAP**

**Reconciliation of total equity as presented under previous AGAAP to that under AEIFRS**

	2005	2004
	\$	\$
Total equity under previous AGAAP	2,463,685	3,123,239
Adjustments to retained earnings		
Inventory adjustment <sup>1</sup>	-	181,200
'Makegood' provision <sup>2</sup>	(264,630)	(252,029)
Amortised deferred costs <sup>3</sup>	180,020	210,023
Prior period error <sup>4</sup>	-	273,402
Total equity translated to AEIFRS	<u>2,379,075</u>	<u>3,535,835</u>

**Reconciliation of profit or loss as presented under previous AGAAP to that under AEIFRS**

Prior year loss as previously reported	(297,948)
Adjustments to retained earnings	
'Makegood' provision <sup>5</sup>	(12,601)
Amortisation of deferred cost <sup>6</sup>	(30,003)
Prior period error <sup>4</sup>	(273,402)
Prior year profit translated to AEIFRS	<u>(613,954)</u>

The cash flow statement presented under previous AGAAP is equivalent to that prepared under AEIFRS.

<sup>1</sup> AEIFRS requires inventory held for distribution for no consideration or at a nominal amount to be carried at the lower of cost or current replacement cost.

<sup>2</sup> AEIFRS requires the recognition of provisions for decommissioning and removal of assets and site restoration. The Commission's current lease makes specific mention of such a requirement for the agency and this provision has been taken up accordingly.

<sup>3</sup> AEIFRS requires the recording of assets reflecting future estimated restoration costs. Amounts for 'makegood' provisions in existing accommodation leases (operating) have been taken up accordingly.

<sup>4</sup> AEIFRS allows for prior period errors to be adjusted directly in equity.

<sup>5</sup> The operating result has been adjusted due to the recognition of a non-current asset written-off in a prior period and to reflect the increase to the provision and the amortisation associated with those 'makegood' provisions in the Commission's accommodation leases.

The Commission has not restated comparatives for financial instruments. The adjustments between AEIFRS and the previous AGAAP have been taken up at 1 July 2005.

**Note 3 - Events after the Balance Sheet Date**

The Commission is not aware of any significant events that have occurred since balance sheet date which warrant disclosure in these statements.

Human Rights and Equal Opportunity Commission  
Notes to and forming part of the Financial Statements  
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	2006 \$	2005 \$
<b>Note 4: Income</b>		
<b>Revenue</b>		
<u>Note 4A: Revenues from Government</u>		
Appropriations for outputs	12,702,000	11,893,000
<b>Total revenues from government</b>	<b>12,702,000</b>	<b>11,893,000</b>
<u>Note 4B: Goods and Services</u>		
Goods	17,533	24,088
Services	3,787,403	2,794,058
<b>Total sales of goods and services</b>	<b>3,804,936</b>	<b>2,818,146</b>
Provision of goods to:		
Related entities	1,896	11,024
External entities	15,637	13,064
<b>Total sales of goods</b>	<b>17,533</b>	<b>24,088</b>
Rendering of services to:		
Related entities	3,528,406	2,441,602
External entities	258,997	352,456
<b>Total rendering of services</b>	<b>3,787,403</b>	<b>2,794,058</b>
<u>Note 4C: Other revenue</u>		
Deferred revenue	43,789	3,211
<b>Gains</b>		
<u>Note 4D: Other Gains</u>		
Resources received free of charge	42,000	38,000
<b>Note 5: Operating Expenses</b>		
<u>Note 5A: Employee Expenses</u>		
Wages and salaries	6,249,946	6,312,872
Superannuation	1,128,081	1,015,752
Leave and other entitlements	392,394	830,061
Separation & redundancies	-	225,623
Other employee expenses	58,736	32,655
<b>Total employee expenses</b>	<b>7,829,157</b>	<b>8,416,963</b>
<u>Note 5B: Suppliers</u>		
Provision of goods - related entities	10,611	5,062
Provision of goods - external entities	756,991	534,374
Rendering of services - related entities	1,558,563	408,041
Rendering of services - external entities	2,877,510	3,909,610
Operating lease rentals*	1,662,198	1,534,312
Workers compensation premiums	35,177	34,140
<b>Total supplier expenses</b>	<b>6,901,049</b>	<b>6,425,539</b>
* These comprise minimum lease payments only		
	<b>2006</b>	<b>2005</b>

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	<u>\$</u>	<u>\$</u>
<b>Note 5C: Depreciation and Amortisation</b>		
<i>Depreciation</i>		
Infrastructure, plant and equipment	<u>332,285</u>	197,964
<b>Total Depreciation</b>	<u>332,285</u>	197,964
<i>Amortisation</i>		
Intangibles - Computer Software	2,297	51,249
Deferred Costs - Make Good	<u>35,594</u>	30,003
<b>Total depreciation and amortisation</b>	<u>370,176</u>	<u>279,216</u>

The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:

Leasehold improvements	188,596	-
Computers, Plant and equipment	143,689	197,964
Intangibles	2,297	51,249
Deferred costs - Makegood	<u>35,594</u>	30,003
<b>Total depreciation and amortisation</b>	<u>370,176</u>	<u>279,216</u>

<b>Note 5D: Finance Costs</b>		
Unwinding of discounted cashflows for Makegood provision	<u>14,629</u>	12,601

<b>Note 5E: Write Down and Impairment of Assets</b>		
<i>Financial assets</i>		
Bad and doubtful debts expense	1,079	131
<i>Non-financial assets</i>		
Infrastructure, Plant and equipment - revaluation decrement	50,641	155,277
Internally developed software - impairment *	-	<u>53,370</u>
<b>Total write-down and impairment of assets</b>	<u>51,720</u>	<u>208,778</u>

\* Certain software became obsolete during 2005 following the upgrade of the Commission's information systems. The recoverable amount of the software was determined as its net selling price which was nil, as there is no active market for the software.

<b>Note 5F: Net Loss on Disposal of Assets</b>		
Infrastructure, Plant and Equipment:		
Proceeds from sale	15	1,000
Net book value of assets disposed	3,501	24,214
Selling expenses	-	-
<b>Net loss from disposal of infrastructure, plant and equipment</b>	<u>(3,486)</u>	<u>(23,214)</u>
Total proceeds from disposals	15	1,000
Total value of assets disposed and selling expenses	<u>3,501</u>	<u>24,214</u>
<b>Total net loss from disposal of assets</b>	<u>(3,486)</u>	<u>(23,214)</u>



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	2006	2005
	\$	\$
<b>Note 6: Financial Assets</b>		
<u>Note 6A: Cash and Cash Equivalents</u>		
Departmental (other than special accounts)	913,789	1,989,232
<b>Total cash and cash equivalents</b>	<u>913,789</u>	<u>1,989,232</u>
<u>Note 6B: Receivables</u>		
Goods and services	1,236,602	269,703
Less: Allowance for doubtful debts	-	-
	<u>1,236,602</u>	<u>269,703</u>
GST Receivable from the Australian Taxation Office	29,652	29,738
Appropriation receivable:		
- for existing outputs	3,000,000	-
<b>Total receivables (net)</b>	<u>4,266,254</u>	<u>299,441</u>
All receivables are current assets.		
All receivables are with entities external to the Commission. Credit terms for all receivables are net 30 days (2005: 30 days)		
Receivables (gross) are aged as follows:		
Not overdue	3,145,792	127,043
Overdue by:		
Less than 30 days	1,118,092	43,294
30 to 60 days	2,200	129,027
60 to 90 days	33	-
More than 90 days	138	77
	<u>1,120,462</u>	<u>172,398</u>
<b>Total receivables (gross)</b>	<u>4,266,254</u>	<u>299,441</u>
The Provision for Doubtful debts is aged as follows:		
Not overdue	-	-
Overdue by:		
Less than 30 days	-	-
30 to 60 days	-	-
60 to 90 days	-	-
More than 90 days	-	-
	<u>-</u>	<u>-</u>
<b>Total provision for doubtful debts</b>	<u>-</u>	<u>-</u>
<b>Note 7: Non-Financial Assets</b>		
<u>Note 7A: Infrastructure, Plant and Equipment</u>		
<b>Computers, plant and equipment</b>		
- at valuation	528,250	386,720
- Accumulated depreciation	-	-
	<u>528,250</u>	<u>386,720</u>
<b>Total computers, plant and equipment</b>	<u>528,250</u>	<u>386,720</u>

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	2006 \$	2005 \$
<b>Leasehold improvements</b>		
- at valuation	1,778,800	2,055,200
- Accumulated amortisation	-	-
	<u>1,778,800</u>	<u>2,055,200</u>
<b>Total leasehold improvements</b>	<u>1,778,800</u>	<u>2,055,200</u>
<b>Total Infrastructure, Plant and Equipment</b>	<u>2,307,050</u>	<u>2,441,920</u>

All revaluations are independent and are conducted in accordance with the revaluation policy stated at Note 1. In 2005-06, the revaluations were conducted by an independent valuer (AON Valuation Services). A revaluation decrement of \$114,780 for leasehold improvements (2005: \$361,606 decrement) was applied to the asset revaluation reserve; a decrement of \$50,641 for infrastructure, plant and equipment was expensed (2005: \$155,277 expensed).

Note 7A: Analysis of Infrastructure, Plant and Equipment and Intangibles

**TABLE A: Reconciliation of the opening & closing balances of infrastructure, plant and equipment.**

Item	Computers, Plant & Equipment	Leasehold Improvements	Total
	\$	\$	\$
<b>As at 1 July 2005</b>			
Gross book value	386,720	2,055,200	2,441,920
Accumulated depreciation/amortisation	-	-	-
<b>Opening net book value</b>	386,720	2,055,200	2,441,920
<b>Additions</b>			
by purchase	339,361	26,975	366,336
Net revaluation increment/(decrement)	(50,641)	(114,780)	(165,421)
Depreciation/amortisation expense	(143,689)	(188,596)	(332,285)
Recoverable amount write-downs	-	-	-
<b>Disposals</b>			
From disposal of operations	-	-	-
Other disposals	3,501	-	3,501
<b>As at 30 June 2006</b>			
Gross book value	528,250	1,778,800	2,307,050
Accumulated depreciation/amortisation	-	-	-
<b>Closing net book value</b>	528,250	1,778,800	2,307,050

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	2006	2005
	\$	\$
<u>Note 7B: Intangibles</u>		
Computer software:		
Internally developed - in use	409,782	409,782
Internally customised - in use	11,125	-
Accumulated amortisation	<u>(409,788)</u>	<u>(407,490)</u>
<b>Total intangibles (non-current)</b>	<b><u>11,119</u></b>	<b><u>2,292</u></b>

**TABLE A: Reconciliation of the opening & closing balances of intangibles**

Item	Computer Software \$
<b>As at 1 July 2005</b>	
Gross book value	409,782
Accumulated amortisation	(407,490)
<b>Opening net book value</b>	2,292
Additions	
by purchase	11,125
Amortisation expense	(2,298)
Recoverable amount write-downs	-
Disposals	
Other disposals	-
<b>As at 30 June 2006</b>	
Gross book value	420,907
Accumulated amortisation	(409,788)
<b>Closing net book value</b>	11,119

	2006	2005
	\$	\$
<u>Note 7C: Other Non-Financial Assets</u>		
Work in Progress - International Programs	-	259,611
Prepayments	235,300	95,075
Deferred Costs - Makegood	267,980	240,027
Amortisation - Makegood	<u>(95,601)</u>	<u>(60,007)</u>
	172,379	180,020
<b>Total other non-financial assets</b>	<b><u>407,679</u></b>	<b><u>534,707</u></b>
Other non-financial assets are represented by:		
Current	235,300	354,686
Non-current	<u>172,379</u>	<u>180,020</u>
<b>Total other non-financial assets</b>	<b><u>407,679</u></b>	<b><u>534,707</u></b>

**Human Rights and Equal Opportunity Commission**  
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	2006	2005
	\$	\$
<b>Note 8: Non Interest Bearing Liabilities</b>		
<u>Note 8A: Other Non Interest Bearing Liabilities</u>		
Lease incentives	<u>242,692</u>	<u>234,389</u>
Other non interest bearing liabilities are represented by:		
Current	48,538	39,065
Non-current	<u>194,154</u>	<u>195,324</u>
<b>Total other non interest bearing liabilities</b>	<u>242,692</u>	<u>234,389</u>
<b>Note 9: Provisions</b>		
<u>Note 9A: Employee provisions</u>		
Salaries and wages	84,097	42,383
Leave	1,656,496	2,049,494
Superannuation	(4,434)	5,587
Separation and redundancies	-	22,555
<b>Total employee provisions</b>	<u>1,736,160</u>	<u>2,120,020</u>
Employee provisions are represented by:		
Current	1,481,828	1,901,699
Non-current	<u>254,332</u>	<u>218,321</u>
<b>Total employee provisions</b>	<u>1,736,160</u>	<u>2,120,020</u>
<u>Note 9B: Other provisions</u>		
Revenue received in advance	1,275,462	74,311
Provision for Makegood	<u>307,212</u>	<u>264,630</u>
<b>Total other provisions</b>	<u>1,582,674</u>	<u>338,941</u>

	Revenue received in advance \$	Provision for Makegood \$	Total \$
<i>Carrying amount at beginning of period</i>	74,311	264,630	338,941
Additional provisions made	1,275,462	27,953	1,303,415
Revenue recognised	74,311	-	74,311
Unwinding of the discounted cashflows for Makegood arising from the passage of time	-	14,629	14,629
<b>Amount owing at end of period</b>	<u>1,275,462</u>	<u>307,212</u>	<u>1,582,674</u>

Human Rights and Equal Opportunity Commission  
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	2006	2005
	\$	\$
<b>Note 10: Payables</b>		
<u>Note 10A: Suppliers</u>		
Trade creditors	525,231	195,167
<b>Total supplier payables</b>	<u>525,231</u>	<u>195,167</u>
All supplier payables are current liabilities. Settlement is generally made in accordance with the terms of the supplier invoice.		
<u>Note 10B: Other payables</u>		
Accrued expenses	132,500	-
<b>Total other payables</b>	<u>132,500</u>	<u>-</u>
All other payables are current liabilities.		
<b>Note 11: Cash Flow Reconciliation</b>		
<b>Reconciliation of cash per Balance Sheet to Statement of Cash Flows</b>		
Cash at year end per Statement of Cash Flows	913,789	1,989,232
Balance Sheet items comprising above cash: 'Financial Asset - Cash and cash equivalents'	913,789	1,989,232
<b>Reconciliation of operating result to net cash from operating activities:</b>		
Operating result	1,422,507	(613,954)
Depreciation and amortisation	370,176	279,216
Finance cost for Makegood provision	14,629	-
Net write down of non-financial assets	50,641	208,648
Loss on disposal of assets	3,486	23,214
Adjustment for prior year accounting error	(166)	273,402
(Increase)/Decrease in net receivables	(966,813)	133,159
(Increase)/Decrease in prepayments	(140,225)	76,984
Increase/(Decrease) in employee provision	(383,860)	(144,578)
Increase/(Decrease) in supplier payables	330,064	(148,140)
Increase/(Decrease) in other provisions	1,201,151	86,913
Increase/(Decrease) in accrued expenses	132,500	-
Increase/(Decrease) in non interest bearing liabilities	8,303	234,389
Increase/(Decrease) in work in progress	259,611	-
<b>Net cash from operating activities</b>	<u>2,302,003</u>	<u>409,253</u>

**Human Rights and Equal Opportunity Commission**  
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**Note 12: Contingent Liabilities and Assets**

*Unquantifiable contingencies*

As at 30 June 2006 the Commission (or officers of the Commission) were named as respondents in five applications before the Federal Court and Administrative Appeals Tribunal. It is not possible to estimate the amounts of the eventual payments 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.

The Commission has been granted leave to intervene in five matters since 1 July 2005. The Commission also has an ongoing intervention matter from the 2004-2005 financial period. From past history of the Commission's involvement in intervention matters, it is unlikely that a costs order will be made against the Commission in these six matters.

**Note 13: Executive Remuneration**

The number of executives who received or were due to receive total remuneration of \$130,000 or more:

	<b>2006</b>	2005
	<b>Number</b>	Number
\$130,000-\$144,999	<b>1</b>	2
\$145,000-\$159,999	<b>1</b>	-
\$160,000-\$174,999	-	1
\$190,000-\$204,999	<b>1</b>	1
\$215,000-\$229,999	-	1
\$230,000-\$244,999	-	1
\$260,000-\$274,999	<b>2</b>	1
	<b>5</b>	<b>7</b>

The aggregate amount of total remuneration of executives shown above:

**\$1,007,976**                      \$1,373,158

The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above.

**Nil**                                      Nil

**Note 14: Remuneration of Auditors**

Financial statement audit services are provided free of charge to the Commission.

The fair value of the services provided was:

Human Rights and Equal Opportunity Commission	<b>42,000</b>	38,000
<b>Total</b>	<b>42,000</b>	<b>38,000</b>

No other services were provided by the Auditor-General.

**Human Rights and Equal Opportunity Commission**  
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**Note 15: Average Staffing Levels** **2006**  
Number **2005**  
Number

The average staffing levels for the Commission during the year were:

95                      94

**Note 16: Financial instruments**

Note 16A: Interest Rate Risk

Financial instrument	Notes	Floating interest rate		Fixed interest rate		Non-interest bearing		Total		Weighted average effective interest rate	
		2006	2005	2006	2005	2006	2005	2006	2005	2006	2005
		\$	\$	\$	\$	\$	\$	\$	\$		
<b>Financial Assets</b>											
Cash	6A	-	-	-	-	913,789	1,989,232	913,789	1,989,232	n/a	n/a
Receivables for goods and services (gross)	6B	-	-	-	-	4,266,254	299,441	4,266,254	299,441	n/a	n/a
<b>Total</b>		-	-	-	-	5,180,043	2,288,673	5,180,043	2,288,673		
<b>Total Assets</b>						7,905,891	5,267,592	7,905,891	5,267,592		
<b>Financial Liabilities</b>											
Lease incentives	8A	-	-	-	-	242,692	234,389	242,692	234,389	n/a	n/a
Trade creditors	10A	-	-	-	-	525,231	195,167	525,231	195,167	n/a	n/a
<b>Total</b>		-	-	-	-	767,923	429,556	767,923	429,556		
<b>Total Liabilities</b>						4,219,257	2,888,517	4,219,257	2,888,517		

Note 16B: Net Fair Values of Financial Assets and Liabilities

	Notes	2006		2005	
		Total Carrying amount	Aggregate Net Fair value	Total Carrying amount	Aggregate Net Fair value
		\$	\$	\$	\$
<b>Departmental Financial Assets</b>					
Cash	6A	913,789	913,789	1,989,232	1,989,232
Receivables for goods and services (net)	6B	4,266,254	4,266,254	299,441	299,441
<b>Total Financial Assets</b>		<u>5,180,043</u>	<u>5,180,043</u>	<u>2,288,673</u>	<u>2,288,673</u>
<b>Financial Liabilities (Recognised)</b>					
Lease incentives	8A	242,692	242,692	234,389	234,389
Trade Creditors	10A	525,231	525,231	195,167	195,167
<b>Total Financial Liabilities (Recognised)</b>		<u>767,923</u>	<u>767,923</u>	<u>429,556</u>	<u>429,556</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.

**Human Rights and Equal Opportunity Commission**  
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**Note 16C: 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 Balance Sheet.

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 17: Appropriations**

Note 17A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Departmental Output 2006	Departmental Output 2005
	\$	\$
Balance carried from previous period	1,958,232	2,214,456
Reductions of appropriations (prior years)	-	-
Adjusted balance carried forward for previous period	1,958,232	2,214,456
Appropriation Act (No.1)	12,093,000	11,893,000
Appropriation Act (No.3)	609,000	-
Departmental Adjustments by the Finance Minister (Appropriation Acts)	-	-
Advance to the Finance Minister	-	-
Adjustment of appropriations on change of entity function (FMAA s32)	-	-
Refunds credited (FMAA s30)	-	-
Appropriation reduced by section 9 determinations (current year)	-	-
Sub-total Annual Appropriation	12,702,000	11,893,000
Appropriations to take account of recoverable GST (FMAA s30A)	133,255	344,567
Annotations to 'net appropriations' (FMAA s31)	3,995,499	3,261,006
Total Appropriations available for payments	18,788,986	17,713,029
Cash payments made during the year (GST inclusive)	14,875,197	15,754,797
Appropriations credited to Special Accounts (excluding GST)	-	-
Balance of Authority to Draw Cash from the CRF for Ordinary Annual Services Appropria	3,913,789	1,958,232
<i>Represented by:</i>		
Cash at bank and on hand	913,789	1,958,232
Receivable - departmental appropriations	3,000,000	-
Receivables - GST receivable from the ATO	-	-
Receivables - departmental appropriations - drawing rights withheld by the Finance Minister (FMA Act s27(4))	-	-
Formal reductions of appropriations	-	-
Receivables - departmental appropriations (appropriation for additional outputs)	-	-
Undrawn, unexpired administered appropriations	-	-
<b>Total</b>	<b>3,913,789</b>	<b>1,958,232</b>



**Human Rights and Equal Opportunity Commission**  
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Note 17B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for other than Ordinary Annual Services Appropriations

Particulars	Non-operating		Total	
	Equity			
	2006	2005	2006	2005
<b>Year ended 30 June 2006</b>	\$		\$	\$
Balance carried from previous year	31,000	62,000	31,000	62,000
Appropriations for reporting period (Act 2)	-	-	-	-
Appropriations for reporting period (Act 4)	-	-	-	-
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	31,000	62,000	31,000	62,000
Payments made	11,125	31,000	11,125	31,000
Appropriations credited to Special Accounts	-	-	-	-
<b>Balance carried to next year</b>	<b>19,875</b>	<b>31,000</b>	<b>19,875</b>	<b>31,000</b>
<i>Represented by:</i>				
Cash	19,875	31,000	19,875	31,000
Appropriations receivable	-	-	-	-
<b>Total</b>	<b>19,875</b>	<b>31,000</b>	<b>19,875</b>	<b>31,000</b>

**Note 18: Reporting of outcomes**

2006

2005

\$

\$

The Commission has one outcome:  
*"An Australian society in which the human rights of all are respected, protected and promoted".*

Note 18A: Net cost of outcome delivery

Total departmental expenses	<u>15,170,218</u>	<u>15,366,311</u>
Costs recovered from provision of goods and services to the non government sector	<u>274,634</u>	<u>365,520</u>
<i>Other departmental external revenues</i>		
Goods and services revenue from related entities	<u>3,530,301</u>	<u>2,452,625</u>
Total Other departmental external revenues	<u>3,530,301</u>	<u>2,452,625</u>
<b>Net cost of outcome</b>	<u><u>11,365,283</u></u>	<u><u>12,548,165</u></u>

**Human Rights and Equal Opportunity Commission**  
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**Note 18B: 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."*

	<b>2006</b>	<b>2005</b>
	<b>\$</b>	<b>\$</b>
<b>Departmental expenses</b>		
Employees	7,829,157	8,451,103
Suppliers	6,901,049	6,391,399
Depreciation and amortisation	370,176	249,213
Finance costs	14,629	12,601
Other expenses	55,206	232,992
<b>Total Departmental expenses</b>	<b>15,170,218</b>	<b>15,324,707</b>
<b>Funded by:</b>		
Revenues from government	12,744,000	11,931,000
Sales of goods and services	3,804,936	2,818,146
Other non-taxation revenues	43,789	3,211
<b>Total Departmental revenues</b>	<b>16,592,725</b>	<b>14,752,357</b>

**Note 19: 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 2006 both of these accounts had nil opening and closing balances and there were no transactions debited or credited to them in the 2005-2006 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 *Financial Management and Accountability 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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