

# **Human Rights and Equal Opportunity Commission**

**Annual Report 1995-96**

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***Human Rights and  
Equal Opportunity Commission President***

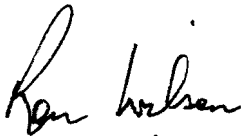
14 October 1996

The Hon Daryl Williams AM QC MP  
Attorney-General  
Parliament House  
CANBERRA ACT 2600

Dear Attorney

I have pleasure in presenting the Annual Report of the Human Rights and Equal Opportunity Commission for the period ended 30 June 1996, pursuant to section 45 of the *Human Rights and Equal Opportunity Act 1986*. The report has been prepared in accordance with the requirements of sub sections 25(6) and (7) of the *Public Service Act 1922*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ron Wilson', with a stylized flourish at the end.

Ronald Wilson  
President

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Later this year, the Commission will be celebrating the tenth anniversary of its establishment in December 1986. I take this opportunity to acknowledge with gratitude the skilled and dedicated contribution to a fairer, better Australia by the founding President, Justice Marcus Einfeld, and the successive Commissioners and staff over these ten years. It is important also to remember with appreciation the pioneering work of the present Commission's predecessor, the Human Rights Commission, which functioned under the presidency of Dame Roma Mitchell for five years from 1981. My colleague Commissioner Elizabeth Hastings also served as a member of that Commission.

It has been an enormous privilege for me to have been associated with HREOC for the past six years. For most of my professional career, I was an advocate, and love the role. But nothing can compare with the joy and privilege of continuing to be an advocate in 'retirement', but this time for disadvantaged Australians and with the support and encouragement of superb colleagues at all levels of the Commission. I shall leave the Commission in a few months with a deep sense of unfinished business but confident of its continuing commitment and capacity to serve the best interests of the nation.

## History of the Commission

The HREOC was established on 10 December 1986, replacing the former Human Rights Commission and incorporating the functions of the Commissioner for Community Relations, and functions under the *Sex Discrimination Act 1984*.

The original Human Rights Commission was established with the introduction of the *Human Rights Commission Act 1986* on Human Rights Day, 10 December 1981, which gave effect to five international instruments:

- the *International Covenant on Civil and Political Rights*;
- the *International Covenant on Economic, Social and Cultural Rights*;
- the *Declaration of the Rights of the Child*;
- the *Declaration on the Rights of Mentally Retarded Persons*; and
- the *Declaration on the Rights of Disabled Persons*.

A more detailed history of the Commission can be found in the Annual Report for 1994-95 (pp. 8-10), or in a pamphlet available free of charge from the Commission.

## Current role of the Commission

The HREOC continues to administer Commonwealth legislation in the area of human rights, anti-discrimination, social justice and privacy issues, and is a major contributor to national strategies being developed in these areas. Joint national projects undertaken between agencies, have helped to nurture a cooperative environment, stimulate public debate and strengthen community support.

Agreements have been made with some State and Territory Governments for the concurrent administration of state and federal anti-discrimination legislation. HREOC administers Queensland and Australian Capital Territory legislation through joint office arrangements, while HREOC's complaint handling powers have been delegated to Equal Opportunity Commissions in

Victoria, South Australian and Western Australia. These cooperative arrangements seek to improve the quality of, and accessibility to, our conciliation services by ensuring Australians have a 'one-stop shop' approach for anti-discrimination and human rights concerns in each part of the country.

## The Commissioners

The Commission as a body corporate is comprised of a President and six Commissioners. Details of the occupants of these positions are provided below:

Sir Ronald Wilson, President  
(appointment expires 6 February 1997)

Chris Sidoti, Human Rights Commissioner  
(appointment expires 11 August 2000)

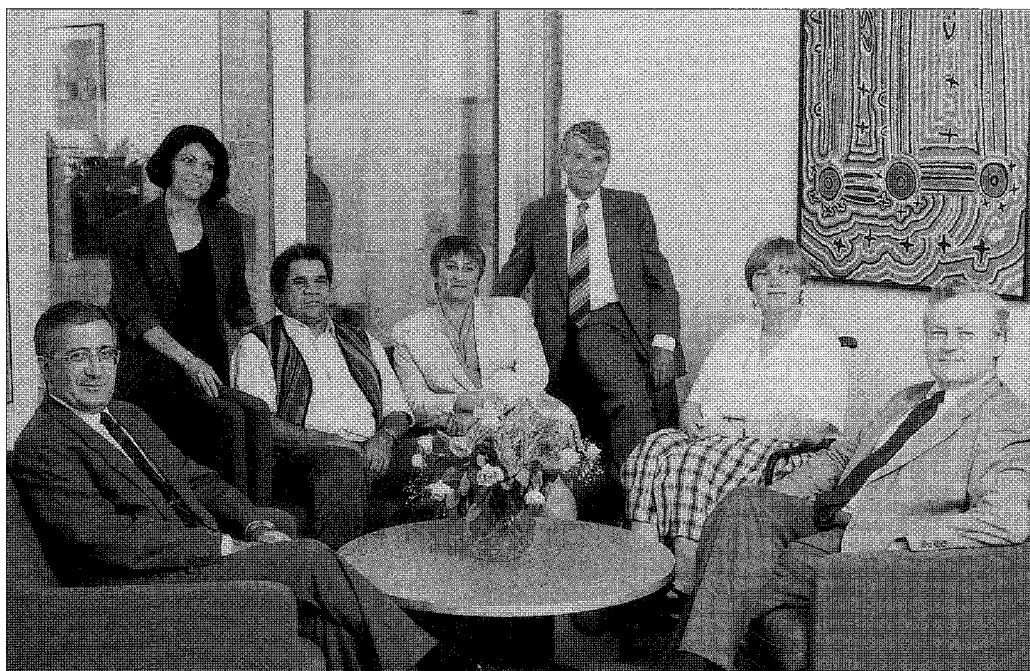
Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner  
(appointment expires 21 January 1998)

Zita Antonios, Race Discrimination Commissioner  
(appointment expires 25 September 1999)

Susan Walpole, Sex Discrimination Commissioner  
(appointment expires 22 February 1998)

Elizabeth Hastings, Disability Discrimination Commissioner  
(appointment expires 7 February 1998)

Kevin O'Connor, Privacy Commissioner  
(appointment expires 31 December 1996)



Chris Sidoti, Human Rights Commissioner; Zita Antonios, Race Discrimination Commissioner; Mick Dodson, Aboriginal & Torres Strait Islander Social Justice Commissioner; Sue Walpole, Sex Discrimination Commissioner; Sir Ronald Wilson, President; Elizabeth Hastings, Disability Discrimination Commissioner; Kevin O'Connor, Privacy Commissioner

## Legislation administered by HREOC

The Commission is responsible for implementing:

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

Functions performed under these Acts are vested in either the Members, the Commission as a collegiate body or the Federal Attorney-General.

Other legislation administered by Commissioners include:

- *Privacy Act 1988* implemented by the Privacy Commissioner; and
- functions under *Native Title Act 1993* performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner.

All of these Acts give force to the relevant international instruments which Australia has ratified.

### **Human Rights and Equal Opportunity Commission Act**

The *Human Rights and Equal Opportunity Commission Act 1986* (HREOCA) establishes the Commission, provides for its administration and gives responsibilities to HREOC in observing seven international instruments which Australia has ratified. These instruments are:

- the *International Covenant on Civil and Political Rights* (ICCPR);
- the *Declaration of the Rights of the Child* (DRC);
- the *Declaration on the Rights of Disabled Persons* (DRDP);
- the *Declaration on the Rights of Mentally Retarded Persons* (DRMRP);
- the *International Labour Organisation Convention 111* (ILO 111) which deals with discrimination in employment and occupation;
- the *Convention on the Rights of the Child* (CRC); and
- the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (DEIDBRB).

### **Racial Discrimination Act**

The *Racial Discrimination Act 1975* (RDA) gives effect to Australia's obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*. Its major objectives are:

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

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## **Sex Discrimination Act**

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

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

## **Disability Discrimination Act**

The *Disability Discrimination Act* 1992 (DDA) has as its major objectives:

- to eliminate discrimination against people with disabilities; and
- to promote community acceptance of the principle that people with disabilities have the same fundamental rights as other members of the community.

## **Privacy Act**

The *Privacy Act* 1988 (PA) gives effect to the Organisation for Economic Development (OECD) *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* and the *International Covenant on Civil and Political Rights* (Article 17). The OECD guidelines cover the collection of personal information, its use, access to and alteration of the information.

The Act has three spheres of operation in which the OECD guidelines are given specific effect in the form of legally binding standards set out below.

1. Information Privacy Principles - to protect personal information which is collected by Federal Government departments or agencies. There are strict privacy safeguards which agencies must observe in collecting, storing and using information.
2. Tax File Numbers - to ensure that tax file numbers are collected and used only for tax related or assistance agency purposes (Tax File Number Guidelines).
3. Consumer Credit Reporting - privacy protection for consumer credit information, including the type of information that may be collected and the use and disclosure of this information.

The Privacy Commissioner also has a function of encouraging businesses to voluntarily conform with the Organisation for Economic Cooperation and Development (OECD) Guidelines.

The Privacy Commissioner has functions under a range of other federal statutes. Details of these are expanded upon below.

## Functions and powers of the Commission

The functions and powers of the Commission fall into four main categories set out below.

The Commission investigates alleged infringements under the anti-discrimination and privacy legislation, and attempts to resolve these matters through conciliation where this is considered appropriate. Where conciliation is unsuccessful or is inappropriate, matters may be referred for formal hearing or consideration by Hearing Commissioners. Upon further inquiry, determinations are issued to resolve these matters (SDA, DDA, RDA, PA).

The Commission inquires into acts or practices that may infringe human rights or that may be discriminatory. In the event that infringements are identified, the Commission formally reports on this and recommends action to remove them (HREOCA).

The Commission fosters public discussion and also undertakes and coordinates research and educational programs to promote human rights and eliminate discrimination (All Acts).

The Commission may both advise on legislation relating to human rights and monitor its implementation. It reviews 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. It examines any new international instruments relevant to human rights in order to advise the Federal Government on their consistency with other international treaties or existing Australian law. The Commission may also propose laws or suggest actions that the Government take on matters relating to human rights and discrimination (All Acts).

In order to be able to carry out these functions the Commission is empowered to:

- refer individual complaints to Commissioners for investigation and conciliation (All Acts);
- require individuals to produce information or documents or appear before the Commission to give evidence in public hearings related to individual complaints (All Acts);
- report to the Government on any matters arising in the course of its functions (All Acts);
- establish advisory committees (All Acts);
- formulate guidelines which ensure Governments act in conformity with human rights rules (All Acts);
- intervene in court proceedings involving human rights matters (All Acts);
- grant exemptions under certain conditions; (SDA, RDA, DDA); and
- conduct national inquiries into issues of major importance either on its own initiative or at the request of the Attorney-General (All Acts).

## Specific functions of the Commission and/or Commissioners

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

- The *Industrial Relations Act 1988* also gives the Sex Discrimination Commissioner the power to initiate equal pay cases in the Industrial Relations Commission (IRC) and to refer certain matters to the IRC.

- The Privacy Commissioner may make 'public interest' determinations which fulfil a similar role to exemptions under the anti-discrimination legislation. He also has several specific functions relating to guidelines, standards, codes of conduct, compliance and audits, and has a number of responsibilities in the specialised areas of credit information and tax file number information. The Privacy Commissioner also performs functions under the following legislation:
  - Part VIIC of the *Crimes Act 1914* gives the Privacy Commissioner responsibility for assessing and making recommendations to the Attorney-General about applications from organisations for exclusions from meeting requirements safeguarding the disclosure of individuals' spent convictions.
  - *Data-matching Program (Assistance and Tax) Act 1990* which regulates a program of data-matching between the Tax Office and four Assistance Agencies to detect overpayments, ineligibility for assistance and tax evasion. The Commissioner has particular responsibilities in the areas of issuing guidelines, investigating complaints and monitoring agency compliance.
  - *National Health Amendment Act 1993* provides for the Commissioner to issue guidelines which cover the storage, use, disclosure and retention of individuals' claims information under the Pharmaceutical Benefits Scheme and the Medicare program.
- The Aboriginal and Torres Strait Islander Social Justice Commissioner, under the HREOCA, prepares an annual report on the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander peoples, and undertakes social justice educational and promotional activities. The Commissioner has no power to receive complaints under this Act.
- The Aboriginal and Torres Strait Islander Social Justice Commissioner also performs separate reporting functions under the *Native Title Act 1993* (NTA). These functions include preparing an annual report on the operation of the Act and its effect on the exercise and enjoyment of human rights of Aboriginal and Torres Strait Islander peoples, and reporting, when requested by the Minister, on any other matter relating to the rights of indigenous people under the Act.

## The Minister

The Attorney-General, the Honourable Daryl Williams AM, QC, MP is the Minister responsible in Federal Parliament for the Commission. He has a number of powers under the HREOCA, the more significant being:

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

## Program structure

The HREOC appears as a sub-program of the Community Affairs program within the Attorney-General's portfolio.

The Commission is organised into the following program elements:

- Human Rights;
- Race Discrimination;
- Sex Discrimination;
- Privacy;
- Disability Discrimination; and
- Aboriginal and Torres Strait Islander Social Justice.

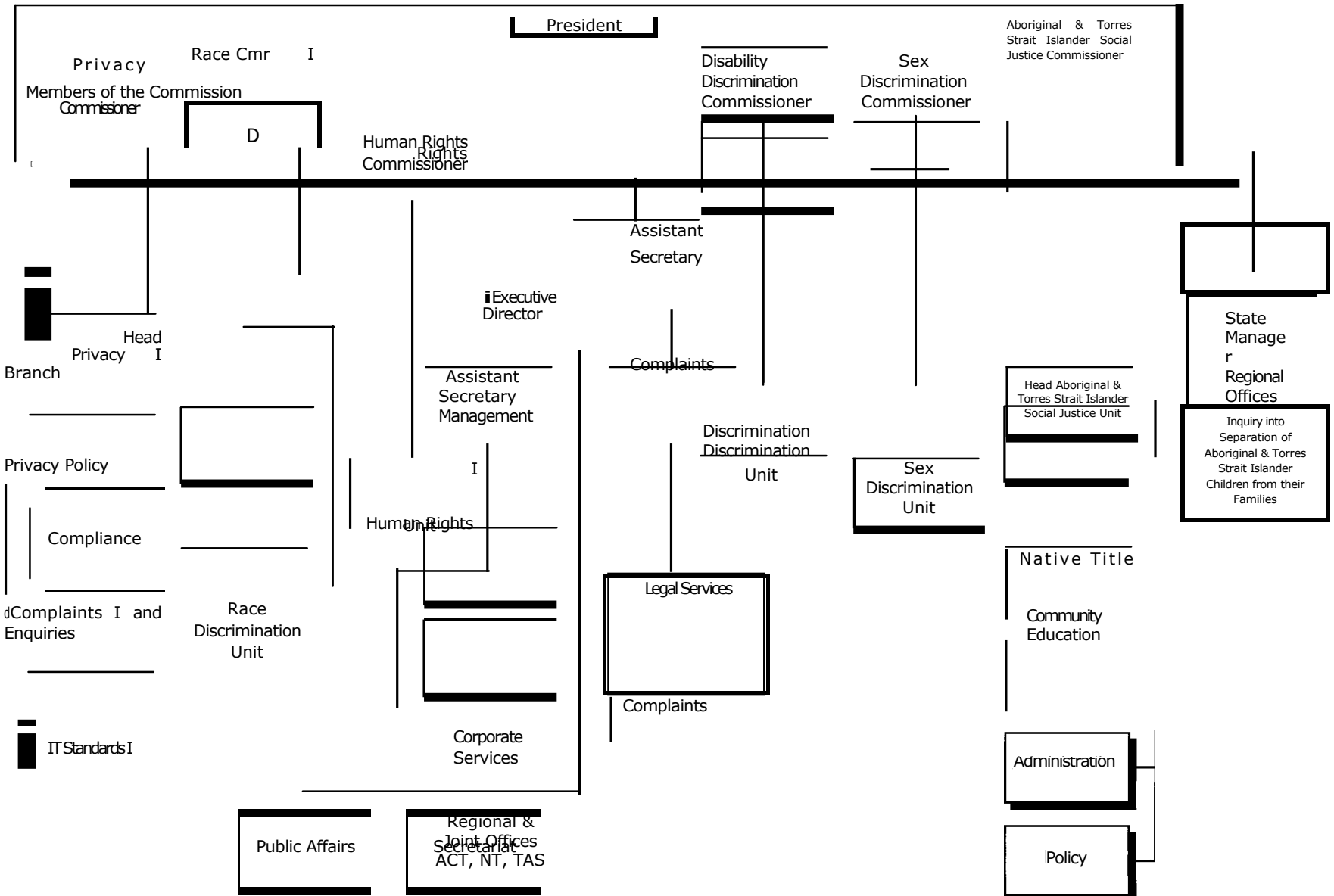
## Management structure

In 1995 the HREOCA was amended to vest ultimate authority for organisational decision making in the collegiate body of the Commission, made up of the President and six Commissioners. The management structure of the Commission reflects the various functions performed, with anti-discrimination Commissioners heading up their own area of legislative responsibility (and sharing resources for the complaint handling, legal support and administrative functions). The Privacy Commissioner is directly responsible for all operational functions under the PA including privacy complaint handling. The Aboriginal and Torres Strait Islander Social Justice Commissioner is directly responsible for all functions conferred under the HREOCA and NTA. An organisational chart is provided on the next page.

The 1993-96 Corporate Plan identifies three goals for the Commission:

1. administering legislation effectively;
2. providing a professional, competent and efficient service; and
3. being a fair and responsible employer.

# HREOC Organisational Chart





# Complaint handling

One of the Commission's central responsibilities is the investigation, conciliation and hearing of complaints of discrimination and breaches of human rights under the RDA, SDA, DDA and the HREOCA.

Complaints are initially assessed for jurisdiction and referred to the Commissioner responsible. The investigation and conciliation of complaints is undertaken by a central Complaints Branch, divided into teams which work closely with each of the responsible Commissioners. Commissioners maintain close supervision of complaint handling and exercise their statutory powers to decline, initiate and finalise complaints personally.

Where a complaint has substance and cannot be resolved by conciliation, the Commissioner responsible is obliged to refer the matter to the Commission for inquiry, hearing and determination. Hearings are conducted by the President and by hearing Commissioners appointed by the Minister. The hearing process is administered by the Commission's Legal Branch.

This section of the Annual Report aims to broadly describe the role and performance of the Commission's Complaints and Legal Branches during the year.

## Complaint handling review

Last year's Annual Report set out the Commission's adoption of a raft of recommendations for reform following reviews of the Commission's complaint handling process and the satisfaction of its users, complainants, respondents and others. The Commission has made considerable progress in the implementation of the recommendations, as set out below.

### Legislative reform

In conjunction with proposed legislation giving effect to the removal of the hearing and determination of complaints to the Federal Court, legislation is being drafted to standardise complaint procedures in the RDA, SDA and DDA. It is anticipated that the legislation will be put to Parliament during the next reporting year.

Also, the Attorney-General has initiated a more comprehensive review of the complaints legislation leading to 'plain English' regarding drafting. The complex issue of harmonising of Federal and State/Territory anti-discrimination laws has been taken up by a Working Party of the Standing Committee of Attorneys-General to which the Commission made a detailed submission.

### Complaints procedures

This year saw the completion of the Commission's Complaint Procedures Manual which deals in detail with the receipt, assessment, investigation and conciliation of complaints. The manual provides standard internal complaint procedures for the different phases of complaint handling, while retaining the discretion and flexibility necessary for individual cases. It also incorporates the structure of a case management system which interlinks with the Commission's National Complaints Database.

## **National complaints database**

The Commission has substantially completed construction of the Complaint Handling and Records Management System (CHARMS) and, after testing and staff training, the system is expected to 'go live' during the next year.

CHARMS is designed to provide accurate data about the nature of complaints and detailed information about the way, and the time in which, they are handled by the Commission. It will assist complaint officers with managing their caseloads and interlink with the Commission's existing systems of word-processing and electronic mail.

The system has been adopted and adapted by the Victorian Equal Opportunity Commission and discussions are being held with the New South Wales Anti-Discrimination Board and the South Australian Equal Opportunity Commission. The Commission anticipates that adoption of CHARMS by national agencies dealing with complaints of discrimination will enhance consistency of practice and provide sufficient management information on which to base improvements.

## **Benchmarking**

This year, the Commission embarked on a comprehensive benchmarking project to establish best practice in complaint handling. The Commission's benchmarking team, led by the manager of the Sydney office complaints branch, compiled a detailed questionnaire and commenced visits to its benchmarking partners. The project aims to document existing complaints practice in each of the participating agencies and, taking the best features of each, develop best practice.

Agencies which have agreed to participate in the exercise are the Queensland Anti-Discrimination Commission, New South Wales Anti-Discrimination Board, the South Australian and Victorian Equal Opportunity Commissions, New South Wales Office of the Ombudsman, Commonwealth Privacy Commissioner and the Australian Taxation Office (regarding telephone inquiry and complaint handling). The project will be completed in the next reporting year and is expected to both improve the Commission's complaint handling and to assist in harmonising national practice for anti-discrimination complaints.

## **Training**

The Commission further developed its conciliation training package during the year by conducting courses for the Commission's complaint handling staff. It is expected that the package will be finalised during the next reporting year and be made available to State and Territory anti-discrimination agencies and more generally.

The Commission is also developing an investigations training course specific to the anti-discrimination area which it will trial by delivery to complaints staff during the next year.

## **Reduction of backlog**

All of the above reforms to the Commission's complaint handling processes, together with the establishment of a temporary task force, has contributed to a substantial reduction in the backlog of complaints awaiting attention. Comparison of Table 1 (complaints received) with Table 2 (complaints finalised), shows the extent of the improvement in productivity in complaint handling.

## Cooperative arrangements with States and Territories

The agreements supporting cooperative arrangements are made between the Attorneys-General of the Commonwealth and States and Territories.

All of the current cooperative arrangements have either expired or will expire during the next reporting year. The Federal Attorney-General has indicated that renegotiation of agreements should proceed on the basis that cooperative arrangements be consistent.

The Commission agrees that cooperative arrangements should be consistent and also provide a broadly consistent complaint handling service nationally. The reforms undertaken by the Commission for its own complaint handling will be of considerable assistance in promoting consistent service delivery through cooperative arrangements.

Each of the State and Territory anti-discrimination or equal opportunity Acts has developed separately and at different times. Consequently, there are differences in the coverage of unlawful discrimination and in complaint handling practices between the various agencies. In reading the complaint statistics tables in this report, it should be understood that simple comparisons of numbers between the different agencies cannot be made.

### Complaint statistics: 1 July 1995 to 30 June 1996

Table 1: Total number of new complaints by location office at which they were received

| Relevant legislation | Central      | Qld*      | NT        | Tas       | ACT*      | Vic        | SA         | WA        | Total        |
|----------------------|--------------|-----------|-----------|-----------|-----------|------------|------------|-----------|--------------|
| SDA                  | 229          | 14        | 15        | 26        | 13        | 417        | 345        | 53        | 1 112        |
| RDA                  | 197          | 28        | 15        | 9         | 11        | 194        | 110        | 19        | 583          |
| HREOCA               | 218          | 3         | 23        | 3         | 4         | —          | —          |           | 251          |
| DDA                  | 286          | 34        | 26        | 39        | 27        | 308        | —          | —         | 720          |
| Other                | 174          |           |           |           |           |            |            |           | 174          |
| <b>Total</b>         | <b>1 104</b> | <b>79</b> | <b>79</b> | <b>77</b> | <b>55</b> | <b>919</b> | <b>455</b> | <b>72</b> | <b>2 840</b> |

\*indicates complaints registered under Federal legislation only

Table 2: Total number of complaints closed by location office at which they were closed and by Federal legislation

| Relevant legislation | Central      | Qld*       | NT         | Tas       | ACT*      | Vic          | SA         | WA        | Total        |
|----------------------|--------------|------------|------------|-----------|-----------|--------------|------------|-----------|--------------|
| SDA                  | 266          | 43         | 24         | 27        | 26        | 633          | 234        | 42        | 1 295        |
| RDA                  | 176          | 49         | 24         | 8         | 16        | 242          | 110        | 27        | 652          |
| HREOCA               | 320          | 18         | 23         | 5         | 7         | —            | —          |           | 373          |
| DDA                  | 434          | 52         | 45         | 21        | 33        | 396          |            | —         | 981          |
| Other                | 207          | —          |            |           |           |              |            |           | 207          |
| <b>T o t a l</b>     | <b>1 403</b> | <b>162</b> | <b>116</b> | <b>61</b> | <b>82</b> | <b>1 271</b> | <b>344</b> | <b>69</b> | <b>3 508</b> |

\*includes complaints registered under Federal legislation only

**Table 3:** Outcome of complaints finalised **under Federal legislation by** location of managing office

| <b>Outcomes</b>                                   | <b>Central</b> | <b>Qld</b> | <b>NT</b>  | <b>Tas</b> | <b>ACT</b> | <b>Vic</b>   | <b>SA</b>  | <b>WA</b> | <b>Total</b> |
|---|----------------|------------|------------|------------|------------|--------------|------------|-----------|--------------|
| Not unlawful                                      | 116            | 1          | 26         |            |            | 5            | 12         | 1         | <b>161</b>   |
| Withdrawn   | 395            | 68         | 23         | 15         | 37         | 497          | 102        | 19        | <b>1 156</b> |
| Other declined                                    | 338            | 25         | 49         | 12         | 16         | 238          | 57         | 4         | <b>739</b>   |
| Conciliated                                       | 177            | 35         | 13         | 30         | 21         | 262          | 143        | 26        | <b>707</b>   |
| Conciliation failed -<br>not referred for hearing | —              | 5          |            |            | —          |              |            |           | <b>5</b>     |
| Referred for hearing,<br>reporting                | 110            | 28         | 4          | 4          | 8          | 238          | 30         | 8         | <b>430</b>   |
| Outside jurisdiction                              | 202            |            |            |            |            |              | —          | —         | <b>202</b>   |
| Transferred                                       | 65             |            | 1          | —          | —          | 31           | —          | 11        | <b>108</b>   |
| <b>Total</b>                                      | <b>1 403</b>   | <b>162</b> | <b>116</b> | <b>61</b>  | <b>82</b>  | <b>1 271</b> | <b>344</b> | <b>69</b> | <b>3 508</b> |

**Table 3a:** Complainors **finalised by** Federal legislation and by method of closure

| <b>Method of closure</b>                          | <b>SDA</b>   | <b>RDA</b> | <b>HREOCA</b> | <b>DDA</b> | <b>Unknown jurisdiction</b> | <b>Total</b> |
|---|--------------|------------|---------------|------------|-----------------------------|--------------|
| Not unlawful                                      | 29           | 38         | 25            | 69         |                             | <b>161</b>   |
| Withdrawn   | 448          | 214        | 121           | 373        |                             | <b>1 156</b> |
| Other declined                                    | 174          | 175        | 155           | 235        |                             | <b>739</b>   |
| Conciliated                                       | 375          | 123        | 28            | 181        | —                           | <b>707</b>   |
| Conciliation failed -<br>not referred for hearing |              | 5          |               |            | —                           | <b>5</b>     |
| Referred for hearing                              | 226          | 79         | 35            | 90         |                             | <b>430</b>   |
| Outside jurisdiction                              |              |            | —             | —          | 202                         | <b>202</b>   |
| Transferred                                       | 43           | 18         | 9             | 33         | 5                           | <b>108</b>   |
| <b>Total</b>                                      | <b>1 295</b> | <b>652</b> | <b>373</b>    | <b>981</b> | 207                         | <b>1 508</b> |

**Table 3b:** Outcome of complaints finalised under **the SDA by** location of managing office

| <b>SDA outcomes</b>  | <b>Central</b> | <b>Qld</b> | <b>NT</b> | <b>Tas</b> | <b>ACT</b> | <b>Vic</b> | <b>SA</b>  | <b>WA</b> | <b>Total</b> |
|----------------------|----------------|------------|-----------|------------|------------|------------|------------|-----------|--------------|
| Not unlawful         | 17             | 1          | 1         | —          | —          | 4          | 5          | 1         | <b>29</b>    |
| Withdrawn            | 94             | 17         | 8         | 8          | 12         | 235        | 71         | 3         | <b>448</b>   |
| Other declined       | 35             | 4          | 9         | 4          | 5          | 85         | 31         | 1         | <b>174</b>   |
| Conciliated          | 58             | 10         | 5         | 14         | 7          | 151        | 108        | 22        | <b>375</b>   |
| Referred for hearing | 46             | 11         | 1         | 1          | 2          | 142        | 19         | 4         | <b>226</b>   |
| Transferred          | 16             | —          | —         | —          | —          | 16         |            | 11        | <b>43</b>    |
| <b>Total</b>         | <b>266</b>     | <b>43</b>  | <b>24</b> | <b>27</b>  | <b>26</b>  | <b>633</b> | <b>234</b> | <b>42</b> | <b>1 295</b> |

**Table 3c: Outcome of complaints finalised under the RDA by location of managing office**

| <b>RDA outcomes</b>                            | <b>Central</b> | <b>Qld</b> | <b>NT</b> | <b>Tas</b> | <b>ACT</b> | <b>Vic</b> | <b>SA</b>  | <b>WA</b> | <b>Total</b> |
|--|----------------|------------|-----------|------------|------------|------------|------------|-----------|--------------|
| Not unlawful                                   | 30             |            | 1         | –          |            |            | 7          | –         | 38           |
| Withdrawn                                      | 67             | 12         | 9         | 2          | 8          | 69         | 31         | 16        | 214          |
| Other declined                                 | 48             | 6          | 9         | 3          | 4          | 76         | 26         | 3         | 175          |
| Conciliated                                    | 9              | 12         | 3         | 3          | 4          | 53         | 35         | 4         | 123          |
| Conciliation failed - not referred for hearing | 5              |            |           |            | –          | –          | –          | –         | 5            |
| Referred for hearing                           | 5              | 14         | 1         |            |            | 44         | 11         | 4         | 79           |
| Transferred                                    | 17             |            | 1         |            |            |            | –          | –         | 18           |
| <b>Total</b>                                   | <b>176</b>     | <b>4P</b>  | <b>24</b> | <b>8</b>   | <b>16</b>  | <b>242</b> | <b>110</b> | <b>27</b> | <b>652</b>   |

**Table 3d, Outcome of complaints finalised under the DDA by location of managing office**

| <b>DDA outcomes</b>  | <b>Central</b> | <b>Qld</b> | <b>NT</b> | <b>Tas</b> | <b>ACT</b> | <b>Vic</b> | <b>Total</b> |
|----------------------|----------------|------------|-----------|------------|------------|------------|--------------|
| Not unlawful         | 57             |            | 11        | –          |            | 1          | 69           |
| Withdrawn            | 130            | 28         | 5         | 2          | 15         | 193        | 373          |
| Other declined       | 114            | 10         | 23        | 5          | 6          | 77         | 235          |
| Conciliated          | 88             | 11         | 4         | 11         | 9          | 58         | 181          |
| Referred for hearing | 23             | 3          | 2         | 3          | 3          | 56         | 90           |
| Transferred          | 22             |            | –         |            |            | 11         | 33           |
| <b>Total</b>         | <b>434</b>     | <b>52</b>  | <b>45</b> | <b>21</b>  | <b>33</b>  | <b>396</b> | <b>981</b>   |

**Table 3e: Outcome of complaint finalised under the HREOCA by location of managing office**

| <b>HREOCA outcomes</b>           | <b>Central</b> | <b>Qld</b> | <b>NT</b> | <b>Tas</b> | <b>ACT</b> | <b>Total</b> |
|----------------------------------|----------------|------------|-----------|------------|------------|--------------|
| Not unlawful                     | 12             |            | 13        | –          |            | 25           |
| Withdrawn                        | 104            | 11         | 1         | 3          | 2          | 121          |
| Other declined                   | 141            | 5          | 8         |            | 1          | 155          |
| Conciliated                      | 22             | 2          | 1         | 2          | 1          | 28           |
| Referred for reporting           | 35             |            | –         |            |            | 35           |
| Reported to the Attorney-General | –              |            | –         | –          | –          | 0            |
| Transferred                      | 6              | –          |           | –          | 3          | 9            |
| <b>Total</b>                     | <b>320</b>     | <b>18</b>  | <b>23</b> | <b>5</b>   | <b>7</b>   | <b>373</b>   |

## Inquiries

In addition to written complaints, the Commission receives thousands of telephone and personal inquiries every year from people who have a grievance and seek help from the Commission.

The statistical tables below are those from the Commission's central Sydney office only. They are provided by way of a snapshot to illustrate the wide variety of inquiries received. Where it appears that the subject matter of complaints does not fall within the legislation administered by the Commission, persons inquiring are given every assistance to direct their grievance to some person or organisation which may be in a position to assist.

**Table 4: Telephone and personal inquiries received in 1995-.96 in Central Office**

The total number of inquiries received in the 1995 96 year was 4 219.

**Table 4a: Inquiries received related to the Acts**

|        |     |
|--------|-----|
| SDA    | 632 |
| RDA    | 332 |
| DDA    | 572 |
| HREOCA | 357 |
| Other  | 246 |

**Table d7-: Subject matter of inquiries,**

| <b>Area</b>                                 | <b>Total</b> |
|---|--------------|
| Employment                                  | 2 058        |
| Provision of goods, services and facilities | 526          |
| Rights to equality before the law           | 33           |
| Access to premises                          | 41           |
| Land  | 12           |
| Accommodation                               | 52           |
| Incitement to unlawful acts                 | 11           |
| Advertisements                              | 13           |
| Superannuation and insurance                | 39           |
| Education                                   | 149          |
| Clubs, incorporated associations            | 33           |
| Administration of Commonwealth programs     | 38           |
| Sport                                       | 20           |
| Unions/accrediting bodies                   | 1            |
| Contravention of disability standards       | 5            |
| Request for information                     | 11           |
| Acts of practice of the Commonwealth        | 32           |
| Media (Racial hatred)                       | 2            |
| Neighbourhood (Racial hatred)               | 3            |
| Personality conflict (Racial hatred)        | 3            |
| Racist propaganda (Racial hatred)           | 1            |
| Religious institutions                      | 1            |
| Family court matters                        | 1            |
| Other law court matters                     | 1            |
| General inquiries                           | 559          |
| <b>Total</b>                                | <b>3 645</b> |

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*\*some inquiries were received under more than one area*

**Table 4.::: Outcome of inquiries**

| <b>Outcome</b>               | <b>Total</b> |
|------------------------------|--------------|
| Advised to lodge a complaint | 1 004        |
| Referred to elsewhere        | 1 897        |
| Information provided         | 1 427        |
| Other                        | 110          |
| <b>T o t a l</b>             | <b>4 438</b> |

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*\*some inquiries had more than one outcome*

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# Legal Branch

The primary responsibility of this branch of the Commission concerns those complaints which cannot be conciliated and are referred to the Commission for inquiry. In carrying out this function the Commission acts in a way that is analogous to a tribunal even though its decisions are not binding and enforceable. It is the Legal Branch's responsibility to schedule and facilitate the Commission's hearings into these matters and its legal officers provide associate and/or counsel assistance to hearing Commissioners.

In addition, the Legal Branch is responsible for the provision of legal advice to the Commission, for conducting Commission interventions in legal proceedings and for external litigation in which the Commission becomes involved. Freedom of Information Act applications are also handled by the branch.

## High Court decision in Brandy v HREOC & Ors

### Ruling

In this Constitutional case the High Court held that certain provisions of the RDA were invalid and hence inoperative. Those provisions had enabled determinations of the Commission made since January 1993 (excluding those made against Commonwealth agencies) to be registered with the Federal Court and to take effect, subject to a right of review to the Court, as if they were an order made by that Court. This system gave successful complainants (subject to the review right) the ability to enforce the Commission's decision without having to argue the case a second time in court.

The High Court invalidated the scheme because it offends Chapter III of the Constitution, which requires that the 'judicial power' of the Commonwealth reside only in the High Court, Federal Courts and any other courts vested with federal jurisdiction. In the view of all seven judges, the scheme constituted an exercise of judicial power by a non-judicial body - the Commission.

### Effect of decision

The High Court's decision has had a profound effect on the future operation of the Commission. Importantly, it is not just the RDA that is affected. The SDA, the DDA, and the PA had equivalent provisions dealing with enforcement.

The consequences of the decision for the Commission mean a major restructure of its procedures. The Attorney-General immediately announced a review of the legislation administered by the Commission and, as an interim measure, Parliament passed legislation reinstating former statutory procedures which provided that Commission determinations were not binding on the parties but had to be re-litigated in the Federal Court to be enforceable: *Human Rights Amendment Act 1995 (Cth)*.

The Attorney-General's Department has been working with the Commission and a specialist committee to devise new procedures to ensure that availability of accessible procedures and enforceable decisions in human rights and anti-discrimination matters. The Government has indicated that unconciliable complaints will now have to be heard and decided in the Federal Court.

## Decline decisions reviewed by the President

Decline decisions of Commissioners (decisions not to inquire, or continue inquiring, into complaints) may be reviewed by the President of the Commission. The number of decisions which have had to be reviewed has increased dramatically over the past few years, with 205 decisions being received for review in 1995-96 as compared with 125 in 1994-95 and 11 in 1993-94. The increase is due to the fact that complaint handling has now become more efficient. Complaints are being assessed and decided at a greater rate, translating into more complaints requesting reviews of Commissioners' decisions. Of the 205 decisions reviewed by the President or his delegate, 25 were reversed.

## Hearings and determinations by the Commission

Complaints which are unable to be settled by conciliation are referred for public hearing in accordance with the requirements of the relevant legislation. Referrals may be made under the RDA, SDA and DDA.

There is no provision in the HREOC for referral of unconciliated complaints. However the Human Rights Commissioner may report to the Attorney-General where conciliation has failed or where, due to the nature of the complaint, conciliation was considered not to be appropriate. In these matters under the HREOCA, the Legal Branch plays the role of assisting the Human Rights Commissioner to arrange hearings for the taking of any oral submissions and, possibly, evidence as part of the statutory process involved in preparation of a report under the HREOCA. For statistical purposes these hearings under the HREOCA are treated in a similar way to public hearings under the RDA, SDA and DDA and are included within those statistics even though it is a quite different process.

## Hearing Commissioners

In the 1995-96 reporting period public hearings were conducted by part time Hearing Commissioners, as well as by Sir Ronald Wilson, President; Mr Kevin O'Connor, Privacy Commissioner; Mr Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner; and Ms Elizabeth Hastings, Disability Discrimination Commissioner. The present part-time Hearing Commissioners appointed by the Attorney-General are:

### **New South Wales**

Mr John Basten QC  
Ms Marion Brown  
The Hon. Elizabeth Evatt  
Professor Regina Graycar  
Mr Graeme Innes  
The Hon. John Nader QC

### **Queensland**

Ms Roslyn Atkinson  
The Hon. William Carter QC  
Dr Mary Kalantzis  
Mr Stephen Keim  
Mr Stanley Jones QC

### **Victoria**

Mr Aaron Castan QC  
Ms Susan Crennan QC  
Ms Rosemary Hunter  
Associate Professor Jenny Morgan  
Ms Moira Rayner

### **Task Force A**

Ms Antonia Kohl  
The Hon Robert Nettlefold  
Mr Christopher Webster



Australian Capital Territory  
Professor Hilary Charlesworth

South Australia  
Ms Kathleen McEvoy

Western Australia  
Ms Hanifa Dean

Northern Territory  
Ms Suzan Cox

## Referrals to public hearings

The increasing volume of complaints being received and handled by the Commission is translating into an increasing number of complaints being referred for public hearing. During 1995-96, 231 new complaints were referred for hearing (including 30 HREOCA matters). Of the hearing matters finalised during 1995-96:

- 62 were conciliated prior to or during hearing (61 in 1994-95);
- 15 were substantiated after a hearing and formal decision (21 in 1994-95);
- 15 were dismissed after a hearing and formal decision (23 in 1994-95); and
- 21 were finalised in other ways including complaints terminated by the Commission at the complainant's own request and complaints adjourned *sine die* by the Commission, for example where a party could not be located (13 in 1994-95).

Table 5: Trends in numbers of matters referred for public hearing

| Year         | 1992-93 | 1993-94 | 1994-95 | 1995-96 |
|--------------|---------|---------|---------|---------|
| Total number | 48      | 52      | 120     | 231     |

Table 6: Complaints referred for public hearing during 1995-96 by location and Act

| Office | Total number of referrals |       | HREOCA | RDA   |       | SDA   |       | DDA   |       |
|--------|---------------------------|-------|--------|-------|-------|-------|-------|-------|-------|
|        | 94-95                     | 95-96 |        | 94-95 | 95-96 | 94-95 | 95-96 | 94-95 | 95-96 |
| NSW    | 33                        | 57    | 11     | 2     | 3     | 28    | 34    | 3     | 9     |
| Vic    | 25                        | 108   | 13     | 5     | 12    | 17    | 62    | 3     | 21    |
| SA     | 11                        | 11    |        | 4     | 4     | 4     | 3     | 3     | 4     |
| Qld    | 25                        | 33    | 3      | 3     | 14    | 21    | 12    | 1     | 4     |
| WA     | 3                         | 9     | 1      | —     | 1     | 2     | 5     | 1     | 2     |
| NT     | 6                         | 6     | 1      |       | 1     | 6     | 1     |       | 3     |
| ACT    | 5                         | 3     | 1      | 1     |       | 3     |       | 1     | 2     |
| Tas    | 12                        | 4     |        | 2     |       | 10    | 1     | —     | 3     |
| Total  | 120                       | 231   | 30     | 17    | 35    | 91    | 118   | 12    | 48    |

In respect of the DDA, the statistics given here refer to the geographical location of the complaint, irrespective of the fact other such complaints were often handled by the Sydney office, in addition to local offices. In respect of the SDA and the RDA, generally all investigation and conciliation work was undertaken by the office indicated in the table.

## Interim determinations

Complainants may apply to the Commission for an interim determination, the purpose of which is to prevent a party to a complaint from taking action adverse to a complainant or altering the status quo before the complaint is investigated and determined. The rate of applications for interim determination has increased enormously, particularly in the area of disability discrimination. In 1995-96, 87 applications for an interim determination were received compared to 61 in 1994-95 and 3 in 1993-94.

## Commission interventions in court proceedings

### **L v Minister for Immigration and Ethnic Affairs — 'One child policy' of the Peoples Republic of China**

#### Description of the case

This matter concerned an AD(JR) Act application by three women from the Peoples Republic of China (PRC) for a judicial review of decisions by the Refuge Review Tribunal refusing their applications for refugee status. The three women had each applied for refugee status on the ground that they faced a well-founded fear of persecution in PRC because of China's one-child policy. Each of the women had been forcibly sterilised and had suffered various economic sanctions for breaching the one-child policy. The Refugee Review Tribunal refused to recognise the applicants as refugees as: (1) they did not come within the phrase 'particular social group' in the Refugee Convention; (2) 'the virtual finality of sterilisation' meant that there was no real chance of further interference with each applicant's body; and (3) financial penalties which are lawfully imposed for breach of family planning laws, even if severe, do not amount to persecution.

#### Human rights matters involved in the Court proceedings

The Commission was granted leave to intervene in the proceedings by way of written submissions. In all material respects, the Commission's submissions supported the case for the applicants, making particular reference to international conventions and the relevance of the international human rights instruments to a determination of refugee status. Special reference was made in the Commission's submissions to the rights of physical and mental integrity, rights of the family and rights of women under the ICCPR, the ICESCR, the CEDAW and the Torture Convention.

#### Decision of O'Loughlin J

Despite the fact that the Commission's submissions were largely accepted, the applicants were not successful before O'Loughlin J because of a technical point relating to the date upon which proceedings for judicial review had been filed in the Court. Under the *Migration Act 1958* (Cth), the Federal Court is unable to extend time in migration cases. O'Loughlin J held that time ran from 31 October 1994 and therefore considered that the Court did not have jurisdiction to consider the merits of the case.

The applicants appealed to the Full Court. The Commission's submissions in the Full Court proceedings were essentially the same as those filed in the first instance proceedings.

#### Decision of Full Federal Court

A majority of the Court held that the appeal should be dismissed. Jenkinson and Beazley JJ held that the Court did not have jurisdiction to consider the merits of the case. However, Lee J considered the merits of the case. His Honour held that the Refugee Review Tribunal had made an error of law in failing to properly deal with the meaning of persecution, particularly as it applied to economic sanctions, and in failing to find that the appellants fell within the definition of 'particular social group'.

### **Wu Yu Fang v Minister for Immigration and Ethnic Affairs and Commonwealth of Australia - Access to lawyers by persons in detention**

#### Description of the case

On 13 August 1995 the Commission sought and obtained leave to intervene in proceedings before the Federal Court of Australia in Perth. The proceedings had been commenced by 119 Sino-Vietnamese residents of China who had arrived in Darwin in November 1994 on a boat named Albatross. Each had been taken into detention in Port Hedland and each claimed that they had requested access to lawyers in order to apply for refugee status but this request had been refused. Legislation was then passed in January 1995 which prevented them from applying for refugee status. The allegations were denied by the respondents although it was conceded that persons in detention are not advised of their right to request a lawyer.

#### Human rights issues involved in the Court proceedings

The Commission made submissions in relation to the issue of incommunicado detention. It submitted that international instruments are an important influence upon Australian domestic law and must be taken into account in interpreting our law. The relevant international obligation in this case was Article 10 of the ICCPR which has been interpreted so as to prohibit incommunicado detention even for very short periods. It was also submitted that the ICCPR imports other international obligations including those set out in the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. These standards and principles make it clear that a person in detention must be advised of his or her right to request access to a legal adviser and if such a request is made, access must be provided without delay. It was submitted that section 256

of the Migration Act, which requires that 'reasonable facilities' for obtaining legal advice be provided to persons in detention, must be read subject to these international obligations.

#### Decision of O'Loughlin J

O'Loughlin J dismissed the application. His Honour held that whilst it may seem incongruous that non-English speaking arrivals are held in isolation and not informed that they have rights to apply for a refugee status, there is no statutory obligation on officers of the Department of Immigration to inform applicants of their rights to legal advice.

The lawyers for the refugees lodged an appeal. HREOC filed further written submissions for the appeal which were similar to those filed at the trial.

#### Decision of Full Court of the Federal Court

A decision was handed down on 28 February 1996. Whilst the appeal was ultimately dismissed by the Full Court, the decision contained some very important indications from the Court. In essence, a majority (Nicholson and Jenkinson JJ) found that the failure of the Department of Immigration and Ethnic Affairs (DIEA) to provide the asylum seekers with access to legal advisers was in breach of international human rights principles and common law notions of procedural fairness. However, the majority went on to say that the Australian Government had consciously amended the Migration Act so as to take a hard line against illegal entrants to deny

them these rights, and this overrode the recognised principles of human rights and procedural fairness. In contrast, Carr J in dissent found that there was sufficient ambiguity in the provisions of the Migration Act to 'read in' the international principles and he would have allowed the appeal. All judges made strong comments which were critical of the way the DIEA had treated the asylum seekers.

#### Application for special leave to appeal to the High Court

The applicants then applied to the High Court for special leave to appeal. The Commission did not intervene in the application for special leave, however, it resolved to make written submissions in the event that special leave was granted. The special leave application was heard and was refused. The Court was concerned that the original application made in the Federal Court did not raise the question whether, in the circumstances, there was a positive statutory or common law duty on the part of the respondents to provide the applicants with visa application forms, to inform them of their right to apply for visas and of the availability of legal advice. Importantly, however, the Court added that in another case, this question, 'if raised by the pleadings and the factual findings, might be a question of importance worthy of the grant of special leave.'

### **P v P: Re Lessli - Sterilisation of a young woman**

#### Background

A detailed report as to the facts of this matter appeared in the Annual Reports for 1993-1994 and 1994-1995. The matter concerned an application to the Family Court of Australia by the parents of a 17 year old young woman with intellectual disabilities and epilepsy, for authorisation of her sterilisation. The Commission has intervened in this matter before the Family Court since May 1994 for the purposes of making submissions on the appropriate principles to govern the exercise of judicial discretion to authorise sterilisation and the procedural safeguards that should be utilised to protect human rights in this area.

In September 1994 the trial judge delivered her judgment dismissing the application to sterilise. Lessli's mother appealed the decision and in December 1994 the Full Family Court upheld the appeal and authorised the sterilisation of Lessli. Lessli was sterilised in early January 1995. As the Full Court did not hand down its reasons for its decision until May 1995, the Commission attempted to preserve its position in respect of appealing the decision by applying for a certificate from the Full Court pursuant to section 95(b) of the *Family Law Act 1975* to take this matter to the High Court.

The Commission decided to pursue the application for the certificate on the basis of concern that the decision did not properly apply the 'step of last resort' test enunciated by the High Court in *Marion's Case* (1992) 175 C.L.R 218 and failed to pronounce adequate procedural safeguards.

#### Developments this financial year

In August 1995, the Full Family Court dismissed the Commission's application for a certificate to the High Court. On 15 September 1995, the Commission commenced an application in the High Court for special leave to appeal the Full Family Court's decision. The Commission argued that:

- it is a question of public importance to development the correct approach to the sterilisation of a child with intellectual disabilities;

- it is a gross breach of human rights to authorise sterilisation in circumstances where it would not be adopted for a young woman with epilepsy but without intellectual disabilities; and
- there is a breach of procedural fairness where there is no party representing the interests of the child putting arguments open of the evidence against such sterilisation.

The Commission's special leave application was heard by the High Court on 5 February 1996 and dismissed. A main factor for the application being unsuccessful appeared to be that Lessli had already been sterilised thereby making the issue moot, a situation that was unavoidable to some degree given that the order to sterilise Lessli was not stayed until the reasons were delivered so that by the time the Commission had the opportunity to consider the reasons in May, the order had already been acted on in January and Lessli had been sterilised.

## **Re: Katie — Sterilisation of a young woman**

### Description of the case

This matter was heard in the Family Court at Brisbane before Justice Warnick on 10 November 1995. The parents of Katie who was 17 years old and diagnosed as suffering athetoid cerebral palsy in the form of spastic quadriplegia and secondary epilepsy had sought the consent of the Court to carry out a sterilisation procedure in order to alleviate problems associated with menstruation.

At the commencement of the hearing the Commission was granted leave to intervene by way of written submissions.

### Human rights matters involved in the court proceedings

The Commission made submissions to assist the Court in determining the most appropriate procedure to follow in matters of this nature in order to fulfil the Court's primary obligation to act at all times in the best interests of the child. The Commission submitted the Court should:

- (i) act in a manner and adopt such procedures so as to minimise the trauma to all involved, particularly the parents, whilst ensuring the child's interests are properly protected;
- (ii) seek to facilitate any request by the separate representative to gain independent expert advice; and
- (iii) consider the option of deferring the final order and maintaining an ongoing relationship with the child to ensure that any procedure which is ordered by the Court is definitely a last resort.

### Outcome

In his decision dated 30 November 1995 Justice Warnick agreed to the parents' application that Katie be sterilised, however, he was generally supportive of the Commission's submissions. In relation to the first submission he said that without attempting to formulate any principle of broad operation, he considered that the nature of the issues and the positions of the parties and witnesses in these matters means that few challenges to credibility are called for and a subdued style of questioning seems more appropriate than a more aggressive style.

In relation to the second submission he held that the discretion to grant an adjournment to assist the separate representative to obtain independent legal advice is unfettered. However, he agreed that the considerations grounding the proposition which were highlighted in the submission are matters which should be taken into account in the exercise of the discretion.

As to the third issue, namely that the Court should consider the option of maintaining a monitoring role, Warnick J accepted that such a course is an available option. However, he added that this does not mean that 'every stone lying on the plain of inquiry must be upturned..., even if the indications are that there are some risks in the manoeuvre.'

Warnick J stated that he hoped his comments in relation to the submissions would be of assistance 'in charting the waters of this recently developed jurisdiction.'

## **Albert Langer v Australian Electoral Commission - Freedom of political speech**

### Description of the case

On 28 February and 7 March 1996, the Commission was granted leave by the Full Federal Court to intervene, as *amicus curiae* in Albert Langer's appeal to the Full Federal Court against the orders of Justice Beach of the Victorian Supreme Court.

The case concerned voting methods for House of Representatives elections. Albert Langer was advocating a form of optional preferential voting method. During the course of the election campaign for the election held on 2 March 1996, he was distributing 'How to Vote Neither' leaflets explaining how to adopt an optional preferential voting method. The Australian Electoral Commission (AEC) considered Albert Langer's campaign was intentionally encouraging voters to vote in a manner which it considered contrary to the *Commonwealth Electoral Act 1918* (Cth) (the Act). The AEC argued that section 240 of the Act was designed

to promote compulsory preferential voting. It moved to obtain an injunction to prevent Langer distributing the 'How to Vote Neither' leaflets.

On 7 February 1996, Justice Beach made orders which prevented Albert Langer distributing, publishing or printing any material which would encourage people to vote in a manner which did not accord with section 240 of the Act. After making those orders, Albert Langer distributed the leaflets at a press conference on the door step of the court. His actions were found to be in contempt of Justice Beach's orders and on 14 February 1996, Albert Langer was imprisoned for ten weeks for contempt.

On appeal, Mr Langer argued that Justice Beach misconstrued section 240 of the Act, by accepting the AEC's submissions and that if his interpretation of section 240 was correct, he argued that there was no basis for the injunction. Accordingly there should be no consequences for contempt and he should be released from gaol. Mr Langer was unrepresented at the appeal and appeared in person. The appeal was heard before Chief Justice Black and Justices Beaumont and Lockhart, in Melbourne.

### The human rights issue and the Commission's arguments

The human rights issue raised in this case concerned Articles 19 (freedom of expression) and 25 (participation in public affairs and voting) of the ICCPR. The Commission supported Mr Langer's interpretation of section 240 of the Act and argued that sentence of ten weeks for contempt was manifestly excessive.

### Outcome

The appeal was heard over two days and two separate judgments delivered. On the issue of the construction of section 240 of the Act, the Court delivered judgment on 1 March 1996.

Mr Langer was unsuccessful. His appeal was dismissed with costs. On 7 March 1996, the Court found it had jurisdiction to consider the matter of appeal from Justice Beach. The Court again dismissed the appeal but varied the penalty and ordered that Albert Langer be released immediately. He was released on 7 March 1996 after serving three weeks of his ten week sentence.

## **Rodney Croome and Nicholas Toonen v The State of Tasmania - Constitutional matter: Alleged inconsistency between State and Federal legislation**

### Description of the case

These proceedings were instituted in the High Court in November 1995 by two Tasmanian men, Rodney Croome and Nicholas Toonen. Their case essentially seeks to establish that certain provisions of the Tasmanian Criminal Code (which make criminal certain types of sexual conduct) are inconsistent with recent Commonwealth legislation guaranteeing privacy for sexual conduct between adults in private (the *Human Rights (Sexual Conduct) Act 1994* (Cth)) and therefore, by reason of section 109 of the Constitution, the High Court should declare the relevant Criminal Code provisions to be invalid and inoperative to the extent of any inconsistency.

Several preliminary points have been raised in the case at the application of the Tasmanian Government which include challenges to the plaintiffs' right to bring the proceedings; these are on the bases that (a) the plaintiffs have no standing to do so, (b) the issue is not justiciable, or capable of determination by the High Court under the Constitution and (c) the proceedings amount to an abuse of process.

### Human rights matters involved in the Court proceedings

'Human rights' are defined in the HREOCA section 3 to mean the rights recognised in the ICCPR and in certain Declarations adopted by the United Nations General Assembly or in other international instruments declared by the Attorney-General to be relevant. Australia acceded to the First Optional Protocol to the ICCPR on 25 September 1991 and is internationally accountable for violations of the ICCPR, including by Federal, State and Territory governments.

On 25 December 1991, Mr Toonen, the second plaintiff in this case, submitted a complaint (called a 'communication') to the United Nations Human Rights Committee in accordance with the Rules and Procedures in the ICCPR and the First Optional Protocol to the ICCPR. Mr Toonen complained that, because of sections 122(a) and (c) and 123 of the Tasmanian Criminal Code, he was a victim of violations by Australia of his rights under certain ICCPR Articles.

On 31 March 1994 the United Nations Human Rights Committee published its views on the case. In summary these views were: that Australia is in breach of Article 17 of the ICCPR; that Australia is in breach of Article 2.1 of the ICCPR; and that an effective remedy would be the repeal of sections 122(a) and (c) and 123 of the Tasmanian Criminal Code.

In July 1994, on behalf of the Commission, the Human Rights Commissioner recommended in a Report to the Attorney-General that the provisions should be immediately repealed by the Tasmanian Government and that if this did not occur then the relevant provisions of the Tasmanian legislation should be overridden by appropriate Federal legislation.

The *Human Rights (Sexual Conduct) Act 1994* (Cth) was assented to and commenced operation on 19 December 1994. It states that it is an Act 'to implement Australia's international obligations under Article 17 of the ICCPR'.

The human rights that are involved in this case include the right to non-discrimination and an effective remedy if that right is violated, the right to privacy and the right to equality (ICCPR Articles 2, 17 and 26 respectively).

Preliminary hearing before Brennan C.J.

In February 1996 the Commission resolved to apply for leave to intervene in this matter by way of written submissions on the preliminary question of standing (to say that the plaintiffs do have standing). The High Court subsequently advised that the application would have to be made orally to the Court.

After hearing the submissions of the parties, the Chief Justice granted leave to the Commission to intervene. He referred the preliminary matters for hearing before the Full Court.

## External litigation

### **HREOC and Human Rights Commissioner v Secretary, Department of Immigration and Multicultural Affairs**

By letter dated 18 March 1996, a complaint was lodged with the Commission under section 20(1) (b) of the HREOC by the Refugee Advice and Casework Service (Vic) Inc (RACS) in relation to a group of 48 Chinese from a boat code named 'Teal'. RACS alleged that they were being held in isolation and incommunicado at the Immigration Detention Centre at Port Hedland, Western Australia and that the Department of Immigration and Multicultural Affairs (DIMA) had denied them access to legal advisers on the basis that they had not requested legal advice. RACS was concerned that the detainees were at risk of imminent removal from Australia without having had access to any independent legal advice or assistance in relation to their immigration rights.

The complaint was accepted by the Commission which thereupon attempted to deliver two letters in sealed envelopes to the detainees pursuant to section 20(6) (b) of the HREOCA. The first letter, written in English, explained that the Commission was investigating the complaint and asked the detainees to contact the Commission to assist it with its investigation. The second letter was a Chinese translation of the first. DIMA refused to deliver the envelopes, claiming that delivery of such material was only required under section 20(6) (b) where the complaint to the Commission had originated from the persons in detention.

The human rights issue raised by the complaint was whether the DIMAs incommunicado detention was inconsistent with or contrary to a human right as defined by section 3(1) of the HREOCA, in so far as such detention may be in breach of Articles 9.1, 9.3, 10, 13, 14.3(d) and 17.1 of the ICCPR.

The Human Rights Commissioner took the view that DIMAs refusal to deliver the letters hindered his inquiry under section 11(1) (0) of the HREOCA, and application was made to the Federal Court of Australia seeking an order that the letters be delivered to the detainees. In the proceedings it was submitted that the grammatical structure of section 20(6) (b) of the HREOCA made it clear that the detainees were entitled to have the envelopes delivered to them regardless of the fact that they had not initiated the complaint by making a request to their custodians.

The Commission's submissions were accepted by the Federal Court and on 7 June 1996 Lindgren J ordered that DIMA deliver the sealed envelopes to the detainees and pay the Commission's costs of the proceedings.

Lindgren J also issued a stay of the order for the delivery of the sealed envelopes for 14 days in order to give DIMA time to decide whether to appeal his decision.



DIMA subsequently appealed to the Full Federal Court. However, the matter was settled prior to the hearing of the appeal. By consent, the orders of Lindgren J were set aside and DIMA was ordered to deliver to the detainees the sealed envelopes containing the letters. It was also ordered, by consent, that DIMA pay the Commission's costs of the proceedings before Lindgren J and the costs of the appeal.

### **Commonwealth of Australia v HREOC and Dopking.**

This decision of the Full Court of the Federal Court is one of a series that have been made by the Court in connection with a complaint of marital status discrimination lodged with the Commission by Mr Dopking. He has alleged that the refusal of the Australian Defence Force (the ADF) to pay him a relocation allowance amounted to discrimination on the basis of his 'single' marital status, contrary to the SDA. This particular Federal Court decision resulted from a challenge by the ADF to the Commission's determination. The Commission had decided that the relocation allowance, operated in a way which was indirectly discriminatory.

The Court disagreed with the Commission concerning the question of reasonableness. The Commission was unable to accept that the reasons advanced by the ADF to justify the discriminatory effect were reasonable in the circumstances. The ADF reasons focused on resources and on its assessment of the respective accommodation needs of members with dependants and members without dependants. The Court, by contrast, accepted the justification advanced by the ADF and held that the Commission had failed to properly assess the reasonableness issue.

#### **Further proceedings**

The Commission will seek special leave from the High Court to challenge the way in which the Federal Court dealt with the issue of reasonableness. Reasonableness continues to be a fundamental element of the definition of indirect discrimination, not only in the context of the SDA, but also in other discrimination legislation administered by the Commission. The Parliament recently acknowledged this by providing a degree of guidance in the SDA itself concerning the method of assessing reasonableness.

The application for special leave will be heard together with an adjourned earlier application for special leave regarding the proper interpretation and scope of the direct discrimination formulation in the SDA. The hearing date is likely to be in September 1996.

### **Lydia Stephenson as Executrix of the Estate of the Late Alyschia Dibble v HREOC and St Vincent's Hospital Limited: Federal Court of Australia, judgment of Beazley J dated 15 December 1995 and judgment of the Full Court dated 26 July 1996**

#### **Description of the case**

This case relates to a complaint of sex discrimination brought by a woman who was HIV positive. This woman had been refused access to an experimental drug trial being run by a hospital because she was capable of becoming pregnant. The complainant died, however, before the complaint was referred for public hearing by the Commission. The complaint was referred for hearing by the Commission and the President, after hearing submissions on behalf of the Estate of the deceased complainant, held that the complaint abated on the death of a complainant and that therefore it must be terminated.

### Appeal to the Federal Court

The Estate applied under the Administrative Decisions (Judicial Review) Act to the Federal Court for a review of the President's decision. Justice Beazley held that the President had been correct in holding that a complaint abates on the death of a complainant and does not devolve upon the personal legal representative of the deceased. Her Honour found that the Commission had the power to terminate the inquiry into the complaint because there was a reason of substance which prevented the continuation of the complaint, namely the death of the complainant.

### Appeal to the Full Federal Court

The Estate then lodged an appeal against her Honour Justice Beazley's decision and the Full Federal Court (consisting of Jenkinson, Wilcox and Einfeld JJ) decided that the better view was that a complaint survives the death of a party. The Full Federal Court allowed the appeal and declared that the complaint made to the Commission by Ms Dibble did not lapse by reason of her death.

This case was important because it had to decide whether the Commission must continue to investigate a complaint where the complainant had died. Parliament had not considered this possibility and the Full Court of the Federal Court thought that the SDA should be interpreted in a broad way so as to allow the consideration of alleged unlawful acts even where the complainant had died since lodging the complaint about the alleged unlawful act.

## Public Affairs

HREOC'S new Public Affairs Unit was established at the beginning of 1996, replacing the former Education and Promotion, Marketing and Media Liaison sections. The central role of the Unit is the development of effective strategies for informing the Australian community about the functions and policies of the Commission in a broad range of areas. To achieve this, the Unit has two main focuses: media and publications.

Australia is a media dependent society. In turn, the media in Australia plays a crucial role in disseminating information and in shaping public opinion. An effective use of and relationship with this medium of information exchange is therefore fundamental in the promotion and recognition of human rights principles and in contributing to public discussion and debate on issues of human rights. Longer term education and information programs are achieved through the publications and marketing activities of the Unit.

An important activity of the Unit is the organisation of the annual Human Rights Medal and Awards which are reported on separately in the section. Within the past year the Commission has launched its home page on the Internet at [www.hreoc.gov.au.hreoc/](http://www.hreoc.gov.au.hreoc/). The development of media, publications and Internet policies for the Commission; strategic planning for public information activities and current issues; the preparation of materials for publication in the media and elsewhere, and the conduct of training programs for staff have been the principal activities of the Unit this year.

In relation to the former Marketing and Training function during the last year, consultancy and training services were provided for a fee to 20 private sector organisations: 1000 participants ranging from board of directors to junior management staff attended training sessions. The majority of the training was based on the 'Eliminating Sexual Harassment from The Workplace' training package. Other promotional activities were attendance at educational and industry forums to provide information about this package and other training packages produced by the Commission.

A business breakfast for senior management in the hospitality industry to promote a new training package for the hospitality industry was conducted in August 1995,

The Public Affairs Unit is also responsible for the distribution of publications on behalf of all Commissioners. Copies of 115 000 publications covering all portfolio areas of the Commission were distributed during 1995-96. This is in addition to the bulk mailouts and publications sent out independently by each Commissioner.

The Publications officer is also responsible for responding to public inquiries regarding the Commission's publications. During the 1995-96 period the Publications officer received an monthly average of 300 telephone inquiries and 60 written requests for information.

## 1995 Human Rights Medal and Awards

Since 1987 the Commission has presented the Human Rights Medal to a person judged to have made an outstanding contribution to human dignity and equality through the advancement of the rights all people to live in a fair and just Australian society in which individuals may reach their maximum potential.

Justice Elizabeth Evatt was presented with the Medal at a ceremony in Melbourne at the Victorian Arts Centre on Human Rights Day, Sunday 10 December 1995. The medal honoured her long and lauded track record in the pursuit of human rights including the protection of children and the ideals and practice of equal opportunity and action to overcome discrimination. A total of 16 Human Rights Awards covering Media, Literature and Other Writing, Film and Corporate were also presented. Two hundred and forty people attended the ceremony, which obtained wide coverage in electronic and print media of the winning entries.

A full list of the winners is as follows.

### SonnwritIng

The Buckled Bicycle  
John Williamson

### Poetry

The Nailing of the Right Hand  
Maurice Strandgard  
Penguin Books Australia

### Fiction

Silver Sister  
Lillian Ng  
Mandarin Imprint

### Non Fiction

Holding The Man  
Timothy Conigrave  
McPhee Gribble  
Obstacle Race: Aborigines In Sport  
Colin Tatz  
University of NSW Press

### TV News/Current Affairs

Deadly Force  
ABC TV - 7.30 Report  
Frank McGuire, Producer

### Major Metropolitan Newspaper6

Anguished Mother Begs Media  
The Age  
Bronwen Kiely

### Regional Newspapers

Collection of Articles  
The Armidale Express  
Christian Knight, Editor

### Magazines

Boy Trouble  
HQ Magazine  
Jane Wheatley, Journalist

### Children's Literature.

Friend of My Heart  
Judith Clarke  
University of Queensland Press

### TV Drama

Fit to Plead - Janus  
ABC TV  
Susan Masters, Executive Producer  
Alison Nisselle, Producer

### Radio Documentary

Troppo  
ABC Radio  
Nick Franklin, Producer

### Feature Film

Angel Baby  
Timothy White & Jonathon Shteinman, Producers  
Michael Rymer, Writer/Director

### Corporate Award

Whole School Anti-Racism Project  
Multicultural Education Unit  
NSW Department of School Education

### Drama

Sanctuary  
David Williamson

### Film Desires

Eva Orner, Producer  
Sarah Stephens, Director

## HREOC Library

The Library provides a comprehensive information and research service for Commissioners and staff utilising both internal and external resources. One of its major areas of responsibility and activity is that of collection development. The process of selection and review of its resources is an ongoing one which ensures that the Library's collection is both appropriate and relevant to the Commission's information needs. Another important area of responsibility is resource circulation management, the purpose of which is to facilitate client access to the collection. The principle subject areas of the collection are human rights and discrimination with an emphasis on relevant legal material.

The Library undertakes on-line and CD-Rom searching to support the research of the Commission. This area of service has experienced a significant and rapid expansion during 1995-96, with an increase of approximately 105 percent in the number of searches performed this financial year. Another area of service of high client demand is that of interlibrary loans. The number of interlibrary loans acquired for Commission staff increased by approximately one third in 1995-96 in comparison to those in 1994-95.

To assist clients to utilise its resources more effectively, the Library undertakes orientation for all new members of staff and conducts comprehensive training sessions in information retrieval and research methods, as well as providing current awareness services. It also develops and reviews appropriate policies and produces guides to Library resources and services which it makes available in both hardcopy and electronic format via the Commission's network.

The Library remains responsive to the needs of its clients through a policy of ongoing liaison with staff. One of the principal means of maintaining this liaison is via the more formal mechanism of the Library Committee which is chaired by Commissioner Hastings. The Committee provides the Library with user feedback concerning current services and policies and offers advice on proposed developments or changes from the client perspective.

During the year, the Library accommodated four TAFE students who were undertaking the Library Practice Associate Diploma on both short and long term work experience placements.

## Get it Right! Human Rights!

In 1995-96 the Commission funded the Victorian Council for Civil Liberties to provide support to educational and other communities in the use of material produced at an earlier stage by the Victorian Council for Civil Liberties and HREOC.

The Council provided information and direct support to legal, academic and community organisations, neighbourhood houses, and schools on areas of the Commission's activity and on general human rights and anti-discrimination law and practice in Australia, and internationally.

A state wide essay competition in Victoria was used to promote the availability of this service to school communities. The competition was co-organised with Amnesty International, and sponsored by The Body Shop. Schools throughout Victoria received information on all three organisations, including The Body Shop's corporate commitment to human rights, the Acts administered by HREOC and copy of the Universal Declaration of Human Rights.

Community and institutional support for the project, and the essay competition has been overwhelming.

The final component of this round of Get it Right! Human Rights! will be a feasibility study designed to ascertain the need for and interest in courses on human rights for the general public and community organisations.

## National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families

In 1991, the Royal Commission into Aboriginal Deaths in Custody reported 'a regime that took young Aboriginal children, sought to cut them off suddenly from all contact with their families and communities, instil in them a repugnance of all things Aboriginal and prepare them for life as the lowest level in a prejudiced white society is still a living legacy among many Aboriginal people today.'

This 'living legacy' is one of the main issues currently being examined by the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families. The Inquiry was launched in August 1995. The Inquiry's Terms of Reference are at Appendix two. In summary, they include:

- tracing the impact of past laws, practices and policies which resulted in the forced removal of children by compulsion, duress or undue influence;
- an examination of the adequacy of, or need for changes in current laws and services available to people affected by separation (including access to records, counselling and family reunion services);

- examination of principles relevant to determining the justification for compensation; and
- examination of current laws, practices and policies affecting the care and placement of Indigenous children, taking into account the principle of self-determination.

The Inquiry has been headed by Sir Ron Wilson, President of HREOC and Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner. They have been assisted in their task by:

Ms Annette Peardon, Tasmania  
 Ms Marjorie Thorpe, Victoria  
 Dr Mary Anne Bin Sallik, South Australia  
 Ms Sadie Canning, Western Australia and  
 Ms Jackie Huggins, Queensland

Hearings have been conducted in every capital city in Australia and in several key areas in regional and remote parts of the country. The Inquiry has consulted widely among individuals, families, Churches and Governments, missionaries, foster parents, welfare workers, doctors and health professionals, academics, police and independent charities, in a mixture of public and private proceedings.

The consultation process has been intense, challenging and deeply emotional. The Inquiry's Commissioners and staff have heard hundreds of private stories of forced removal. It has received over a thousand more through the mail, or presented to us by Aboriginal representative organisations. Others have sent letters, tape recordings, video cassettes, photographs and personal mementos as part of their submissions. One organisation in the Northern Territory presented its submission in a Coolamon - a long, carved wood cradle, traditionally used for carrying babies.

Evidence presented to the Inquiry to date demonstrates that every Aboriginal family has been affected in some way, either by having children taken or by being forced to make drastic life decisions, to *avoid* having children taken. The Inquiry has heard of mothers who smeared black clay or ashes on fair skinned children, hid their children in trees, behind sand dunes, in hollow logs; of whole families who were constantly on the move, to keep one step ahead of 'the welfare'; of people who said they were Italian, Maori or Greek, concealing their true identity to escape the strict control of the Protector.

The Inquiry has heard evidence of the cruel and abusive conditions many Aboriginal children conditions children were forced to endure:

- 'We slept in dormitories with about 20 girls in each of them. If we wet the bed you were flogged and your nose rubbed in the wet sheet. The food was bad. We had maggots in the meat. We never had any shoes. We used to jump in cow dung to keep our feet warm. It was very cold at Roelands Mission during the winter.'
- In many cases, children suffered sexual and physical abuse. One man whose childhood was spent at the Kinchela Boys' Home in New South Wales said 'if we answered back we were 'sent up the line'. Now, I don't know if you can imagine 79 boys punching the hell out of you, just knuckling you. Even your brother, your cousin. They had to. If they didn't do it, they were sent up the line. When the boys had broken ribs or noses ... they'd have to pick you up and carry you through right to the last bloke. Now that didn't happen once. That happened every day.'

Evidence from State Governments includes the following.

The New South Wales Government estimate that at least *eight thousand* Aboriginal children were removed from their families between 1885 and 1969.

Comments that in Victoria, Aboriginal children are five times more likely to be on a protection order and 12 times more likely to be in placement and support services than any other children in the state.

A statement from the South Australian Government that: 'Aboriginal people are still living every day with the tragic impact of past policies and practices, and specifically the separation of children. Breakdown in family structures and relationships; loss of cultural, spiritual and community roots and personal, family and cultural identity; alienation; and ongoing grief and anger are clear consequences. The over-representation of Aboriginal people in the welfare system is another outcome.'

Submissions have also provided dramatic evidence of the effects of this massive dislocation. For example:

- 43 of the 99 deaths investigated by the Royal Commission into Aboriginal Deaths in Custody were of people who were separated from their families as children. Many of them had experienced a lifetime of institutionalisation and severe psychological distress related to their removal.
- Indigenous children are also over-represented in the juvenile justice system. Nationally, Indigenous children are 18.6 times more likely to be held in detention than any other Australian children. In Western Australia, Indigenous children are 32.4 times more likely to end up in detention.
- Dr Jane McKendrick of Melbourne University's Department of Psychiatry told the Inquiry in Victoria: 'Ongoing losses, poverty, family disruption, racism and physical ill health not only predispose (Aboriginal people) to increased rates of disorders but also to chronicity. Loss is an everyday experience for most Aboriginal people, who still mourn the loss of their land. Other losses which began with European settlement continue, including removal of Aboriginal children from their families, loss of health, loss of self-esteem and frequent deaths of relatives and friends at an early age. A high proportion of patients seen by Aboriginal health workers and doctors working for Aboriginal community medical services are significantly psychologically distressed'.
- Evidence that grief and loss, and the unresolved intergenerational trauma of forced removal are the underlying causes of other, widespread health problems in Aboriginal communities: family breakup, violence, alcoholism and substance abuse, high infant mortality and low birth rates, dramatically reduced life expectancy rates, parental incarceration and lack of parenting skills.

The Inquiry has also heard evidence about the historical role of the church in taking children. Some Church submissions have apologised for their role in taking children.

A Lutheran missionary, writing about establishing the Hope Valley mission in North Queensland in 1925, said: 'It is impossible for a white missionary to conform to the mode of life of the Aboriginals of Australia, travelling with them from place to place and trying to deliver to them the message of Christ. If the white missionary wishes to bring them under the influence of the word of God, the natives must settle at some definite place and keep permanently to a fixed abode.'





The Anglican Social Responsibilities Commission told the Inquiry 'if it wasn't for the willing and active cooperation of churches and Christian organisations, governments around Australia would not have been able to implement this policy as effectively as they did ... Churches, related organisations, religious orders and missionary societies were key players in this practice because they operated and controlled the missions and institutions that those Aboriginal children who were removed from their families were placed in'.

Australians have responded to this Inquiry with great sympathy and compassion. People are horrified to learn that in a country where the notion of a 'fair go' is deeply etched into the national psyche, such cruelties could ever have occurred. Laws sanctioning removal were in place for over 80 years. Aboriginal people were given the vote in 1967, but the Protection Acts remained in place until 1969. Some Aboriginal childrens' homes continued operating until the early 1980's. So it is clear this is not ancient history. It is a practice that occurred within the living memory of at least three generations of Aboriginal people: grandmother, mother, daughter. In many ways, their lives today are dramatically shaped by being removed as children. And the communities in which they live are dramatically shaped by the after-effects of their removal.

The very fact of Aboriginal peoples' continued survival in the face of such odds is a triumph of the spirit that all Australians can be proud of. The Inquiry is providing the Australian people and our elected Governments with the opportunity to work towards healing the scars of this most shameful era of history.

The Inquiry's report is expected to be released early in 1997.

# Human Rights Commissioner



Chris Sidoti, Human Rights Commissioner

Chris Sidoti commenced his five year appointment as Human Rights Commissioner on 14 August 1995.

Mr Sidoti's career has included being National Secretary of the Catholic Commission for Justice and Peace, Deputy President of the Australian Council of Social Service, President of the Youth Affairs Council of Australia, head of the Director General's Unit within the NSW Department of Youth and Community Services, foundation Secretary of the Human Rights and Equal Opportunity Commission and most recently a Commissioner at the Australian Law Reform Commission.

Mr Sidoti is presently a member of the Advisory Council of the Australian Association of Young People in Care, the National Executive of the National Association for the Prevention of Child Abuse

and Neglect, the Human Rights Council of Australia and the Advisory Council of the Asia-Australia Institute.

## Statement from the Human Rights Commissioner

No function of government is more important than protecting and promoting human rights. The savagery of this century demonstrates that. The well-being of people in the civil, cultural, economic, political and social dimensions of life should be at the centre of governmental responsibility and community concern.

Of course for most (but not all) Australians our country is comparatively socially just, democratic and tolerant. Comparatively good but still with some distance to travel before we can feel satisfied. Human rights challenge us to move beyond our present achievements

For many of our fellow Australians and others who share our country the reality of life is different from the well-being we all desire. For many poverty, hardship, discrimination and injustice is a day to day experience. This is the challenge that human rights present to us all. It is the challenge to become more human, to insist on living in a

community that is inclusive, where people matter, where justice and compassion and caring are valued highly. Human rights challenge us to transcend all divisions, whether economic, racial, political, religious or social. The alternative may be a divided society where racial, religious and political intolerance is the norm rather than the exception.

The vision of the vast majority of Australians is of a society based on fairness, justice and equality not of one based on unfairness, injustice and inequality. Achieving this vision requires nothing less than the universal enjoyment of human rights.

Australia has taken many steps towards this. Little more than 20 years ago, there was no effective legislation in Australia, federal or state, directed to ensuring equal opportunity and human rights. We now have comprehensive anti-discrimination laws federally and in every mainland State and Territory. The existence of this equal opportunity network is an influential statement about the commitment of parliaments and governments at all levels to advance the dignity and genuine equality of our many communities.

But it is not enough simply to have laws in place.

We need as well an Australian culture that underpins human rights and equal opportunity initiatives. Developing this culture is not a task solely for governments and the Human Rights and Equal Opportunity Commission. It is a task in which the media, community organisations, all sectors of industry and commerce and individual Australians must be involved. It requires cooperation in a common cause.

The needs are not only local but also international. Here the effectiveness of cooperation between government and Commission is most evident. For many years the Commission has assisted the establishment and development of national human rights commissions in other countries, especially in the Asia Pacific region. This work has been particularly important in this region because there have been no regional human rights arrangements here and few effective national mechanisms. The work has been limited in scope but the results have exceeded our expectations. There are now independent national commissions in five regional nations and good prospects for the establishment of new commissions in half a dozen more. With the strong support of the federal Attorney-General, the Hon Daryl Williams, and the Minister for Foreign Affairs, the Hon Alexander Downer, including funding assistance through the Australian Agency for International Development, our Commission joined the New Zealand Commission in hosting the first Asia Pacific regional meeting of national human rights commissions. At the meeting the commissions agreed to form the Asia Pacific Regional Forum of National Human Rights Commissions, the first official human rights arrangements in this part of the world. Mr Downer has also provided funding to enable our Commission to host the secretariat of the Forum for the first three years. These initiatives have proved to be constructive, cooperative ways for the Commission and the Australian Government to promote human rights. The Australian Government's support has been warmly welcomed by our Commission and by other commissions and governments in the region. I will report on the activities of the Asia Pacific Human Rights Forum in more detail in the Commission's next Annual Report.

The Human Rights Commissioner has a particular role within this national effort. I have responsibilities within the broad areas of human rights for civil and political rights, the rights of children, freedom of religion and belief and discrimination in employment and occupation. When I was appointed to this position in August 1995 I inherited from my predecessor, Brian Burdekin AO, a record of sustained achievement in these areas.

In a few months the Commission will be celebrating its tenth anniversary. This will be an occasion to review our successes and our failures and to renew our commitment to better protection and promotion of human rights. During my term as Human Rights Commissioner I will seek to build upon the achievements of my predecessors and colleagues in the Commission. I am grateful for the opportunity to contribute to this important national effort in this way.

## **Functions under the Human Rights and Equal Opportunity Commission Act**

The major activities of the Human Rights Commissioner during the 1995-96 reporting period are outlined below.

### **Public Inquiries**

Since its establishment in 1986, one of the Commission's most effective strategies has been undertaking inquiries into patterns of human rights violations. Complaint handling seeks to provide redress for individuals who allege violations of their human rights but its ability to prevent violations or address systemic patterns of abuse is limited. It is especially limited in the Human Rights Commissioner's areas of responsibility where the legislation does not provide a judicially enforceable remedy to breaches of human rights or acts of discrimination in employment and occupation. Broader inquiries enable a comprehensive investigation into and response to more general experiences of human rights violations. The Human Rights Commissioner has expressed his commitment to continuing inquiries into areas of serious human rights concern for these reasons.

## **Reconvened Mental Illness Inquiry**

Following his appointment in August 1995 the Human Rights Commissioner's first priority was to complete the last stage of the National Inquiry into Human Rights and Mental Illness. In December 1994 the Mental Illness Inquiry chaired by the former Human Rights Commissioner, Mr Brian Burdekin, with the assistance of Hearing Commissioners, Dame Margaret Guilfoyle DBE and Mr David Hall, reconvened for two days of public hearings in Victoria. In addition to the public hearings the Inquiry called for written submissions.

The reconvened hearings focused on the provision of services with particular attention to:

- the circumstances in which medication is provided in private hotels, hostels, boarding houses or other non-specialist facilities where individuals affected by mental illness reside;
- the adequacy of services for especially vulnerable or disadvantaged groups (including individuals who are homeless, those with dual or multiple disabilities, the elderly, the young and those from non-English speaking backgrounds);
- the participation of non-government agencies in policy formulation and program planning for people affected by mental illness; and
- whether there had been any intimidation, coercion, detriment or disadvantage suffered by any individuals or organisations advocating on behalf of the mentally ill or criticising the adequacy of existing programs or services.

The Report of the Reconvened Inquiry into the Human Rights of People with Mental Illness (Victoria) was tabled in Parliament on Thursday 14 December 1995 and publicly launched in Melbourne on Friday 15 December 1995.

The Reconvened Inquiry's findings and recommendations reflect developments since the hearings were conducted in December 1994. The Inquiry acknowledged that, in principle, the Victorian Government's reform agenda was potentially of great benefit to people with mental illness, as well as to their carers and the community. However, the evidence raised serious concerns about the manner in which the reforms were being implemented.

The Inquiry found that, despite higher per capita spending on mental health than in other states and territories, Victoria's mental health system was not meeting the demands placed on it. The situation was placing extreme stress on the community sector, service providers and those caring privately for people with mental illness. A primary concern linking the Inquiry's recommendations was the need to close the gap between the Victorian Government's stated policies and their implementation.

Of particular concern was that an antagonistic climate appeared to pervade Victoria's health system. Carers, consumers and their advocates told the Inquiry of their marginalisation by service providers and in particular by the Department of Health and Community Services. A climate of intimidation appeared to inhibit mental health workers and advocates from voicing their concerns about the mental health system. The evidence showed that complaints and constructive criticism tended not to be considered on their merits but interpreted as attacks on the reform agenda.

Some of the findings documented in the Report could be linked to upheaval in the early implementation stages of a radical reform program. But the degree to which the results appeared to be inconsistent with policy intentions raised concerns about the longer-term appropriateness and effectiveness of the Government's reforms.

While this completed the Inquiry itself the Human Rights Commissioner will continue to promote change in this area, in particular by monitoring closely the implementation of the Inquiry's recommendations and the progress of the National Strategy on Mental Illness.

## **Inquiry into Children and the Legal Process**

The Federal Attorney-General has requested the Australian Law Reform Commission and the HREOC to conduct an Inquiry into Children and the Legal Process. The Inquiry was foreshadowed by former Prime Minister Keating in his May 1995 Justice Statement. The Attorney-General signed the terms of reference in August 1995 and the Inquiry was launched in September.

This is the first joint Inquiry undertaken by this Commission. It is proving to be an effective way to address the issues covered by the terms of reference. For the Australian Law Reform Commission the Inquiry follows well on previous examinations of how the law affects indigenous peoples, people of non-English speaking background and women. For the HREOC it brings a human rights perspective into areas of the law where human rights are critical issues. For the community it will ensure a report that benefits from the expertise, the consultants and the staff of both organisations.

The Inquiry is looking closely at the CRC and identifying the issues and problems facing children and young people throughout Australia. Consideration is being given to how these issues may be better addressed by Australian law, and the legal system made more responsive and sensitive to the needs of children and young people.

A particular concern of the Inquiry is the inconsistency and lack of uniformity in the law relating to children. This has led to gaps and shifting of responsibility in the provision of services for children, both between and within levels of government.

The Inquiry will also seek to consolidate work done on issues relevant to children in earlier inquiries and by related bodies such as the Family Law Council, State Law Reform Commissions, parliamentary standing committees, and so on.

The Inquiry is a broad one, covering many areas relevant to children's interaction with the legal system. Issues which fall within the scope of the Inquiry include:

- legal representation of children in courts and tribunals;
- advocacy of the rights of children;
- the appropriate rules of evidence for children;
- children as witnesses and as victims of crime;
- young offenders and their dealings with the juvenile justice system;
- children in care and protection;
- children's involvement in Family Court matters; and
- children as consumers of government services.

Particular attention is being given to young people who are disadvantaged or who have special needs including Indigenous children, children with disabilities, children from economically or socially disadvantaged families, and gay and lesbian young people.

As part of the Inquiry, an Issues Paper titled 'Speaking for Ourselves: Children and the Legal Process' was released in March 1996. The paper canvassed a wide range of issues relevant to children and the legal system. A large number of submissions have been received in response to the Issues Paper.

The Inquiry has involved an extensive program of national consultation. During 1996 the inquiry team visited metropolitan and regional centres in every State and Territory in Australia, holding public hearings, seminars of legal practitioners and focus groups of young people. Special emphasis has been placed on seeking the views of young people. With this in mind, a reference group of young people has been appointed to advise the inquiry. In addition, a survey was circulated in a large number of schools and youth detention centres throughout Australia.

In the course of this Inquiry the Human Rights Commissioner has become increasingly concerned at decisions and proposals by many State and Territory Governments that will place children and young people at risk of human rights violations. The decisions and proposals will increase police powers in relation to young people and involve young people more deeply and in greater numbers in the criminal justice system. They will have a particularly serious effect on Indigenous young people. These kinds of approaches to juvenile offending have been shown repeatedly to be misguided and ineffective in increasing community safety.

Draft recommendations of the inquiry will be released early in 1997 and further submissions invited. The final report and recommendations will be forwarded to the Federal Attorney-General in June 1997.

## **Promotion of the observance and protection of human rights within Australia**

The Commission and Human Rights Commissioner have a mandate to promote adherence to the principles contained in the international human rights instruments to which Australia is a party and which are scheduled to or declared under the HREOCA.

In performance of the policy advising and intervention functions of the Commission under sections 11, 14, 20 and 29 of the HREOCA, the Human Rights Commissioner may advise government on matters relating to human rights, undertake research and promotional activities, examine enactments for consistency with human rights, intervene with leave in proceedings in courts and publish guidelines for the avoidance of acts or practices inconsistent with or contrary to human rights. In carrying out these functions, the Commissioner consults broadly with national governmental and non-governmental organisations.

### **Immigration and refugees**

The Commission has continued to express concern about certain issues within the immigration portfolio. Over the last year the particular focus of these concerns has been in the area of Australia's treatment of unauthorised arrivals (boat people).

#### **Detention of unauthorised arrivals**

As reported in the 1994-95 Annual Report, the Commission is concerned that the long term detention of unauthorised arrivals is a violation of Australia's human rights treaty obligations. The Commission has long advocated the development of non-custodial approaches which are more appropriate and proportionate and less restrictive of rights.

Due to these concerns and a continuing series of complaints about the conditions in detention centres, the Commission undertook a series of site inspections of various DIMA detention

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centres. From 15 to 21 January 1996 the President and Human Rights Commissioner undertook a site visit of the West Australian detention centres in Port Hedland, Curtin and Willie Creek. On 14 February 1996 and 13 March 1996 respectively the Commissioner inspected the detention centres at Villawood, New South Wales and Maribyrnong, Victoria. During these visits the Commissioner met with detainees, members of the community and immigration officials. The site inspections will be discussed in a report to Parliament under the HREOCA during 1996-97.

#### Communication with detainees

On 19 June 1996 the Commission was informed that the Federal Government was introducing the *Migration Legislation Amendment Bill (No.2) 1996* into Parliament that day. In essence the proposed legislation seeks to nullify the Federal Court decision. It would amend the Migration Act to ensure that HREOC or the Commonwealth Ombudsman cannot initiate communication with boat people held in incommunicado detention.

On 26 June the Human Rights Commissioner gave evidence to the Senate Legal and Constitutional Legislation Committee in its examination of the Bill. The Commissioner stated that he was concerned that the Bill was in breach of Australia's international human rights treaty obligations. He further stated that the Bill would affect such a fundamental change to the powers of the Commission that it far exceeded the perceived difficulties that the Government sought to address.

The Bill was debated in the Senate on 27 and 28 June 1996. The opposition indicated their support for the Bill. The minor parties opposed it. Due to extensive debate on the Bill the Senate rose for the Winter recess without the Bill securing passage through the Senate.

The Human Rights Commissioner has indicated to the Government that HREOC will continue to seek to pursue alternative solutions to this matter. The Commissioner considers it highly undesirable that the Bill be passed in its present form.

#### Human rights and administrative decision making

Australia has ratified many international treaties, including human rights treaties. Treaties entered into by Australia create duties in international law. However they are not directly enforceable in Australian courts unless and until they have been passed by Parliament as legislation. Decisions of the High Court have established that treaty provisions can be used to resolve an ambiguity in legislation and to provide guidance on the development of the common law (particularly where the treaty declares universal fundamental rights) and can be taken into account in the exercise of a discretion by government decision makers.

As reported in the 1994-95 Annual Report the decision of the High Court on 7 April 1995 in *Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh* extended the role of international treaties in domestic law - particularly the extent to which government decision makers must take into account Australia's international treaty obligations. In May 1995 the then Government sought to nullify the High Court decision by introducing the *Administrative Decisions (Effect of International Instruments) Bill 1995* (the Bill)

On 14 September, the Human Rights Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner presented submissions in opposition to the Bill to the Senate Legal and Constitutional Legislation Committee. The Commission considered the Bill unnecessary and a retreat from Australia's good record in supporting human rights treaties.

The Bill did not secure passage through the Parliament prior to the 1996 Federal election. It has not been reintroduced since then.



## **Human rights and the justice system**

### **Detention centres**

The Human Rights Commissioner commenced a program of visits to detention centres, to inspect facilities and speak to staff and detainees. During 1995-96 he visited immigration detention centres at Port Hedland, Curtin and Willie Creek in Western Australia, Villawood in New South Wales and Maribyrnong in Victoria. He also visited police lock ups at Rockhampton in Queensland, South Hedland and Derby in Western Australia. He will extend his visits to youth detention centres in all States and Territories and to adult prisons during 1996-97.

The Queensland Police Service (QPS) sought comments from the Commission in relation to a proposal to build a new underground watchhouse at Rockhampton. Following concerns about the underground character of the proposed facility and the possible psychological consequences such an environment might have on detainees and police staff, the Commissioner recommended that the QPS revise the building plans and seek expert advice from an environmental psychologist. This recommendation was adopted. The expert report revised facility plans to ensure adequate natural light, fresh air, ventilation and access to the natural environment. The Commission also identified a range of consultative and other measures which would need to be observed in the development of the plans.

### **Pro-bono scheme in relation to mental illness**

The Commission, in association with the Law Council of Australia and the Australian Bar Association, continued to administer the national pro-bono scheme providing legal representation and advice to individuals affected by mental illness. The Commission sincerely thanks those lawyers who have freely given their time and expertise in support of the scheme. In 1996 the Law Societies took over the complete administration of the scheme.

## **Promotion of non-discrimination**

The functions of the Human Rights Commissioner and the Commission in the promotion of non-discrimination arise from Australia's obligations under the ICCPR and ILO 111.

National Advisory Committee on Discrimination in Employment and Occupation  
The Attorney-General established the National Advisory Committee on Discrimination in Employment and Occupation, to clarify the Commission's role in promoting equal opportunity in employment and to recommend action to be taken by Australia if the provisions of the ILO 111 are to be observed. Under the Article 2 of the ILO 111 Convention, Member States undertake to 'declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination in respect thereof'.

The Committee comprises representatives of the Commission, Commonwealth, State and Territory Governments, the Australian Council of Trade Unions, the Business Council of Australia, the Australian Chamber of Commerce and Industry and community groups representing Aboriginal and Torres Strait Islanders, women, people with disabilities, people from non-English speaking backgrounds and gays and lesbians.

The Commission acts as the secretariat to the Committee. During the reporting period, working groups of the Committee met to discuss and develop a national policy on discrimination in employment and occupation, a national action plan on promoting non-discrimination in employment and disability employment standards under the DDA.

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## **Age discrimination**

### **Compulsory retirement in the Australian Public Service**

The Commission participated in discussions with other major Commonwealth agencies concerning the abolition of compulsory retirement at age 65 in the Australian Public Service. The Commission strongly supported changes to remove the discriminatory effects of requirements that individuals retire from the work force at a specific age. These requirements operate to exclude from consideration the ability of an individual to satisfactorily perform the duties of employment. Upon the advice of the interdepartmental taskforce the Federal Government decided to progressively abolish compulsory retirement.

### **National age discrimination legislation**

The Commission has been involved in a variety of government processes concerning national age discrimination legislation since 1989, most recently a large inter-departmental Age Discrimination Taskforce chaired by the Attorney-General's Department.

During the 1996 election campaign both major parties announced their commitment to develop and implement strategies to eliminate age discrimination. The Commission hopes that this long overdue issue will finally be progressed.

### **Legal needs of older Australians**

The Commission, in conjunction with the Attorney-General's Department, held a conference on the Legal Needs of Older Australians on 8 December 1995. The then Attorney-General opened the conference. A wide cross-section of government and non-government organisations attended. Issues discussed included pensions and superannuation, tenancy, banking and credit, offering security on loans for family members, home equity conversion schemes, insurance, home based support for the aged, regulating aged care service provision, service standards and health care, the impact of retirement incomes policy on older women, special considerations for older people from non-English speaking backgrounds and indigenous communities and eliminating disadvantage facing frail older people. A report of the conference has been published.

In addition, the Commission provided a submission to the Australian Industrial Relations Commission's 'Junior Rates' hearing.

## **International activities**

The Commission's international activities have two objectives.

First, the Commission seeks to assist countries to improve their own performance in complying with international human rights standards by supporting national human rights institutions. It does this through working with governments wanting to establish and strengthen national institutions, through bilateral links with individual national human rights bodies, through regional cooperation and through participation in international workshops of national institutions and in their international coordinating committee.

Second, it seeks to assist in promoting the international human rights legal system. It does this through participation in major international human rights meetings and in negotiations for new, more effective international human rights instruments.

## **National institutions**

Over the last six years the United Nations has given increasing emphasis to establishing and strengthening national human rights institutions. This is seen as a practical way to translate international commitments into tangible, national level observance and protection of human rights.

The Australian Government has seen the promotion of national institutions as an important part of its human rights strategy in foreign affairs. Assisting other countries is seen as a positive step to broaden the dimensions of bilateral relationships on a cooperative basis.

Strengthening national institutions is part of a long term commitment to developing appropriate mechanisms in the Asia Pacific region for the protection of human rights, similar to those that have operated for up to fifty years in the other three regions, Europe, Africa and the Americas. The strategy is to build 'institution to institution' links first, then 'government to government' formal agreements and then subregional or even regional forums. This approach to building regional mechanisms in the Asia Pacific region was specifically endorsed in the Manila Declaration of the Third International Workshop on National Human Rights Institutions in April 1995 and the Fourth United Nations Asia Pacific Workshop on Regional Human Rights Arrangements in February 1996.

These steps to regional cooperation have now been formalised at the First Asia Pacific Workshop of National Human Rights Institutions held in Darwin from 8 to 10 July 1996 with the establishment of the Asia Pacific Human Rights Forum. This development will be reported in detail in the Commission's next Annual Report.

During the reporting period the Commission undertook the following activities.

### **South Africa**

In November 1995 the Commission met with representatives of the recently established South African Human Rights Commission. One of the major interests of the South African delegation was the establishment of institutional links between the South African and Australian Commissions. In addition to the delegation's formal activities, Dr Max Coleman, a member of the South African Commission, spent three days with staff of the Commission obtaining an overview of our operations.

### **Latvia**

In December 1995 the Commission continued to assist in the development of the Latvian Human Rights Commission. The Commission's work in Latvia resulted in the passage of a law to establish the Latvian Commission and a five year agreement for financial and technical assistance from the United Nations Development Program and the governments of Sweden, Finland and the Netherlands. A former secretary of our Commission and our current public affairs manager have undertaken significant developmental work with the Latvian institution under those arrangements.

### **Philippines**

From 11 to 14 December 1995 the Human Rights Commissioner attended an Asia Pacific regional seminar on human rights education in Manila. The seminar, which was organised by the Philippines Commission on Human Rights, brought together representatives from a number of governments and national institutions in the region. The seminar explored the possibility of collaborative work between countries in the region to promote the United Nations Decade of Human Rights Education.

### International Coordinating Committee of National Institutions

In April 1996, while attending the 52nd session of United Nations Commission on Human Rights, the Human Rights Commissioner also attended the meeting of the International Coordinating Committee of National Institutions. A major item for the Coordinating Committee was the election of the position of Chairman of the Committee. The Canadian Commission had held this position since its inception in 1993. The meeting elected the Indian Commission to the position of chair.

### New Zealand

In April 1996 as part of a staff exchange program the Commission hosted a senior member of staff of the New Zealand Human Rights Commission for a three month period. Activities undertaken during this period included research on religious discrimination, same sex partnership registration schemes and preparations for the First Asia Pacific Workshop of National Institutions.

### Second International Workshop on Ombudsman and Human Rights Institutions

From 21 to 23 May 1996, at the request of the United Nations Centre for Human Rights, the Human Rights Commissioner was an expert participant in the Second International Workshop on Ombudsman and Human Rights Institutions held in Chisinau, Moldova. The role of national institutions for the promotion and protection of human rights was seen as central to the Workshop and this focus was reflected in the outcomes of the workshop. The 'Latvian' model (based on HREOC) was seen as being particularly significant for the region.

### International visitors

During the reporting period the Commission met with government and non-government representatives concerned with the promotion and protection of human rights from China, Hong Kong, India, Indonesia, Japan, Nigeria, Pakistan, South Africa, Sri Lanka and Sweden.

## **Improving international human rights law**

**Fourth United Nations Asia Pacific Workshop on Regional Human Rights Arrangements**  
The Fourth United Nations Asia Pacific Workshop on Regional Human Rights Arrangements was held in Nepal from 26 to 28 February 1996. The workshop was attended by representatives of the governments of over 35 countries as well as a number of international experts, representatives from three National Human Rights Institutions (Australia, India and the Philippines), UN agencies and NGOs.

The previous three workshops and discussions on this issue at the United Nations Commission on Human Rights were largely unproductive. The Fourth Workshop differed in its approach by focusing on practical measures that could be undertaken on an incremental basis to develop regional arrangements. As a result, the final Declaration of the Workshop was supportive of regional human rights arrangements and it considered that initial arrangements could focus on supporting and reinforcing action at a national level on issues such as establishing and strengthening national institutions and the development of national action plans.

### 52nd session of the United Nations Commission on Human Rights

Since its establishment in 1986, the Commission has been represented at each ordinary session of the United Nations Commission on Human Rights, the pre-eminent international human rights forum.

From 2 April to 11 April 1996 the Human Rights Commissioner attended the 52nd session of the United Nations Commission. The Commissioner assisted the Australian delegation on a number of human rights issues. Of particular significance were resolutions on the role of national human rights institutions in United Nations forums and regional human rights arrangements in the Asia Pacific.

#### Optional protocols to the Convention on the Rights of the Child

The Commission has specific functions under section 11 of the HREOCA concerning the examination of international instruments such as Covenants and Declarations.

As reported in the 1994-95 Annual Report the Commission continues to assist in the preparation of two Optional Protocols to the CRC. One Protocol seeks to strengthen measures directed at the protection of children from prostitution, trafficking and other forms of abuse and sexual exploitation. The other seeks to limit the involvement of children in armed conflict.

Meetings of the United Nations Working Groups developing the Protocols were held in Geneva in January 1996. The Human Rights Commissioner provided comments to the Department of Foreign Affairs and Trade on Australia's position on the armed conflict Protocol and tabled a discussion paper to the Working Group developing the sexual exploitation Protocol. Resource constraints prevented the Commission being represented at the meetings.

## Complaint handling

The Human Rights Commissioner is concerned to ensure that complaint handling receives the attention it requires and deserves. Investigating, attempting to conciliate and, if necessary, reporting on complaints is one of the Commission's central functions. The Human Rights Commissioner is responsible for complaints to the Commission under the HREOCA.

Following his appointment the Human Rights Commissioner commenced a review of current complaints lodged under the HREOCA. There were many complaints that had been active for some years. The respondents were unwilling to resolve them through conciliation and the complainants were committed to pursuing them.

Under the HREOCA the Commission has no power to make determinations in these complaints and there is no mechanism for enforcement. It can only make a finding and recommendations and report to the Attorney-General who is required to table the report in Parliament. Because this process does not result in enforceable orders the Commission seeks through every possible means to achieve a negotiated settlement between the parties. However the inability to enforce hinders efforts to settle.

The Human Rights Commissioner does not consider prolonged handling of complaints to be in the interests of either respondents or complainants. When it becomes clear that there is no reasonable prospect of conciliation, the conciliation process should cease. If there is no substance to the complaint, it should be dismissed. If there is substance, that is, if there is an act or practice that is either discriminatory or a breach of human rights within the terms of the HREOCA, the inquiry process should be finalised and a report should be made to the Attorney-General and tabled in Parliament.

As a result of the review many longstanding complaints under the HREOCA are now moving to completion. The Human Rights Commissioner's first report, on four of compulsory retirement age, will be forwarded to the Attorney-General early in the 1996-97 year. He anticipates that it will be tabled in Parliament in October 1996.

The Human Right Commissioner has completed reports on four other complaints but he has been prevented by legal action in the Federal Court from presenting them to the Attorney-General. In each case the respondent is a Commonwealth department. The HREOCA does not provide for findings and recommendations to be enforceable in the courts but for them to be the subject of report to the Attorney-General and Parliament. The clear intention of the legislation is that unconciliated complaints with substance should be dealt with in the political arena, not in the judicial arena. Different views can be expressed, argued and resolved in Parliament rather than in the courts. The Human Rights Commissioner is concerned that public authorities should respond to these reports by commencing litigation, at significant cost to the taxpayer, to prevent tabling in Parliament.

During the year I was also forced into Federal Court litigation by the refusal of DIMA to pass on my correspondence to persons detained by them at Port Hedland. The facts of this case are set out more fully in the body of this report. The Federal Court held that under the HREOCA, DIMA was required to transmit the correspondence. Unfortunately the Government with the support of the Opposition sought to amend the Migration Act to remove the Human Rights Commissioner's power to initiate contact with persons held in incommunicado detention as unauthorised arrivals.

## Complaints lodged under the HREOCA: 1 July 1995 to 30 June 1996

**Table 7a: HREOCA grounds of complaint**

| Category         | Central*   | Qld*     | NT        | Tas      | ACT      | Total      |
|------------------|------------|----------|-----------|----------|----------|------------|
| ICCPR            | 78         | 2        | 13        |          | —        | 93         |
| ILOC 111         | 115        | 4        | 8         | 3        | 4        | 134        |
| DRC              | 2          | —        |           | —        | —        | 2          |
| DRDP             | 6          | —        |           | —        |          | 6          |
| DRMRP            | —          |          | —         |          |          | 0          |
| CRC              | 1          |          | 1         |          |          | 2          |
| DEIDBRB          |            |          | 1         |          | —        | 1          |
| Other            | 27         | —        |           |          | —        | 27         |
| <b>T o t a l</b> | <b>229</b> | <b>6</b> | <b>23</b> | <b>3</b> | <b>4</b> | <b>265</b> |

\*multiple grounds per complaint

**Table 7b: HREOCA area of complaint**

| Category                     | Central*   | Qld      | NT        | Tas      | ACT      | Total      |
|------------------------------|------------|----------|-----------|----------|----------|------------|
| Employment                   | 79         | 2        | 8         | 3        | 4        | 96         |
| Immigration                  | 14         |          | —         |          | —        | 14         |
| Access to goods and services | 8          | 1        |           |          | —        | 9          |
| Education                    | 3          | —        |           | —        |          | 3          |
| Civil rights in general      | 1          |          | 15        | —        |          | 16         |
| Other                        | 115        |          | —         |          |          | 115        |
| <b>Total</b>                 | <b>220</b> | <b>3</b> | <b>23</b> | <b>3</b> | <b>4</b> | <b>253</b> |

\*multiple areas per complaint

Table 7c: HREOCA type of complainant

| Type                  | Central | Qld | NT | Tas | ACT | Total |
|-----------------------|---------|-----|----|-----|-----|-------|
| Male                  | 149     | 3   | 13 | 3   | 3   | 171   |
| Female                | 58      |     | 8  |     | 1   | 67    |
| Group or organisation | 6       |     | 2  |     |     | 8     |
| Other                 | 5       |     | —  |     | —   | 5     |
| Total                 | 218     | 3   | 23 | 3   | 4   | 251   |

Table 7c1: HREOCA type of respondent

| Type                   | Central | Qld | NT | Tas | ACT | Total |
|------------------------|---------|-----|----|-----|-----|-------|
| Commonwealth authority | 82      | 2   | 3  | —   | 3   | 90    |
| State or Territory     | 49      | 1   | 12 | 2   | 1   | 65    |
| Other                  | 87      |     | 8  | 1   |     | 96    |
| Total                  | 218     | 3   | 23 | 3   | 4   | 251   |

## Case studies

The following case studies illustrate typical complaints lodged under the HREOCA with their outcomes.

### Conciliated complaints

#### Compulsory retirement

Nine people independently complained about a government agency which had informed them that they were not eligible for temporary employment because they were more than 65 years of age. All of the complainants had done the same job on previous occasions. The agency pointed to legal inconsistencies regarding equality of opportunity, safety at work and workers' compensation. With the appointment of the new Commissioner, the agency was again approached and availing of the relevant Minister's commitment to redress age discrimination, undertook to ensure that the skills of experienced people were not lost because they reached a certain age. The media were advised of this change of policy which also satisfied the majority of the complainants.

#### Discrimination in a factory based on sexual preference

A woman complained that she was harassed and isolated by co-workers and denied shifts after word spread that she was a lesbian. The respondent, while claiming that the reduction in the number of shifts was due to the seasonal nature of the work, agreed to pay \$1 000.

#### Discrimination based on criminal record

When advised of this particular complaint, the respondent confirmed the allegations, that is, that a taxi driver had been denied because of the existence of a criminal record. With the assistance of the Commission, the respondent reviewed its decision. Taking account of specialist opinion and character references from prominent community members, the respondent agreed to provide the licence to the complainant.

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## Education and promotion

The Commissioner has the functions of:

- promoting understanding and acceptance of, and observing provisions of, the Act; and
- undertaking research and educational programs to promote the provisions of the Act.

### **The human rights of rural and remote people**

On 10 May the Human Rights Commissioner released the first in a projected series of occasional papers. Occasional Paper 1 discussed the human rights of rural and remote people. The paper focused on the marked socio-economic disparities of people living in remote Australia and their inadequate access to essential services and facilities. In particular the paper examined issues such as employment, poverty health and access to services such as adequate water supplies.

### **Principal papers delivered by the Human Rights Commissioner**

13 September 1995, Melbourne: 'Rhetoric or reality: International human rights treaties and government decision making'. Victorian Council of Civil Liberties - The Teoh case and the Administrative Decisions Bill.

30 October 1995, Sydney: The Human Rights Commissioner appeared before the Joint Standing Committee on the National Capital and External Territories Inquiry into the Right to Protest.

7 November 1995, Hobart: 'International and cross-cultural issues: Their impact on young people and human rights'. Youth 95 Conference - International and cross-cultural issues.

7 December 1995, Sydney: 'Why do human rights abuses occur?'. United Nations Association - Human Rights Day Event.

8 December 1995, Sydney: 'Human rights of older Australians'. HREOC/Attorney-General's Department Seminar.

23 January 1996, Sydney: The Human Rights Commissioner appeared before the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. A range of issues were covered at the Committee hearing including national institutions, the draft Optional Protocols to the CRC on armed conflict and sexual exploitation, immigration and refugees, the High Court Teoh decision (and the associated review of Commonwealth decision making) and the need for a Bill of Rights.

25 February 1996, Melbourne: 'The international promotion and protection of human rights: The role of the Australian Human Rights and Equal Opportunity Commission'. Community Aid Abroad Conference - Taking Australia Into Asia.

26 March 1996, Darwin: 'Child Welfare - a global human rights issue'. International Forum for Child Welfare - Asia Pacific Regional Conference.



10 April 1996, Geneva:  
'Australia's human rights framework - further promotion and encouragement of human rights and fundamental freedoms'. 1996 United Nations Commission on Human Rights - 52nd Session.

29 April 1996, Sydney: The Commissioner presented evidence to the NSW Parliament Standing Committee on Social Issues Inquiry into Children's Advocacy.

2 May 1996, Sydney: 'Abuse of older people'.

8 May 1996, Bathurst: 'The human rights of rural Australians'. Auxiliary of St Catherine's Nursing Home.

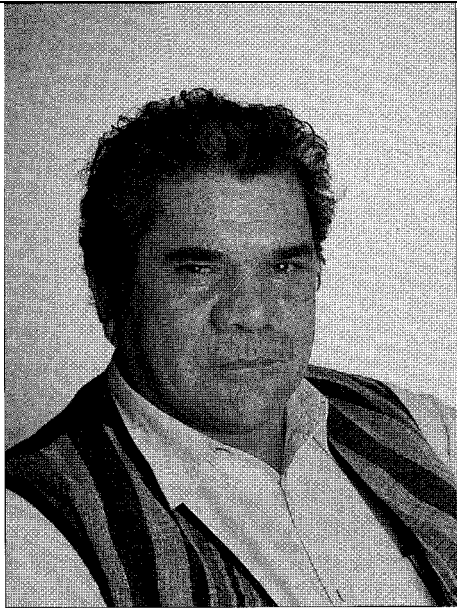
6 June 1996, Sydney: 'The practice of human rights'. Speakers' Forum - UNSW Law Society.

24 June 1996, Hobart: Launch of Refugee Week.

## **Consultations**

During the reporting period the Human Rights Commissioner undertook a national program of consultations with government and non-government representatives.

# Aboriginal and Torres Strait Islander Social Justice Commissioner



Mick Dodson, Aboriginal & Torres Strait Islander Social Justice Commissioner

Mick Dodson is Australia's first Aboriginal and Torres Strait Islander Social Justice Commissioner. Born in the Northern Territory town of Katherine, Mr Dodson was educated at Katherine, Darwin and in Victoria. Since graduating from Law at Monash University, Mr Dodson has worked to pursue social justice for Indigenous Peoples, initially as a barrister and solicitor at the Victorian Aboriginal Legal Service and as a barrister at the Victorian Bar. Subsequently he held positions as legal counsel to the Royal Commission Into Aboriginal Deaths In Custody and as senior legal officer at the Northern Aboriginal Land Council (NLC) in Darwin. Immediately preceding his appointment to the Human Rights and Equal Opportunity Commission he was director of the NLC.

The Commissioner's functions and responsibilities are set out in the *Human Rights and Equal Opportunity Commission Act 1986* and the *Native Title Act 1993*. In addition, the Commissioner is responsible, on behalf of the Commission, for the implementation of two human rights education programs developed by the Commonwealth in response to recommendations 211 and 212 of the Royal Commission into Aboriginal Deaths in Custody.

## Statement from the Aboriginal and Torres Strait Islander Social Justice Commissioner

When, a little over three years ago, I took up the office as first Aboriginal and Torres Strait Islander Social Justice Commissioner, I came to it with commitment and optimism, but no illusions. The dire situation of Aboriginal and Torres Strait Islander peoples, the legacy of over 200 years of dispossession, marginalisation and discrimination was not going to shift overnight. I would not, however, have predicted

what I find today: according to a number of major social indicators, the situation of Indigenous Australians has not merely remained static - it has in fact deteriorated. Health statistics in a number of key areas have deteriorated. A higher number of Aboriginal adults and juveniles are in custody than at any other time, and they comprise a higher proportion of the incarcerated population. In 1995 more Aboriginal

people died in custody than in any other year on record - including the years of the Royal Commission Into Aboriginal Deaths In Custody. The fate of the High Court's decision has been dragged into a political and bureaucratic mire obstructing the delivery of justice that it promised.

Certainly, the High Court's decision provoked heated national debate, and much hostility towards the prospect of any recognition of our rights that might threaten dominant interests. But it also brought out a great deal of good will from Australians now ready to take up their national responsibility to restore justice and correct past wrongs. Australians, on the whole, seemed to be saying that this was a matter above politics, and that to move forward as a nation, this injustice needed to be remedied.

A year ago, I felt that Australia was becoming a country with the maturity to confront the darker side of its past. A country with the courage to accommodate difference and not require all peoples to wear the uniform of the dominant group. A country with the dignity to allow Aboriginal and Torres Strait Islander peoples to take up our just and proper place as First peoples - full and equal citizens of modern Australia with a distinct status and distinct rights.

It seemed that the tide was turning. Rhetorical acknowledgment from the highest level of non-Indigenous society was followed up by commitments to action. And most importantly an apparent willingness to forge the type of long term structural changes which would facilitate lasting justice.

In this atmosphere, change seemed possible. The Council for Aboriginal Reconciliation explored options for documents of reconciliation. My Office advocated fundamental shifts in the organisation of service delivery for Aboriginal and Torres Strait Islander peoples.

Indigenous Australians vigorously advocated an international instrument for the protection and promotion of the rights of the world's Indigenous peoples at the United Nations. Aboriginal and Torres Strait Islander Commission (ATSIC), the Reconciliation Council and my Office put forward far reaching and imaginative proposals for the Social Justice Package, the promised third stage of the Commonwealth's response to the High Court's decision in Mabo. And we did so in good faith, believing that perhaps this time the invitation to negotiate change had been honestly put.

How fragile social and attitudinal changes are! Especially where they involve and require structural transformations in a nation's self-image and identity and in its political, legal or bureaucratic systems. All of which would be required in establishing a national justice.

The fragility came into stark relief in the last year. A wave of resentment and racism began to take form during the lead up to the March 1996 election, and has washed across this country and the national media ever since. The defining political climate is a disturbing culture of disrespect, disregard, resentment and vilification.

A series of familiar myths about Indigenous Australians have been resuscitated to justify the shift: Indigenous Australians are getting more than our fair share; we are exploiting public sympathies to suck the tax payer dry; our organisations are corrupt and unaccountable. The new myth makers assert that the only reason these 'truths' have not previously emerged in full colour, is that 'political correctness' has been used to silence valid criticism and thus dishonestly conceal the damning truth. Of course, they have emerged previously. Time and again. And been discredited.

Supposedly, throwing off the yoke of 'political correctness', will free those who have been silenced and initiate free and honest debate of facts and issues. What we have seen is a new endorsement of old racisms. Today, it is considered acceptable, if not courageous to single out Indigenous Australians as the number one enemy of social harmony, equality, and believe it or not, social justice.

According to this new Orwellian rhetoric, programs designed for the benefit of Indigenous peoples are in fact antisocial justice, anti-egalitarian and destructive to the nation. Far from being required by social justice, their continuation would constitute an act of injustice against 'ordinary Australians' and will undermine, not facilitate social cohesion and national unity.

Most troubling has been the response of many of our elected representatives, who have chosen to tolerate, sanction, or even advocate the worst, most ill-informed prejudices. In a climate of economic rationalism and political pragmatism, political expedience displaces ethical and even factual considerations. The rights of minorities are deemed a small price to pay for a good majority.

This new ethos, together with its supporting mythology is dishonest, theoretically flawed and factually incorrect.

First, the anti-political correctness movement has not fostered open and honest debate - it has silenced it. If you do not like a particular position, for example one that advocates racial or gender equality, all you need do to discredit it is invoke the magic pc phrase - no analysis or contrary argument required.

Second, it is simply untenable in the 1990s to equate social equality with uniformity. Assimilationist thinking officially went out the window in Australia in the early 1970s. Internationally, it is rejected as an acceptable model for national unity, and condemned in the instruments and pronouncements of the international community. Depriving peoples of the right to practice their own culture and thus to be different from the dominant group is a human rights violation. This applies both to cultural minorities in general, but most particularly to First peoples whose countries were colonised, and are now dominated by the people of an alien culture.

Finally, those who would reject my second point on the grounds of 'political correctness' should at least be amenable to the factual situation. If we have been reaping such advantage, why do we consistently occupy the position as the most disadvantaged of all Australians according to every social indicator? And if the endless statistics on life expectancy, infant mortality, participation in education and annual income are not sufficient, the pundits might care to look, as I did in my second social justice report of 1994, at the dollars actually getting to Aboriginal and Torres Strait Islander people. If anything, they are fewer than those going to other Australians - a particularly harsh indictment on a system that openly acknowledges that our needs are far far greater.

Far from being contrary to the promotion of equality and fairness, the laws and programs now under attack are required by justice. The Native Title Act, for example, *gives* us nothing - no special privileges, no special treatment. It is no gratuity, but simply a mechanism for the substantive recognition (through legal title) of what we already have - ownership of our lands. Every other Australian takes it for granted that they are entitled to legal tenure over what they own or inherit. The principle of equality in fact requires that we are treated similarly.

Similarly, the funding of Aboriginal and Torres Strait Islander health services, educational or employment programs grew out of the recognition that Indigenous peoples were not gaining equitable access to mainstream services. It was experience, not ideology that led to the recognition that such services were required if existing disparities were not to worsen. It is myth making of the most mischievous kind to suggest that we have been getting more than our fair share.

From the 1930s, for over thirty years Governments used every avenue to assimilate us into the broader Australian community. Not only did they fail to make us 'like other Australians', they in fact created a racial underclass that remains the nation's greatest source of shame.

I would be the first to support the demand that policy regarding Aboriginal and Torres Strait Islander peoples should be effective, logically consistent and justifiable on ethical grounds. However, those who have joined the anti-political-correctness bandwagon are, I fear, not motivated by a commitment to best outcomes or to rigour. What they are seeking is a convenient target to wear the blame for everything from their personal complaints to the national budget deficit. And what better target than a social minority with little capacity to bite back? Of course, this is nothing new.

But this is not just the stuff of social disagreement. What is at issue here are hard won fundamental principles about the rights of relatively powerless and socially disadvantaged minorities, and society's obligation to ensure that people belonging to such groups do not become the refuse of a society tyrannised by majoritarian politics. And what is at stake are the laws, mechanisms and programs developed to promote those principles. The price will be paid with the legal and policy framework which safeguards and promotes the enjoyment of human rights:

- laws that provide a framework to ensure that Aboriginal and Torres Strait Islander peoples are not discriminated against (for example, the Native Title Act);
- laws that allow for recognition of our cultural heritage (the Aboriginal Cultural Heritage Act); and
- programs that assist us to access basic social goods and services available to and expected by all Australians (for example Abstudy, Aboriginal Medical and Health Services, Aboriginal Legal Services, the Community Development Employment Program, and funding to Indigenous communities for housing and essential services).

My evaluation of our current position is certainly not a positive one. I have seen my Office shift from one directing its energies to creative policy development to one desperately trying to protect what we have. There is no longer time in the day to initiate policies which will build on improvements - we are fully occupied staving off damaging action.

In the face of this situation, it is the human rights principle that sustains me. It is the belief that there exists a set of imperatives that transcend historical, cultural or social context, politics and ideology. And that all peoples have the capacity to recognise the universality and sanctity of those imperatives. They are embodied in the international human rights instruments that have gained the support of countries throughout the world, and have been affirmed by the international community time and again as universal, inherent and inviolate.

On the other hand, such principles are relatively meaningless if not translated into concrete laws and practices which define the circumstances of peoples' lives.

As a nation with a longstanding professed commitment to human rights, Australia would do well to honestly reflect on the direction in which it seems to be moving. Within its national boundaries, recognition of rights, far from being an apolitical 'given' has become a political football.

Aboriginal and Torres Strait Islander peoples cannot afford to be complacent about such matters. Our survival depends on it. But nor, I would suggest, can any Australian. Once we accept as a nation that principles of equality and justice are expendable, or that they may be arbitrarily overridden by economic interests, then, our integrity is at stake. Respect for the human rights of Indigenous Australians affirms the dignity of all Australians. Violation of those rights reduces and threatens us all.

## **Functions under the Human Rights and Equal Opportunity Commission Act**

### Monitoring and reporting

#### **Aboriginal and Torres Strait Islander Social Justice Commissioner's Third Annual Report**

The Commissioner's annual social justice reports provide the major vehicle for the performance of his monitoring and reporting functions. In 1995 the Commissioner produced his Third Annual Report which covered the period 1 July 1994 to 30 June 1995.

#### Outcomes

The Commissioner's reports examine the human rights implications of issues of current concern, comment on the potential human rights implications of specific law and policy, and assess the impact of existing law and policy. However, the Commissioner's social justice reports have been directed more towards raising general themes and issues than calling for specific measurable changes. Thus for example, in the 1995 report, the chapter on juvenile justice examines the current emphasis on detention and punitive responses to Indigenous youth offending, and the impact these approaches are having on Indigenous young people and communities. The report seeks to encourage readers to recognise the broader impact and to consider different, in this case non-custodial options, as more useful approaches.

The report also seeks to function as an educative tool, to raise awareness about current mechanisms and their impact, Indigenous peoples' views and aspirations, and alternative policy approaches or views and to elaborate the meaning of international human rights standards. Specifically with respect to the latter, the aim is not, in a threatening tone, to point out to Government that it is compelled to honour its 'obligations'. Rather it is to explain what Australia has agreed it ought to do, and elaborate the meaning of such commitments.

In this year's report, this was done specifically in relation to juvenile justice, the domestic implementation of international instruments, and cultural rights. The desired outcome would be a greater understanding of what is required and entailed in meeting commitments in these areas, and, of course, the development of law and policy which fully complies with them.

It cannot be said that this has occurred. In fact, there appears to be a great deal of resistance amongst certain politicians and departments to acknowledging or fulfilling Australia's human rights commitments, and a feeling that international law is a foreign, alien force which Australians should guard against. It is hoped that the third annual report and future reports will mitigate against this reaction by showing how international human rights instruments and elaborations can be seen by Australians as a tool to assist us in making the just country we would have it be.

Notable outcomes of specific chapters are as follows:

#### *Juvenile Justice*

The Commissioner has been approached by juvenile justice Ministers, magistrates, legal organisations and departmental officials to discuss issues raised in the chapter and to look at ways of altering law, policy and practice to reduce the number of Indigenous youth in detention and open other options to them.

#### *Australian Human Rights Developments (Teoh's case)*

This chapter looked at what is required for Australia to properly implement its international treaty commitments, and assesses the degree to which this has been done. It is strongly critical of the *Administrative Decisions (Effect of International Instruments) Bill 1995*, legislation proposed at the time of drafting the report which would have specifically sanctioned administrative decision makers not following or even considering treaty obligations in the performance of their decision making functions. The Bill was in fact withdrawn shortly before the report was tabled in parliament. Nevertheless, before the report's formal presentation the Commissioner had used the material it contained to oppose the Bill. This included appearing before the Senate Committee considering the Bill. It is felt that such opposition contributed to the Bill's withdrawal. The outcome was thus successful.

#### *International Human Rights Developments: Cultural Rights*

This chapter elaborated the meaning of Article 27 of the ICCPR and assessed the degree of Australia's compliance. It found that current recognition and protection of the cultural rights of Aboriginal and Torres Strait Islander peoples falls short of adequate implementation.

Feedback to the Commissioner indicates that Indigenous Organisations found the material to be a useful elaboration and tool for pressing their concerns. However, developments in the last year, in particular judicial decisions, administrative processes and public reactions regarding the protection of Indigenous culture and heritage (most markedly in relation to the Hindmarsh Island affair) indicate that Australia is not heeding the chapter's call for greater compliance.

#### *Social Justice Strategies*

This chapter was an edited version of the Commissioner's submission on the proposed social justice package. The submission has raised a great deal of interest, and has been broadly used and quoted by people and organisations exploring and advocating new policy development. In particular, the material on regional agreements has generated a great deal of interest. Resource material produced by the Commissioner has been reproduced and distributed for conferences and meetings and is increasingly used to assist people seeking to negotiate new arrangements.

Unfortunately, at a governmental level, there has been no response from either the former, or the current Federal Governments. The Coalition Government has indicated that it does not intend to implement a specific package of reforms. Nevertheless, it is hoped that the policy directions canvassed in the chapter will be considered by the new Government as it further develops policy.

#### *National Community Education Project and National Indigenous Legal Curriculum Development*

These chapters were directed mainly to information provision and to informing Indigenous peoples and organisations, legal professionals and educational institutions about the philosophies of the programmes, educational directions they are implementing and their stage of development. Forums held by the Commissioner subsequent to the report's release indicate that they have been widely read and are being used by Indigenous organisations and educators in particular seeking to develop greater control and involvement in curriculum development and community education for Indigenous people.

### *Legislative review*

The objective of this chapter was to encourage government departments and agencies responsible for developing and drafting legislation to take note of human rights implications of the legislation at the developmental stage, and to liaise with the Commissioner at an early stage. Unfortunately, few have taken up the proactive approach advocated, and the responsibility still rests with the Commissioner to intervene raising human rights concerns when Bills are at the presentation stage, or after their passage.

## **Other monitoring and reporting activities**

Besides the material presented in the reports, during the year, the Commissioner monitors the enjoyment of human rights in a range of areas, inter alia: health, education, criminal justice, cultural rights and housing and infrastructure. The key methods employed for such monitoring are those noted above, in particular regular liaison and information exchange with Indigenous organisations and researchers.

The Commissioner deals with many of these matters in an immediate, direct manner, as is appropriate. For example, he may raise them in the media or other public fora, or raise his concerns through submissions and direct approaches to Ministers and relevant departments and agencies.

In particular, the Commissioner uses formal review and Committee processes to raise concerns about particular areas of law and policy. This year submissions have been put to the following:

- New South Wales Ombudsman's Inquiry into Juvenile Detention Centres in February 1996;
- Australian Law Reform Commission Reference on the *Freedom of Information Act* 1982 in September 1995;
- the Commonwealth Minister for Justice on the *Crimes Act (Forensic Procedures) Bill* (Cth.); and
- the New South Wales Royal Commission into Police Corruption.

The objective of such submissions is to initiate legislative amendments or policy changes to ensure recognition of the human rights of Aboriginal and Torres Strait Islander peoples in the particular context. At this stage it is too early to assess whether this will occur in relation to the abovementioned matters. However, the more short term objective of influencing the recommendations of the reviews and Committees has been achieved in several key areas.

## **International activities**

The Commissioner continues to play a major role in the international arena and at the interface between domestic law and policy and international human rights laws and standards. As noted above, this is done through an examination of compliance of domestic law and policy with international benchmarks. Major areas considered this year have been juvenile justice, administrative decision-making and cultural rights.

In addition, the Commissioner contributes to Australia's reports to Treaty Committees, such reports being required periodically for the ICCPR, the ICESCR, the CRC, the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention Against Torture*. This year the Commissioner provided extensive critical comments on the Government's final draft report to the United Nations Human Rights Committee on the implementation of the ICCPR.



The objective of such comments is to improve the quality of the report and ensure that it better conforms with reporting requirements. The Commissioner has also encouraged Government to use the reporting process as an opportunity to assess its own performance, and not see it merely as a report it is required to produce at the behest of an external body.

At this stage, the outcome cannot be assessed as the Government has not produced a final report since comments were submitted.

The Commissioner has also been active at the international level, this year participating in both the UN Working Group on Indigenous Populations and the Commission on Human Rights Special Working Group set up to consider a Declaration on the Rights of Indigenous Peoples.

The outcome of initiatives designed to secure Australian support for the Draft Declaration on the Rights of Indigenous Peoples cannot be easily assessed at this time as it is still being processed through the UN system. At this stage the Australian Government has not indicated what position it will take at the Commission on Human Rights working group with respect to the substantive provisions of the draft. Unfortunately, it appears that in general the Coalition Government will be very cautious in its support for any new instrument which may appear to extend Australia's human rights commitments.

More generally, Australia has continued to support other UN initiatives concerning Indigenous peoples such as the International Decade of the World's Indigenous Peoples and the Permanent Forum for Indigenous Peoples.

While the Commissioner's efforts do appear to have increased domestic awareness of international developments, there is still a great deal of disinterest in, ignorance and misunderstanding of and even hostility towards the international human rights framework. This would indicate that there is still significant work to be done to counter such attitudes.

Increasingly people and Governments in other countries raise concern about the status of Indigenous Australians. International reports, such as those of Amnesty International and the US State Department reports have highlighted violations occurring in Australia.

## Speeches

The Commissioner has had a heavy speaking program this year. Notable speeches include:

5-6 July 1995: 'The Concept of Regional Agreements'. Regional Agreements meeting, Wilcannia.

5 July 1995: 'Rethinking Extinguishment of Native Title'. Australasian Law Students Association Conference, Hobart.

11 July 1995: The Alcohol Report Release. Alice Springs.

14 July 1995: Australian Model United Nations Conference 1995. University of New South Wales, Sydney.

17 July 1995: 'International Law and Indigenous Peoples - Another Rung on the Ladder to Nowhere?'. National Aboriginal Youth Law Centre, Darwin.

14 August 1995: 'Fair Business is Good Business'. National Indigenous Business and Economic Conference, Brisbane.

14 August 1995: 'Negotiating Criminal Justice'. Second Annual Conference of the Aboriginal Justice Advisory Committees, Brisbane.

21 August 1995: 'Which Law is Valid in this Country?'. Australian National University Public Policy Seminar, Canberra.

2 September 1995: 'Indigenous Peoples, Social Justice and Rights to the Environment'. Ecopolitics IX Conference, Darwin.

13 September 1995: 'The Republican Debate: Social Implications of the Republic'. Parliament House, Sydney.

12 October 1995: 'The Shape of Equality: Opportunities and Outcomes.' ACOSS Congress Panel Discussion.

18 October 1995: Indigenous Customary Law Forum. Parliament House, Canberra.

21 October 1995: 'Indigenous People and the Criminal Justice System in New South Wales.' Office of the Public Defender Conference.

23 October 1995: 'Aboriginal Development After Mabo'. DAS Conference.

3 November 1995: 'Equity and Health'. Menzies School of Health Research Ten Years of Partnership and Achievement, Darwin.

16-18 November 1995: 'Access to Justice - Including a Role for Customary Law?' Federation of Ethnic Communities Councils of Australia, Sixteenth National Conference, Melbourne.

8 February 1996: 'The Business of Public Service - Influence the Agenda, the Problem of Opportunity'. Forum of Commonwealth Agencies in New South Wales 1996 Conference.

26-27 February 1996: 'Aboriginal Customary Law - Hard and Strong Like Cement'. Customary Law Conference, Mackay.

1 June 1996: 'Aboriginal Identity and Australian Identity: Imagining Reconciliation'. Indonesia.

3 June 1996: National Seminar on Australia's Agenda for the Eradication of Poverty. ACOSS, Sydney.

5 June 1996: 'International Law and Indigenous Peoples'. The Inclusion of Indigenous Peoples in International Environmental Law, the New South Wales Law Association, Sydney.

12 June 1996: 'Social Justice for Indigenous Peoples'. Deakin University, Geelong.

# Reporting on the Native Title Act

The objectives of the Commissioner in monitoring and reporting on the operation and human rights impact of the Native Title Act (NTA) include:

- to provide and promote a human rights perspective on native title;
- to assist in developing a more efficient claims process; and
- to advocate a minimalist approach to extinguishment based on the compatibility of Indigenous and non-Indigenous land use.

## Outcomes

The Commissioner's 'Native Title Report July 1994-June 1995' was submitted to the Minister for Aboriginal and Torres Strait Islander Affairs on 6 December 1995.

The report focused on several issues. It examined the system contained in the NTA for the recognition and protection of native title, and considered its adequacy from the perspective of Indigenous peoples. It explored means for facilitating native title claims and for ensuring that the process for determining claims does not infringe native title holders' human rights. Mediation processes under the NTA were examined, focusing on problems which are caused by power imbalances between Indigenous claimants and other stakeholders. The report discussed the importance of the statutory 'right to negotiate' scheme to the protection of Indigenous human rights, and analysed problems in the practical operation of the scheme. Methods for promoting negotiation and land use agreements were also put forward.

During 1995 the Commissioner spoke publicly on two occasions about mediation under the NTA. He described the pitfalls which are inherent in the mediation process due to its vulnerability to power imbalances between the parties involved, and proposed initiatives for achieving fairer mediation processes.

In February 1996 the Office presented a submission to the Industry Commission's Inquiry into the Implications for Australia of Firms Locating Offshore. The Office hopes to provide further comment on the Commission's draft report later in 1996.

During 1996 the work of the Native Title Unit has focused on the broad ranging amendments to the NTA which have been proposed by the new government. These amendments raise vital human rights issues for Indigenous peoples.

The government's outline of proposed amendments, 'Towards a More Workable Native Title Act', was issued in late May 1996. A detailed submission was prepared by the Office, which provided commentary and recommendations relating to each proposal.

The *Native Title Amendment Bill* 1996 was tabled at the end of June. The Office is in the process of preparing a response to the contents of the Bill, which will be contained in the 'Native Title Report 1995-1996',

The Commissioner has been involved in the Indigenous Working Group on Native Title which was established to put the views of Indigenous organisations to the government in relation to the proposed amendments. He has also become a member of the Native Title Joint Key

Stakeholders' Working Group, which was established during a stakeholders meeting between Indigenous and industry representatives and other stakeholders which was organised by the Council for Aboriginal Reconciliation in late May. The Working Group has since met to discuss the proposed amendments to the NTA and mechanisms for reaching land use agreements. These meetings are proving constructive, and more have been planned for later this year.

## National Aboriginal and Torres Strait Islander Community Education Program

This program sought to implement Recommendation 211 of the Royal Commission Into Aboriginal Deaths in Custody through the development of a national video, a regionally developed resource package and a Train the Trainer program to inform Aboriginal and Torres Strait Islander peoples about their rights and the protection available under anti-discrimination and other legislation.

The specific objectives of developing this project include:

- to divert Aboriginal and Torres Strait Islander peoples from custody;
- to enable Aboriginal and Torres Strait Islander communities to establish and protect community standards for their human rights; and
- to empower Aboriginal and Torres Strait Islander peoples to solve community relations problems at the local level through an understanding and assertion of their rights.

A number of strategies were pursued including:

- two meetings of members of the national Reference Committee comprising representation from ATSIC, Department of Employment, Education and Training, Council of Aboriginal Reconciliation (CAR), Secretariat of Aboriginal and Islander Child Care, National Aboriginal and Islander Legal Services Secretariat, Federation Aboriginal Education Consultative Groups, Western Australian Aboriginal Legal Service, South Australian Equal Opportunity Commission, Victorian Equal Opportunity Commission, Northern Territory Anti-Discrimination Commission, Native Title Unit, Victoria, HREOC Tasmania and Northern Territory, Aboriginal Disability Association, Northern Australian Aboriginal Legal Aid Service, Central Australian Aboriginal Legal Aid Service and Katherine Regional Aboriginal Legal Service, Aboriginal Legal Rights Movement -South Australia, Aboriginal Justice Advisory Committee - South Australia and community representation. A couple of agencies are still to respond to the invitation for membership;
- the appointment of consultants to develop the 'Resource' and 'Train the Trainer' packages in two regions including the following:
  - (i) New South Wales, Victoria, Tasmania and the Australian Capital Territory; and
  - (ii) Northern Territory and South Australia.
- regular meetings between the Project Coordinator and members of the Reference Committees and the consultants to develop management plans and schedules for the production of the program, chaired by the Commissioner;
- the development of proposals by consultants to visit a range of Aboriginal and Torres Strait Islander communities facilitating discussion about the overall project as well as the specific content areas and medium for the most effective delivery of the information;

- community visits to selected, representational communities for discussions about the content needed for the development of the resource and the type of resource needed;
- development of funding proposals and submissions to corporate and public sector agencies;
- ongoing development of a mediation strategy with assistance from CAR;
- development of an implementation strategy;
- development of training materials to accompany the resource components of the National Community Education Program (NCEP);
- development and production of the national video and accompanying training manual; and
- development in consultation with the Race Discrimination Commissioner of specific material on racial vilification.

## Outcomes

Funds were secured to develop the NCEP in the Northern Territory and South Australia. As a result, the consultants were contracted to carry out this work namely the Faculty of Aboriginal and Islander Studies of the University of South Australia.

In the southeast, Rowitta Designs took over the work that Mukina Management Services began in New South Wales, Australian Capital Territory, Victoria and Tasmania.

Consultations in Western Australia were extensive with consultants and staff meeting with people in the following areas; Albany, Balgo, Brookton, Broome, Bunbury, Collie, Cosmo-Newberry, Derby, Fitzroy Crossing, Halls Creek, Jigalong, Kanpa Bail Facility, Kununurra, Kalgoorlie, Kondinin, Leonora, Laverton, Mandurah, Moora, Northam, Narrogin, Nullagine, Mulga Queen, Patjarr, Perth, Port Hedland, Pinjarra, Roebourne, South Hedland, Tjirrkali, Warnan, Warburton and Yiyili. Over 10 000 kilometres were travelled in one round of consultations. Meetings took place with service providers as well as with community members.

Higgins, Wood and Associates, the consultancy team for the development of the resource component in Western Australia submitted a draft product. The Western Australia resource and accompanying training manual will be complete and ready for distribution by the end of 1996.

Consultations in the southeast have included meetings in the following communities; Broken Hill, Deniliquin, Dubbo, Eden, Grafton, Griffith, Lismore, Moree, Narrandera, Newcastle, Taree, Wagga Wagga, Walgett, Wilcannia in New South Wales, Cape Barron Island, Burnie, Devenport, Hobart, Launceston, Penguin, Smithton in Tasmania and Bairnsdale, Cumeragunja, Geelong, Horsham, Melbourne, Mildura and Shepparton in Victoria. Consultations will continue with a draft product being completed within the next reporting year.

The consultancy team for South Australia and the Northern Territory have conducted meetings in Berri, Murray Bridge and Mount Gambier as well as having conducted meetings with various umbrella organisations to coordinate further community visits in both South Australia and the Northern Territory. Consultations will continue with a draft product being completed within the next reporting year.

Vision Splendid were appointed as the production company for the development of the video. The video has been produced and the training manual is in draft form.

Unfortunately, funding has still not been forthcoming to implement training using Tracking Your Rights in Queensland.

Sponsorship has been forthcoming from Ansett and the Law Foundation of New South Wales.

Funding remains a problem if the NCEP product is to be printed and implemented. Funding submissions have not been successful to date.

## **National Indigenous Legal Curriculum Development Project (formally the National Aboriginal Legal Field Officer Training Program)**

This project seeks to implement Recommendation 212 of the Royal Commission into Aboriginal Deaths in Custody through the development of national Indigenous legal education and training courses for Aboriginal and Torres Strait Islander Legal Field Officers.

### **Roles and strategies of the project**

The National Indigenous Legal Curriculum Development Project has two roles:

1. to increase the level of legal and human rights education and training to Aboriginal and Torres Strait Islander peoples; and
2. at a broader level, the project aims to increase access to information and resources which address human and legal rights, for clientele of Aboriginal and Torres Strait Islander Legal Services.

Strategies for the success of this program include the:

- appointment of consultants to develop curriculum;
- developing a Working Group, now referred to as the National Aboriginal and Torres Strait Islander Legal Field Officer Curriculum Development Advisory Committee (CDAC). This committee is made up of nominees from Aboriginal Legal Services representing every State and Territory, the majority of whom are Aboriginal and Torres Strait Islander Field Officers. There are 32 members nominated to this Committee who have the ability to assist and inform decisions made by the National Steering Committee. The Committee will meet in September/October 1996 and will continue to meet regularly to inform and monitor the development, implementation and review of the course; and
- convening Focus Groups meetings of the Curriculum Development Advisory Committee to assist in the writing of the Curriculum with appointed consultants;

As well as convening CDAC and Focus Groups other major strategies include:

- curriculum development and considerations for articulation from TAFE and community education sector to the university sector;
- national accreditation; and
- extensive networking and community consultations with groups engaged in Aboriginal adult education and Indigenous legal work.

## **Outcomes**

Pilot national accredited courses across educational areas have been developed. This has set a blueprint for any other courses that may be developed in the future for Aboriginal and Torres Strait Islander peoples in legal education.

There has been a shift away from 'purely' human rights training to broad based legal education that takes into account legal and human rights issues that impact on the lives of Aboriginal and Torres Strait Islander peoples. The shift reflects dedication to ensuring that the types of courses being developed become generational and reflect the learning needs of the Indigenous community as defined by themselves via the CDAC and its Focus Groups.

The Commissioner has made a substantial personal commitment and contribution towards the implementation of Recommendation 212.

## Race Discrimination Commissioner



Zita Antonios, Race Discrimination Commissioner

Ms Zita Antonios was appointed Race Discrimination Commissioner in September 1994. She has been closely involved for many years in a variety of roles dealing with issues involving race discrimination, particularly those affecting people from non-English speaking background.

### Statement from the Race Discrimination Commissioner

The past year has been a positive landmark year in the history of the Racial Discrimination Act (RDA). Celebrations of the twentieth anniversary of the Act continued throughout the second half of 1995 and it was the year which saw racial hatred provisions finally enacted. However, this past year has also been marked by the emergence

of a new wave of racism particularly targeted at Indigenous Australians and certain Australians of non-English speaking background.

This new wave of racism has been bubbling under the surface for some time but has erupted in the past year quite publicly. It manifests itself in the view that policies, legislation and even funding for Indigenous Australians and people of non-English speaking background have 'gone too far'. Attempts to redress the severe and continuing disadvantage of Aboriginal and Torres Strait Islander peoples have been fundamentally misunderstood and viewed as 'reverse discrimination'. Humanitarian policies directed at certain immigrants and refugees are perceived as giving the recipients 'an unfair advantage'. The sweeping generalisations and emotive stereotyping simply do not hold up when assessed against the facts but this has not slowed the tide.

Some take the language of human rights and argue 'well, if we are all equal, then we should all be *treated* the same'. Such an approach incorrectly confuses the concept of the equal worth of all humans with the concept of equality of opportunity. Yet the concepts are quite different. Moreover, there is frequently a discrepancy between what people say about equality and their actions. Such actions in this context lead to discrimination and a lack of equality of opportunity for Indigenous Australians and certain people of non-English speaking background. Further, the assertion that equality means always treating everyone the same regardless of race or ethnicity, denies the reality that equality of treatment does not necessarily result in equality of outcome. In other words, treating people the same does not mean one is being fair.

We have heard repeated statements this year of Australians identifying themselves as members of the majority who are being made to feel they are the minority in 'their own country'. History attests to the fact that we have always been more willing in Australia to embrace people from other parts of the world in preference to those who arrive from Asia and those some of us have described as being 'too different'. While it was hoped that such leanings were extinguished with the abolition of the White Australia Policy, the



legacy of our anti-Asian past continues to surface in a variety of ways through graffiti, public vilification in letter dropping campaigns, personal abuse and even physical attacks.

A common theme of letters to the editor in newspapers around the country and repeated over talk-back radio airwaves in the past year is the perception that those in the 'Aboriginal industry' and 'professional ethnics' hold far more influence on decision makers than 'real Australians'. Yet we are all, of course, Australians. The sub-text of those who label themselves as real Australians is one of exclusion, intolerance and prejudice. It is a position at odds with the cross party support in Australia for the acceptance of, and respect for diversity. It also flies in the face of internationally endorsed principles on the elimination of racial discrimination and equality of opportunity regardless of race, colour or ethnicity, enshrined in domestic law in the RDA.

My concern is not limited to the moral issues of fairness and justice (although they are paramount and clearly we must address the myths by providing the facts). I am also concerned that the social and economic costs of not countering racism are frequently overlooked. Leaving aside the emotional and economic costs to the individual and looking at the broad social costs, there is the risk that systemic racism produces an underclass characterised by unemployment, underemployment and/or worker exploitation. This is both unproductive and unfair.

Institutional racism also produces groups of people with poor educational outcomes or chronic ill-health who ultimately require more resources in housing, welfare, social security and health expenses than those not similarly disadvantaged. Some inevitable consequences may be social tension, unrest and, at its extreme, violence.

Indeed, a worrying feature of this new wave of racism is its reported link to violence associated not only with the acts of the perpetrators but an apparent readiness on the part of some targets to respond in kind. It has been suggested to me that this has been particularly evident in regional areas such as north Queensland, northern Western Australia and South Australia. We are reliant on anecdotal evidence from individuals, community groups, organisations and media reports in monitoring these developments. It is impossible to gauge accurately the extent or nature of the change because we do not have uniform national statistics on race based crime. Many incidents are reported as varying forms of criminal offences but, as long as the racial element of the offence is unnamed and unreported, we continue to mask and deny the problem.

We have in the past been somewhat comforted by the fact that when our race relations and management of diversity are compared with many countries overseas, we have been regarded with envy. This may say more about those other countries than it says about Australia, but we cannot forget that Australia has traded well on its social, political and cultural image as a successful multicultural society. This has been important in our international dealings on, for example, foreign policy, the Olympics, human rights and other social and cultural matters. We know, too, that there have been substantial economic benefits arising from our cultural diversity in both the international and domestic markets. By failing to respond appropriately to the new wave of racism, we run the risk of significantly harming both our image and the positive results.

As the Commissioner charged with the responsibility for administering the RDA in the context of this new wave of racism, there are many challenges. Chief among these is recognising what is possible and realistic as well as working in partnership with others including colleagues and staff of the Commission, non-government organisations and community groups, government officials and individuals. A sense of balance must be maintained and the degree of racial discrimination in our community must not be overstated. At the same time, we must not ignore or understate the negative trends now evident. Legislative redress is now as important as ever and must be supported by community education. To this end, the planned five million dollar community education programme to be implemented by the Government is welcome. I believe it will be critical to evaluate the program's impact, but measuring positive or negative change in this area

will always pose problems. Unfortunately, complaints statistics under the relevant federal and state legislation are unreliable as an indicator.

Complaints statistics rise and fall for a range of reasons and it is generally accepted that the number of people who seek formal redress for race discrimination is the tip of the iceberg. This year has seen a decrease in the overall number of complaints lodged under the RDA and there will be various reasons for that, including for example, changes in state legislation in Victoria (the state which has reported a significant decrease). It is very pleasing to report that this year there have been major achievements in dealing with the crippling backlog of complaints in central office. In the race area in central office, the vast majority of complaints can now be allocated immediately to a conciliator for action. This represents significant positive change and it has had a welcome impact on the increased rate of successfully conciliated cases (although this is not reflected in this year's data and will show more clearly in the 1996-97 statistics).

I have been concerned for some time about the high number of cases under the RDA which are declined for lack of substance. A factor contributing to this trend has been the quite lengthy delays in complaint handling which has made investigation difficult. It is good to see the beginning of the end of that trend and congratulations must go to the hardworking complaint handling and legal staff for such notable results. Yet another factor contributing to the high decline rate under the RDA, is the legislation itself and this is one of the reasons which prompted a comprehensive review of the Act discussed later in this section.

It is unnecessary here to comment on other specific work undertaken by myself and Commission staff, since the details follow in the body of this report. However, it would be remiss of me not to comment that the remainder of this section does not reveal any of our ongoing daily work in appearing before government committees, participating as committee members in a range of areas, commenting on government proposals and reports, making formal submissions to various inquiries, handling general correspondence, distributing literally thousands of fact sheets, brochures, reports and community education resource material and generally contributing to the overall work of the Commission. My involvement, for example, in the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families this year has been particularly challenging and I am committed with Sir Ronald and other Commissioners to ensuring that in the year to come a useful and comprehensive report is released and acted upon.

Finally, I want to acknowledge the many individuals and organisations who have provided me with support throughout the year. I particularly wish to salute our staff who work extremely well and hard - my thanks to each of them for their efforts in another extraordinary year.

## **Functions under the Racial Discrimination Act**

To ensure that progress is made towards addressing discrimination issues in Australia the Commission and the Race Discrimination Commissioner have been granted a number of functions under sections 20 and 21 of the RDA. These functions fall into three main categories:

- complaint handling;
- research; and
- education and promotion.

The Commissioner's contribution during 1995-96 to addressing existing race discrimination

throughout Australia is outlined under these three broad categories.

# Complaint handling

## Complaints lodged under the RDA: 1 July 1995 to 30 June 1996

The variation in definition and classification of complaints across Commission offices and State and Territory equal opportunity agencies means there are some limitations aggregating and interpreting the data.

A total of 583 complaints were accepted within the jurisdiction of the RDA during the year (see Table 1). The total figure last year was 707. Table 8a provides a breakdown of the areas where these complaints arose. The total of 590 in Table 8a reflects some Central Office complaints relating to more than one area. While employment-related complaints constitute the largest percentage (263 or 44.6 percent) of matters dealt with under the Act, there was also a significant number of complaints (177 or 30 percent) relating to the provision of goods and services.

Table 8a: RDA area or corm. hit

| Category                          | Central*   | Qld       | NT        | Tas      | ACT       | Vic        | SA         | WA        | Total      |
|-----------------------------------|------------|-----------|-----------|----------|-----------|------------|------------|-----------|------------|
| Land, housing, other              | —          | 1         | —         | —        | —         | —          | 6          | 2         | 9          |
| Accommodation                     | 2          | —         | —         | —        | —         | 6          | —          | —         | 8          |
| Provision of goods and services   | 47         | 6         | 6         | 7        | 2         | 50         | 47         | 12        | 177        |
| Employment                        | 67         | —         | 5         | 1        | 8         | 127        | 50         | 5         | 263        |
| Advertisements                    | 2          | 9         | —         | —        | —         | —          | —          | —         | 11         |
| Incitement to unlawful acts       | —          | 1         | —         | —        | —         | —          | —          | —         | 1          |
| Education                         | —          | 1         | —         | 1        | 1         | 11         | 7          | —         | 21         |
| Rights to equality before the law | 8          | —         | —         | —        | —         | —          | —          | —         | 8          |
| Trade unions                      | 12         | —         | —         | —        | —         | —          | —          | —         | 12         |
| Other                             | 66         | 10        | 4         | —        | —         | —          | —          | —         | 80         |
| <b>Total</b>                      | <b>204</b> | <b>28</b> | <b>15</b> | <b>9</b> | <b>11</b> | <b>194</b> | <b>110</b> | <b>19</b> | <b>590</b> |

\* multiple areas per complaint

Table 8b shows the ethnicity of complainants. A total of 110 complaints were received from Aboriginal and Torres Strait Islander people representing 18.7 percent of the total number of complaints received, and 250 (or 42.8 percent) of complaints were lodged by complainants from non-English speaking backgrounds.

Table 8b: RDA complainants

| Category                              | Central    | Qld       | NT        | Tas      | ACT       | Vic        | SA         | WA        | Total      |
|---------------------------------------|------------|-----------|-----------|----------|-----------|------------|------------|-----------|------------|
| Aboriginal and Torres Strait Islander | 14         | 7         | 9         | 4        | 3         | 22         | 43         | 8         | 110        |
| Non-English speaking background       | 57         | 2         | 4         | 4        | 7         | 121        | 52         | 3         | 250        |
| English speaking background           | 41         | 4         | 2         | 1        | 1         | 24         | 9          | 8         | 90         |
| Not disclosed                         | 85         | 5         | —         | —        | —         | 27         | 6          | —         | 133        |
| <b>Total</b>                          | <b>197</b> | <b>28</b> | <b>15</b> | <b>9</b> | <b>11</b> | <b>194</b> | <b>110</b> | <b>19</b> | <b>583</b> |

The trend of previous years has continued in the 1995-96 reporting period, with men more likely than women to lodge complaints under the RDA. As Table 8c outlines, of the 583 individual complaints received under the Act, 345 (59.2 percent) were from men and 194 (33.3 percent) were from women. The balance of complaints were either lodged by groups/ organisations, were representative, or were not recorded at the request of the complainants.

The majority of RDA complaints were made about respondents from the private sector (217 or 37.2 percent) including private enterprise, non-government organisations, educational institutions and trade union or professional organisations. There were 202 (34.5 percent) complaints received alleging discrimination from the three tiers of government. The largest single category of respondents was private enterprise: 173 (29.5 percent).

Table 8c RD). type of complainant

| Type                           | Central    | Qld       | NT        | Tas      | ACT       | Vic        | SA         | WA        | Total      |
|--------------------------------|------------|-----------|-----------|----------|-----------|------------|------------|-----------|------------|
| Male                           | 121        | 12        | 7         | 5        | 7         | 111        | 75         | 7         | 345        |
| Female                         | 51         | 10        | 4         | 2        | 4         | 80         | 34         | 9         | 194        |
| More than one individual       | 4          |           | 2         |          | —         | —          |            |           | 6          |
| On behalf of a person or group | 5          | 6         |           | 2        | —         | —          | 1          | 3         | 17         |
| Representative complaint       | 14         | —         | 2         | —        | —         |            | —          | —         | 16         |
| Other                          | 2          | —         | —         | —        | —         | 3          | —          | —         | 5          |
| <b>Total</b>                   | <b>197</b> | <b>28</b> | <b>15</b> | <b>9</b> | <b>11</b> | <b>194</b> | <b>110</b> | <b>19</b> | <b>583</b> |

Table 8d: RDA type of respondent

| Type   | Central    | Qld       | NT        | Tas      | ACT       | Vic*       | SA         | WA        | Total      |
|--|------------|-----------|-----------|----------|-----------|------------|------------|-----------|------------|
| Male   | 19         | 3         | 2         |          |           | 54         |            |           | 78         |
| Female   | 11         | 6         | 1         |          |           | 15         |            |           | 33         |
| Educational institution  | 3          | 1         | —         | 1        | 2         | —          |            |           | 7          |
| Non-government organisation  | 4          | 1         | 2         | 2        | —         | 5          | 7          | —         | 21         |
| Private enterprise   | 53         | 1         | 3         | 4        | 2         | 64         | 46         | —         | 173        |
| Trade union-<br>professional organisation                          | 16         | —         | —         | —        | —         | —          | —          | —         | 16         |
| Local government   | 2          | 1         | 1         | 1        |           | 1          | 3          |           | 9          |
| State/Territory government<br>department or statutory<br>authority | 26         |           | 5         |          | 1         | 22         | 33         | 6         | 93         |
| Commonwealth government<br>department or statutory<br>authority    | 40         | 3         | 4         | 1        | 6         | 26         | 11         | 9         | 100        |
| Other  | 23         | 12        | —         | —        | —         | 7          | 10         | 4         | 56         |
| <b>Total</b>   | <b>197</b> | <b>28</b> | <b>18</b> | <b>9</b> | <b>11</b> | <b>194</b> | <b>110</b> | <b>19</b> | <b>586</b> |

\*multiple respondents per complaint

During the year a total of 652 RDA complaints were closed or referred for hearing. The high number of closures reflect, to a large extent, the effectiveness of the administrative strategy established in the previous year to assist in clearing the backlog.

## **Racial hatred complaints**

In this reporting period the amendments on racial hatred were in operation for eight months. The number of complaints received in this area to 30 June 1996 was 63. Of these, 15 (23.8 percent) related to the media; 11 (17.5 percent) related to neighbourhood disputes. The ethnicity of complainants included 14.3 percent from Aboriginal and Torres Strait Islander people and 47.6 percent from people of non-English speaking background. A more detailed report on cases received in the first twelve months of the operation of the amendments will be released in December 1996.

## **Complaints resolved through formal Commission hearings**

Where conciliation is unsuccessful, or in the view of the Race Discrimination Commissioner not achievable, the Race Discrimination Commissioner may refer complaints to the Commission for a public hearing. Once this occurs, the Race Discrimination Commissioner cannot participate in the process.

## **Case studies**

The following are some examples of complaints lodged under the RDA with their outcomes in the reporting period.

### **Employment**

An Australian of Sri Lankan background employed by a large hotel complained that he was warned inappropriately by management about his work performance. He claimed he was denied more favourable shifts, isolated and denied promotion because of his race and colour.

The hotel management denied the allegations and stated that the man had not been promoted because the Human Resources Manager was not aware that he was interested in becoming a supervisor.

As a result of investigation, the hotel management at a conciliation conference, acknowledged that some aspects of the man's employment could have been handled better and agreed to pay him \$9 000 to settle his complaint. The hotel also agreed to provide him with an equivalent permanent job with another hotel in the chain should he wish to continue working for the hotel. Additionally, the hotel agreed to provide the man with a written apology and a written statement of employment. Another positive outcome was action by management to establish fair policies and practices for employment and promotion.

### **Racial hatred**

A woman complained that a proprietor of a cafe at which she was having lunch acted in a manner which was racially offensive. She stated that following a disagreement over a lunch order the proprietor yelled out 'you belong in the jungle'. The woman stated that as she is of West Indian ethnic origin she took offence at this comment.

Following investigation of the allegation and discussion with both the complainant and the respondent, the proprietor of the cafe at a conciliation conference, agreed to pay \$50 to a charity chosen by the woman.

### Racial hatred

Two prominent community members from an ethno-religious background complained under the Racial hatred provisions that racially offensive references were twice made about them in a metropolitan newspaper. Upon receipt of an investigatory letter from the Race Discrimination Commissioner the newspaper management entered into direct negotiations with the aggrieved parties. This resulted in the publication of an unreserved apology published in the aforementioned newspaper. The newspaper also agreed to pay all legal expenses incurred during the complaint handling process.

### Goods and services

A man of Indian background alleged that he was racially discriminated against by the employee of a service station when the employee refused him access to toilet facilities. The complainant claimed that the employee had told him there were no toilets on the premises. The complainant then pointed out that he had seen the toilets and asked the employee why he had lied to him. He alleged the employee replied, 'Because you people do not know how to use them'. The complainant alleged that he then asked the employee for his name and the respondent then used abusive language towards him. The respondent company which was vicariously liable claimed that it had received a letter of complaint from the complainant but had not replied as the letter had been misplaced. After being contacted by the Commission, the respondent company advised that as soon as the matter had come to its attention the employee was dismissed from his position. The company also made a written apology to the complainant and his wife for any inconvenience or degradation which had been caused to them.

### Complaint hearing

A complaint of racial discrimination was made by a woman of Ugandan origin employed as a librarian with a large Commonwealth organisation. The complainant alleged that she was subjected to a campaign of racial harassment which was evidenced by criticism of her communication skills and competence. She alleged that she was discriminated against in the workplace by unfair deadlines and tasks, unwarranted criticism and personal abuse in front of library staff and users. She alleged both direct discrimination and indirect discrimination. The matter was not able to be conciliated and was referred to a public hearing. The hearing lasted six days and involved the evidence of twelve witnesses. Witnesses giving evidence included other employees, supervisors, the complainant's current employer and a linguistics expert.

Although the employing organisation claimed that the complaint was frivolous, vexatious, misconceived and lacking in substance, the Commissioner held that the complainant had been the victim of indirect discrimination and awarded her \$10 500 damages.

### Accommodation

An Aboriginal woman complained that she was asked to pay a bond for 'incidental costs' by a large international tourist hotel where she was staying overnight and attending a conference. She noted that her non-Aboriginal colleagues at the conference were not asked to pay a bond and she concluded that different standards were being applied because of her race. The hotel denied that it was singling the woman out because of her Aboriginality and that instead there was a 'mix-up' for it was hotel policy all guests were charged bonds to check-in. The check-in officer claimed she was unaware that guests attending conferences were exempt from the bond. The hotel manager, at a conciliation conference, apologised to the woman and offered her a complimentary luxury accommodation package which she accepted.

### Employment (decline)

A man of northeastern European origin alleged that he was racially discriminated against by senior colleagues who failed to cooperate with him in the performance of his job. He further alleged that the employer failed to supply him with the necessary facilities and equipment required to perform his job. The complainant also advised that there was no problem in the workplace until after he had raised questions regarding workplace safety and facilities. While there was no evidence that the employer was unhappy with the complainant's work performance, the complainant did allege that his qualifications and ethnicity were questioned by senior colleagues. Following further inquiries by the Commission, the complainant advised that in relation to his ethnicity and qualifications, senior management had asked him what nationality he was. No other reference was made to his race. The complainant inferred from this that his race and qualifications were an issue for senior management. In addition he could not specify how or if he had been treated less fairly in any other way *because of his race*. The complainant was asked to provide more evidence if he wished the Commission to pursue the complaint. Although further information was supplied it was not related to the complainant's race. The complaint was declined.

## Research and policy

The Race Discrimination Commissioner has the functions of developing, conducting and fostering research programs to promote the provisions and purpose of the RDA.

### State of the Nation report 1995

The objective of the 'State of the Nation' report is to monitor and assess progress being made towards achieving social justice for people of non-English speaking background. The 20th anniversary year of the RDA provided an opportunity for the third State of the Nation Report to evaluate how far people of non-English speaking background have come in the last 20 years in the areas of health, justice, policing, education, training and employment.

The Report found that there have been positive developments particularly in educational curriculum which now generally include diversity and anti-racist activities. There has been major improvement too in torture and trauma rehabilitation services for refugees. However, in other areas progress has been slow or non-existent. For example, the report found that in the contracting manufacturing sector, Australian born workers experienced increased employment at the expense of immigrant workers of non-English speaking background. Unemployment rates for immigrants of non-English speaking background have also worsened compared with that of Australian-born workers. Refugees and women appear hardest hit. In the area of health, access to interpreters remains very poor in many areas and in some languages. Informed consent remains extremely problematic and should be a source of anxiety for medical service providers. The lack of progress in the implementation of the recommendations of the 'National Inquiry into Racist Violence' (1991) and the 'Multiculturalism and the Law' (1992) research mean that discrimination in the area of policing and criminal justice remains.

The retrospective was hampered by a lack of useful data. Of major concern across all areas is the lack of systematic collection of ethnicity data. This is a vital tool to enable clear analyses of the impact of services on particular groups and to assist in developing strategies to combat racism.

The 'State of the Nation' report identified the problem of a lack of standards and evaluation of the effectiveness of cross cultural training and recommended that this be addressed. Since the publication of the report there has been ongoing dialogue with the Western Australian and Tasmanian Police Services about the nature and quality of cross cultural training in these services.



The Race Discrimination Commissioner and policy and research staff will continue to monitor action on the 1995 report and recommendations.

The 1995 'State of the Nation' report also provided an update on progress on issues that were highlighted in the previous year's report. This included the then Commonwealth Department of Human Services and Health's development of a strategy document on the care of frail elderly people. It was pleasing to see the document quoted all the recommendations of the 1994 'State of the Nation' report on residential care for elderly people of non-English speaking background. It also included mechanisms for implementation. Among the mechanisms included in the document were improving ethnicity data collection, examining the needs of smaller ethnic communities, improving assessment processes, and increasing options in the provision of culturally appropriate care. These goals have been put into practice and the Department of Health and Family Services is now working on projects to improve the access of ethnic older persons to appropriate care. For example, the Department is improving assessment and referral practices for nursing homes, hostels and community aged care packages. Aged Care Assessment Teams in Tasmania, South Australia and Queensland will be receiving additional resources to build on established links between themselves, ethnic communities and service providers. Other projects include the development and servicing of clusters of older people of non-English speaking background in nursing homes in Western Australia and New South Wales, development of on-the-ground partnerships between ethnic communities and aged care providers in South Australia and Victoria, and the writing of a manual for providers who care for older people of non-English speaking background in residential care settings.

Other key results of the previous 1994 'State of the Nation' report on housing and the health care needs of elderly people of non-English speaking background are:

- the former Department of Housing and Regional Development had provided funding for a national information and community program about the private and rental market and the rights and obligations of tenants and landlords with particular reference to ethnicity; and
- the Department of Immigration and Multicultural Affairs in Tasmania has referred the recommendations of the 1994 'State of the Nation' report to the inter-departmental Access and Equity Officers meeting to ensure greater awareness of the recommendations on the report.

## **Community Development Employment Program**

In May 1995, the Race Discrimination Commissioner began an examination of policies and legislation relating to CDEP to determine whether these have adverse discriminatory consequences that are contrary to the human rights of participants in the CDEP. The inquiry was undertaken in response to Aboriginal and Torres Strait Islander communities having expressed some concerns in relation to alleged financial disadvantages experienced by participants in the CDEP scheme. The report is now completed and should be tabled in Parliament in November 1996.

## **Cultural diversity training**

Following up on an issue identified in the 1995 'State of the Nation' report on the need to evaluate cross-cultural training programs in Australia, a successful seminar was held at HREOC on 5 June 1996. The Race Discrimination Commissioner has been particularly concerned that some cross cultural training may have unintended adverse results including the entrenching of

ethnic stereotypes rather than challenging them. The seminar was jointly organised and supported by the then Bureau of Immigration, Multiculturalism and Population Research (BIMPR) and the Race Discrimination Commissioner.

The aim of the seminar was to define effective and high quality cross cultural training and to consider strategies which would raise the standards of delivery. The national seminar was attended by cross cultural training practitioners, academics and policy makers from sectors such as health, education, law and business who discussed, among other things, the need for the registration of practitioners and the need for specialist train the trainer courses and peer support.

Results of the seminar:

- the Race Discrimination Commissioner and the BIMPR agreed to jointly publish a book of research papers that will point to local best practice models and demonstrate the unique nature of the development of cross cultural training in Australia. Given the changes regarding the BIMPR this will need to be renegotiated with DIMA now that much of the work of the BIMPR will be undertaken by DIMA;
- agreement by all participants that there was a need for further workshops and research; and
- practitioners present at the seminar decided to explore the possibility of establishing a National Professional Association of workers in the area.

## **Education and promotion**

The Race Discrimination Commissioner has the function of:

- promoting understanding and acceptance of, and observing provisions of the Act; and
- developing, conducting and fostering educational programs and other programs to promote the provisions of the Act.

## **Racial hatred legislation**

The Race Discrimination Commissioner and her staff have been active this year in extensive media and community liaison about the new racial hatred amendments. They have prepared submissions to government about the operation of the amendments, produced fact sheets, written articles, delivered speeches and conducted seminars. Comprehensive training on the amendments for staff in central and regional offices as well as those in HREOC agencies has been conducted. Complaint handling guidelines have been prepared for all complaints and enquiries staff dealing with these complaints.

The Race Discrimination Commissioner has also embarked on a national community education and public information strategy to raise public awareness about rights and responsibilities under the racial hatred amendments and the RDA generally. The campaign has three distinct but integrated components. One component targets indigenous people and is being conducted by the Aboriginal and Torres Strait Islander Social Justice Unit of the Commission as part of the National Community Education Project. Materials (including a video and training booklets) have been developed. Another component targets people of non-English speaking background. Information about rights and responsibilities has been produced in English and twelve other community languages and will be distributed nationally. A press and radio campaign has also

been conducted in the ethnic media. A third component involves the Race Discrimination Commissioner conducting a series of briefings and seminars around Australia for working journalists in print and electronic media. A media resource kit is also being developed for trainee and working journalists.

## **Racial Discrimination Act - twentieth anniversary**

While the key celebratory event of the twentieth anniversary of the RDA was described in the 1994-95 Annual Report, other events related to the anniversary continued until the end of 1995.

A book entitled 'Battles Small and Great: The First Twenty Years of the Racial Discrimination Act' was published in November 1995 to explain in greater detail the themes addressed by the video of the same name. (The video was produced for the Race Discrimination Unit by ABC-TV and highlights had been screened at the celebratory event in June 1995 with the full version screened nationally by the ABC later in the year). The International Year for Tolerance Secretariat included both 'Battles Small and Great' the book and video in its 'Tolerance Kit' which was sent to over 3000 secondary schools across Australia. The book and video have been purchased by many organisations as an anti-racism resource.

The Race Discrimination Commissioner formally ended the twentieth anniversary commemoration on 12 December 1995 when she launched 'Battles Small and Great' (the book) and the 'State of the Nation' 1995 report for people of non-English speaking background. Among the guests were former Prime Minister Gough Whitlam and the former Attorney General Kep Enderby, both key players in the passage of the legislation in 1975.

A number of anti-racist projects funded by the Race Discrimination Commissioner were undertaken during the twentieth anniversary year in regional offices and agencies of the Commission. These included, for example, monitoring and analysing media reporting on race in Queensland, a community education campaign on the RDA and employment in Tasmania, and the production of community language materials about rights and responsibilities under the RDA targeted to two non-English speaking background communities in South Australia.

## **Employment code of practice**

In the 20 years of operation of the RDA, the clear majority of complaints made have related to employment. This year the Race Discrimination Unit developed an 'Employment Code of Practice' to assist employers, employees, trade unions and employment agencies in understanding the provisions of the RDA. The Code explains how policies can be developed and implemented to positively address racial discrimination, harassment and vilification and enhance equality of opportunity in the workplace.

The Code covers issues such as recognising unlawful discrimination, the responsibilities of employers, employees, trade unions and employment agencies, setting up complaint procedures, recruitment and special measures.

The Code is currently in the form of a working draft and submissions are being sought from various groups on how this draft can be improved. It is expected the final version of the Code will be issued following consultations in early 1997.

## **Dealing with racist violence**

Anecdotal evidence suggests that racist violence is increasing although this is difficult to quantify because of the lack of data. A training kit entitled 'Dealing with Racist Violence' had been prepared as part of an earlier community relations strategy in the early 1990s but was never approved and released. This has now been updated and will be distributed to primary service providers such as police services, ambulance officers and hospital personnel as a resource for staff training. To date the Race Discrimination Commissioner has successfully negotiated with the New South Wales Police Service for pilot use of the kit in its training programs and daily operations.

## **Alcohol report**

The 'Alcohol Report' launched in Alice Springs in July 1995 has had a positive impact on Aboriginal communities in the Northern Territory according to the Northern Territory Liquor Commissioner. The Report reaffirmed the right of Aboriginal communities to demand restrictions on the distribution of alcohol for the benefit of all community members. Throughout the year twelve applications for special measures certificates were made to the Race Discrimination Commissioner and the first should be issued in August 1996.

The Race Discrimination Commissioner continues to monitor progress in this area. During the Liquor Commission hearings into licence conditions in Tennant Creek, Northern Territory, the Race Discrimination Commissioner made a successful written submission. The outcome of the hearings, enforcing restrictions requested by the Julalikari Council has been welcomed by all parties and is providing a model for other communities and towns in the Northern Territory and beyond.

## **Speeches and community liaison**

Throughout the year the Race Discrimination Commissioner and her staff presented 48 formal speeches in a variety of contexts such as national conferences, seminars, luncheons and dinners. The Race Discrimination Commissioner also chaired a number of sessions at major conferences and participated in numerous book launches, public meetings and lectures. Almost weekly the Race Discrimination Commissioner has given press, radio and television interviews (local, regional and national) on a range of relevant subjects.

The following are some examples of speeches delivered:

11 July 1995: 'Alcohol, Special Measures and the RDA' paper. Launch of the 'Alcohol Report' in Alice Springs.

26 July 1995: 'Reviewing the Racial Discrimination Act' paper. 'Customer Anti-Discrimination Law', IIR Conferences, Sydney.

26 July 1995: 'Domestic Violence, Racism and Immigrant Women' paper. Launched the Immigrant Women's Domestic Violence Service of Victoria Inc, Melbourne.

15 August 1995: 'Racism in Higher Education' paper. Launch of the University of New South Wales' 1995 Pilot 'Act Now' Against Racism Campaign, Sydney.

27 August 1995: Keynote address 'Racial Hatred Act' at the Annual General meeting of the Muslim Women's Association, Sydney.

4 September 1995: 'Racism and Schools' paper. Launch of the Ethnic Communities Council of NSW Oral History, 'Project Harmony', Sydney.

12 September 1995: Keynote address 'Addressing Racism in Australia' to the Women's International Zionist Organisation State Council of Victoria's 75th Anniversary Luncheon, Melbourne.

26 October 1995: Keynote address 'Race Relations in Australia; Has it Improved?'. Annual General meeting of the West Australians for Racial Equality Group, Perth.

11 November 1995: 'Communication and Managing Change - Implications for a Multicultural Workforce' paper. Second International Conference on Communication and Culture in the Workplace, Sydney.

14, 15 November 1995: 'The Work of the Race Discrimination Commissioner' speech. Rockhampton and Cairns.

18 November 1995: Opened the NSW State Child Care and Child Development conference with a speech 'Embracing Diversity: Working Now for the Future: What Do We Want' at the University of Western Sydney.

5 December 1995: 'Racism in Australia Today' paper. Annual Speech night of St Catherine's School Waverley at the University of NSW, Sydney.

16 February 1996: Address delivered to the Third Anniversary Louis Johnson Media Awards and presentation for media coverage of Aboriginal issues, Perth.

8 March 1996: Keynote address 'Racism and the Public Service'. International Women's Day Luncheon hosted by the Public Service Commission, Brisbane.

22 March 1996: Keynote address 'Domestic Violence and Non-English Speaking Background Women'. National Conference on Domestic Violence and Non-English Speaking Background Women, Melbourne.

14 May 1996: 'Racism at Universities' paper. Community forum on racism organised by the University of Western Sydney, Hawkesbury Campus, Sydney.

29 May 1996: 'The Role of National Institutions in Working with Ethnic Minorities'. Presented by Brian Burdekin on the Race Discrimination Commissioner's behalf to the United Nation's Working Group on Minorities in Geneva.

3 June 1996: 'Equal Employment Opportunity and Migrant Women' paper. One of the key note speakers at the opening session of the second national Women in Migration conference, Sydney.

4 June 1996: Paper on 'Performance Through People: EEO: The Drive for Excellence'. National conference organised by the Public Service and Merit Protection Commission, Canberra.

# Legislative reform

## Review of the Racial Discrimination Act

On 7 August 1995 the then Attorney-General launched the seminar which began the formal review of the RDA. Invited participants, expert in anti-discrimination legislation and race issues, presented papers which addressed topics such as indirect racial discrimination, section 9 of the RDA, collective rights, special measures, the intersection of race and gender, access to the RDA, the conciliation framework and remedies. The objective of the seminar was to produce papers to form the core of a discussion document on reviewing the Act. 'The Racial Discrimination Act: A Review 1975-1995' was published in February 1996 and distributed widely to the target audience of practitioners, legal officers, academics and peak advocacy organisations.

A community consultation guide in plain English for broader use was also completed and distributed widely before the commencement of consultations to assist communities in presenting written and oral submissions on the Act. In response to advertisements in national, state, ethnic and indigenous press calling for public submissions, many enquiries and some written submissions have already been received. National community consultations began on 23 June 1996 and will continue to the end of September 1996 in urban, regional and remote areas. The meetings with Aboriginal and non-English speaking background communities are raising many issues about the operation and scope of the RDA which will contribute to the formal review of the Act. Equally important, the community review consultations, as planned, have provided a valuable opportunity to inform and educate communities about the racial hatred amendments and the RDA.

The Review will be completed in late 1997 when a package of recommendations will be presented to the Attorney-General.

## Racial hatred amendments

Amendments on racial hatred were enacted on 13 October 1995. The amendments excluded, in their entirety, the criminal provisions in the Bill which proposed amendments to the Commonwealth Crimes Act. The civil provisions of the Bill which proposed amendments to the RDA (a new Part 11A of the Act) were untouched. These are the provisions which are now being administered by the Commission and referred to elsewhere in this section.

# Sex Discrimination Commissioner



Sue Walpole, Sex Discrimination Commissioner

Sue Walpole has a Bachelor of Law and a Bachelor of Jurisprudence in Industrial Relations from the University of New South Wales. She has studied industrial democracy systems overseas and has a Graduate Diploma in Media Management from Macquarie University.

Sue Walpole took up her appointment as Sex Discrimination Commissioner in February 1993.

## Statement from the Sex Discrimination Commissioner

As I have noted before, Commissioner's statements provide an opportunity to reflect on past activities and achievements, as well as future plans. This year such reflection is perhaps even more important as a change in

government significantly alters the environment in

which the Sex Discrimination Act (SDA) operates.

Since taking up the office of Sex Discrimination Commissioner my work and that of the Sex Discrimination Unit has been concentrated around four main objectives:

- the integration of the principles of the SDA into the major decision making forums of practical importance to women;
- the amendment of the SDA to remove its restrictions and make it more accessible and effective;
- the development of major community education programs targeted at specific groups; and
- the streamlining and improvement of complaint handling procedures so that all those who come into contact with the Commission receive fair and equitable treatment.

1995-96 has been a very successful year in all these areas as the detail of the report demonstrates.

Government administration and the industrial relations system and have been the focus of efforts in the first area. The Australian Industrial Relations Commission's Carer's Leave Test Case decision and the section 150A Review of Awards have placed principles for the prevention and elimination of discrimination in the industrial relations mainstream.

Complaints under the SDA continue to focus on employment, so it is of critical importance that the bodies on which the community relies in the employment arena (governments, employers, unions and the Industrial Relations Commission) incorporate anti-discrimination principles into their day to day activities. If equity is not at the core of their approach, neither will it be for the broader community.

Rights and responsibilities form the basis of the SDA. However, the legislation governing a number of critical activities of government, such as taxation and social security, has been exempt from the SDA. This year, in conjunction with the relevant departments, my office has successfully reviewed these exemptions and the Attorney-General currently is preparing legislation for the removal of the majority of them. This is a major achievement and I congratulate all involved. Rights have been expanded and responsibilities accepted by the decision makers involved. It is to be hoped that this constructive and reciprocal approach will continue as a prime means for change and preventing unwanted and unintended discriminatory practices.

Perhaps the most interesting aspect of our work has been explaining and developing an understanding of the principles of equality. This is particularly so when discussing the concept of indirect discrimination. Too often the common understanding of discrimination rests on the idea of deliberate intent. 'There can't be discrimination because I didn't mean there to be.' But intent has never been an element of anti-discrimination legislation. The Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) and the SDA are both based on the idea of equality of outcomes, not on intentions.

An attempt has been made to clarify this critical distinction in two significant amendments which were passed in December 1995. Of particular importance was the change to the SDAs indirect discrimination provisions. The new test for indirect discrimination is much simpler and, hopefully, will lead to the development of case law that goes to the heart of systemic discrimination. No longer will complainants have to work their way through a maze of statistics to prove proportionality. Nor will they have to speculate on why the policy or practice they are disputing may or may not be reasonable. Now they only need to prove that it will result in disadvantage. If respondents wish to defend the provision, they can argue that it is reasonable in the circumstances. Equality of outcomes is the issue, not a blaming environment based on intent.

Positive action aimed at remedying the ongoing effects of past discrimination or addressing disadvantage will no longer be seen as discriminatory but exempt under the SDA. Instead, 'special measures' will be seen as a legitimate strategy for achieving substantive equality. These amendments, along with the others described in this report, should make the SDA more accessible and effective.

Of course, there remains much to be achieved. In my view, a major restriction of the SDA is the exemption applying to state and local governments. Neither the RDA nor DDA contain a similar exemption. All states and territories in Australia now have sex discrimination legislation and it is unjustifiable that the restriction remains in the SDA. It is clear that there is broad community support for the legislation and it is unacceptable that there remains such a big gap in its coverage, reflecting long past controversy.

Of course all this work and all these changes have little or no meaning if women and men remain unaware of them. The community education work of my office is wide-ranging but targeted. A good example was the series of national workshops run by the Metal Trades Industry Association in which I participated. The written and visual word is also particularly



important for the less mobile and those in remote communities. The translation of our basic brochures and the production of our video for use in indigenous communities are both landmark achievements in this area. Our efforts to tailor information for those who need and will use it also includes other advocates for equality. The research on working hours, enterprise bargaining and superannuation, produced under the auspices of my office, provide much needed tools for such advocates.

Community education is also about floating new ideas and approaches to issues. The Human Rights and Women's Equality lecture and the Asia Women's Fellowship are two programs launched this year that provide the opportunity to think more broadly about different approaches to gender equity. The continuation of these programs will add to our understanding of the many dimensions of inequality.

More controversial has been the development of codes of practice. The codes are a direct response to requests for assistance, particularly from employers. To be of practical use they focus on specific issues such as sexual harassment and equal pay. Each code examines statute and case law along with best practice examples. The emphasis is on prevention of discrimination and usefulness in a day-to-day context.

The many steps which have been taken to improve the complaint handling process are outlined elsewhere in this report. I will not repeat them here, but rather take the opportunity to thank those Commission staff who have worked so hard to make the daily administration of the SDA a much improved one for all concerned.

Each year I have especially thanked the staff of my unit for their hard work and sense of fun and adventure. So to in 1995-96. It is also important to thank all of you. Without the ongoing support of the community the achievements of this unit would not have been possible.

1995-96 has confirmed in my own mind the importance of the role of the Sex Discrimination Commissioner. Whoever occupies this position brings a fresh view to the issue of equality between the sexes which is the core of the SDA.

Without continued specialist attention to sex discrimination issues through a dedicated office, it is unlikely that the significant progress that has been made towards equality will continue. It is clear from experience built up over the last 12 years that we must constantly look at the boxes in which sex discrimination is packaged. At the same time, we must closely scrutinise the contents. Only with such understanding will equality become an achievable goal.

## **Functions under the Sex Discrimination Act**

To ensure that progress is made towards addressing sex discrimination in Australia, the Commission and the Sex Discrimination Commissioner have been granted a number of functions under sections 48 and 49 of the *Sex Discrimination Act* 1984. These functions fall into five broad categories:

- complaint handling;
- education and promotion;
- research;
- publishing guidelines; and

- advice to Government and Parliament on sex discrimination issues.

## Complaint handling

Complaints alleging unlawful discrimination may be brought to the Commissioner. Complaints are investigated and, where possible, resolved by conciliation. Where complaints cannot be conciliated, or are inappropriate for conciliation, they are referred to the Commission for formal hearing and determination.

## Temporary exemptions

None granted in 1995-96.

## Complaints lodged under the SDA: 1 July 1995 to 30 June 1996

The most notable feature of complaints during the past year is the fall of some 30 percent in the number of complaints received. Without further research it is not possible to ascribe a reason for this fall but it is noticeable that it has been uniform across the country except in South Australia and Western Australia where small rises were recorded. It is notable however that 96 percent of the fall in complaints is due to a fall in employment related complaints. This may be attributable to the active role the Industrial Courts has taken in the discrimination area where it relates to unfair dismissals.

Sexual harassment continues to be the largest single ground of complaint (48 percent) and employment largest area (84 percent). There has been a notable increase in complaints concerning goods and services (up from 7 percent to 12 percent) of all complaints. Private enterprise continues to be the major respondent (43 percent of complaints) but the proportion of individual men as respondents has declined from 21 percent to 14 percent. This may assist in putting to rest the idea that legislation is misused for reasons of 'vengeance'.

When outcomes are examined (see Table 3b) the results are extremely pleasing. Conciliated outcomes have increased (34 percent up from 28 percent last year) and the number of declines have decreased (17 percent compared to 19 percent). Along with withdrawals, which in the majority of cases indicate private settlement, this tends to indicate better understanding of the legislation by all concerned. The proportion of referrals has doubled this year (20 percent compared to 10 percent). This is particularly due to Victoria but overall it indicates success in dealing with the backlog of complaints.

Table 9a: SDA grounds of complaint

| Category                                    | Central*   | Qld       | NT        | Tas       | ACT       | Vic        | SA         | WA        | Total        |
|---|------------|-----------|-----------|-----------|-----------|------------|------------|-----------|--------------|
| Sex discrimination                          | 97         | 6         | 5         | 10        | 7         | 132        | 80         | 14        | 351          |
| Sexual harassment                           | 102        | 5         | 6         | 10        | 3         | 202        | 199        | 28        | 555          |
| Sexual discrimination and sexual harassment |            | —         | —         | —         |           |            | 28         | —         | 28           |
| Marital status                              | 18         | 1         | 2         | 2         |           | 13         | 3          | 2         | 41           |
| Pregnancy                                   | 26         |           | 1         | 4         | 3         | 28         | 19         | 2         | 83           |
| Family responsibility                       | 12         |           | 1         |           | —         | 6          | 2          | 2         | 23           |
| Victimisation                               | 8          | 2         | —         | —         | —         | 34         | 14         | 5         | 63           |
| Other                                       | 6          | —         | —         | —         |           | 2          | —          | —         | 8            |
| <b>Total</b>                                | <b>269</b> | <b>14</b> | <b>15</b> | <b>26</b> | <b>13</b> | <b>417</b> | <b>345</b> | <b>53</b> | <b>1 152</b> |

\*multiple grounds recorded

Table 9b: SDA area of complaint

| <b>Category</b>                                  | <b>Central*</b> | <b>Qld</b> | <b>NT</b> | <b>Tas</b> | <b>ACT</b> | <b>Vic</b> | <b>SA</b>  | <b>WA*</b> | <b>Total</b> |
|--|-----------------|------------|-----------|------------|------------|------------|------------|------------|--------------|
| Employment                                       | 178             | 8          | 11        | 24         | 12         | 347        | 293        | 48         | 921          |
| Accommodation - land                             | —               | —          | 1         | —          | 1          | 3          | 3          |            | 8            |
| Goods and services facilities                    | 26              | 2          | 1         | 2          | —          | 51         | 40         | 5          | 127          |
| Clubs - incorporated associations                | 1               | 2          | —         | —          | —          | 5          | 4          | —          | 12           |
| Administration of Commonwealth laws and programs | 6               |            | 2         |            |            |            | —          | —          | 8            |
| Education  | 3               |            |           |            |            | 11         | 5          |            | 19           |
| Superannuation                                   | 7               |            |           |            |            |            |            |            | 7            |
| Trade unions - accredited bodies                 | 1               | —          | —         | —          | —          |            |            |            | 1            |
| Other  | 10              | 2          | —         | —          | —          | —          |            |            | 12           |
| <b>Total</b>                                     | <b>232</b>      | <b>14</b>  | <b>15</b> | <b>26</b>  | <b>13</b>  | <b>417</b> | <b>345</b> | <b>53</b>  | <b>1115</b>  |

\*multiple areas per complaint

Table 9c: SDA type of complaint,

| <b>Type</b>                    | <b>Central</b> | <b>Qld</b> | <b>NT</b> | <b>Tas</b> | <b>ACT</b> | <b>Vic</b> | <b>SA</b>  | <b>WA*</b> | <b>Total</b> |
|--------------------------------|----------------|------------|-----------|------------|------------|------------|------------|------------|--------------|
| Male                           | 32             | 2          | 5         | 2          | —          | 55         | 43         | 46         | 185          |
| Female                         | 187            | 11         | 10        | 24         | 13         | 362        | 302        | 4          | 913          |
| More than one individual       | 1              |            |           |            |            | —          | —          | —          | 1            |
| On behalf of a person or group | 3              | 1          |           |            |            |            |            |            | 4            |
| Representative complaint       | 6              | —          | —         | —          | —          |            |            |            | 6            |
| Trade union                    | —              | —          | —         | —          | —          | —          | —          | 3          | 3            |
| <b>Total</b>                   | <b>229</b>     | <b>14</b>  | <b>15</b> | <b>26</b>  | <b>13</b>  | <b>417</b> | <b>345</b> | <b>53</b>  | <b>1112</b>  |

Table 9d: SDA type of respondent

| <b>Type</b>  | <b>Central*</b> | <b>Qld</b> | <b>NT</b> | <b>Tas</b> | <b>ACT</b> | <b>Vic</b> | <b>SA</b>  | <b>WA</b> | <b>Total</b> |
|--|-----------------|------------|-----------|------------|------------|------------|------------|-----------|--------------|
| Male   | 22              |            | 7         |            |            | 96         | 30         |           | 155          |
| Female   | 2               |            |           |            |            | 5          | 6          |           | 13           |
| Educational institution                                      | 7               |            | 1         |            |            |            |            |           | 8            |
| Non-government organisation                                  | 2               | 2          |           |            |            | 9          | 8          |           | 21           |
| Private enterprise   | 105             | 2          | 11        |            |            | 215        | 144        |           | 477          |
| Trade union- professional organisation                       | 4               | —          | —         | —          | —          | —          | —          | —         | 4            |
| Local government   | 1               |            | —         | —          |            | —          | 4          | —         | 5            |
| State/Territory government department or statutory authority | 16              |            | 1         |            | 1          | 15         | 8          |           | 41           |
| Commonwealth government department or statutory authority    | 46              | 2          | 2         | 3          | 9          | 48         | 7          | 10        | 127          |
| Other  | 24              | 8          | —         | 23         | 3          | 29         | 138        | 43        | 268          |
| <b>Total</b>   | <b>229</b>      | <b>14</b>  | <b>22</b> | <b>26</b>  | <b>13</b>  | <b>417</b> | <b>345</b> | <b>53</b> | <b>1119</b>  |

\*multiple respondents per complaint

## Case studies

The following case studies illustrate typical complaints lodged under the SDA with their outcomes.

### Conciliated complaints

#### Sex discrimination in a partnership

The complainant alleged that she was being denied the benefits and opportunities of a partnership based on her sex. The complainant claimed that work was not referred to her by the other partners and that there was a male dominated culture in the workplace. She alleged that she was initially advised that her financial performance was below expected targets and that it needed to increase over the ensuing six months. She claimed that although her performance improved significantly, she was consequently advised that she did not fit in the culture of the partnership and was dismissed. The respondent partnership denied that the complainant had been discriminated against because of her sex and claimed that she did not have the capabilities required of a partner. However, the complaint was settled for \$81 000 without admission of liability.

#### Sexual harassment

The complainant was a young woman who employed as secretary to a partner in a small law firm. She said that during the first week of her employment, her boss leered at her and also treated her in a abrupt manner. She said that she spoke to him about his behaviour and he subsequently apologised and asked her not to leave. The complaint alleged that two weeks later, her put his arm around her and said that he was pleased he had hired a woman with blond hair and large breasts. She claimed that he then pushed his groin into her back while she was sitting at her desk. The complainant did not return to work and resigned two days later. She was diagnosed with post-traumatic stress disorder, but at that time was unable to afford the prescribed psychotherapy. The complaint was settled for \$6 500 without admission of liability.

#### Pregnancy, family responsibilities, race

The complainant, a Chinese woman, had worked for a five star hotel chain as a cleaner for six years when she first encountered problems with the new supervisor of housekeeping. The complainant had an excellent work performance history with the hotel, and held a 'chief maid' position of responsibility. After advising of her pregnancy, the complainant was refused light duties by her supervisor despite doctor's orders. She alleged that from this time the supervisor frequently reprimanded her on her work performance, and often stated that her 'English wasn't good enough'. After the complainant returned from maternity leave, the supervisor removed her 'chief maid' responsibilities and gave her fixed hours which conflicted with her family responsibilities. Because of the impossibility of the fixed hours, which were imposed on no other staff member in her role, and increasing racial harassment, the complainant resigned. In conciliation, employer acknowledged that the removal of 'chief maid' responsibilities was a profound humiliation for the complainant within her workplace, and that her experience of the racist harassment had impaired her confidence to find other work. The complainant's loyalty and long service with the hotel was also recognised. The complainant sought damages for economic loss, stress and humiliation. In settlement the respondent offered the complainant \$12 500 and a 'chief maid' position with the hotel, which had recently dismissed the supervisor for bad management practices.

## Complaints referred to formal hearing

### **Eleven Fellow Members of the McLeod Country Golf Club v McLeod Country Golf Club**

The McLeod Country Golf Club was founded in 1968 by a group of women who were excluded from the management of all existing clubs and refused access to golf courses at the best playing times. The women responded by constructing a modern golfing facility managed solely by women. Men could join the club and use its facilities but they could not participate in its management.

Twelve male members complained that the club discriminated against them on the ground of sex. For constitutional reasons, the men had to show that the club was a trading corporation in order to bring their complaint within the jurisdiction of the SDA. They argued the club was incorporated and engaged in commercial trading activities such as selling food and drinks and hiring out the clubhouse for functions.

Inquiry Commissioner Carter dismissed the complaint. Although he accepted that a sports club could be a trading corporation, the mere fact of trading did not make it one. The issue depended on the extent of the trading activity. He concluded that the club's core activity was the playing of golf. This meant that the complaint from the male members was not covered by the SDA.

He added that even if the club was a trading corporation, the women-only management structure would qualify as a 'special measure' under the SDA as it was designed to give female golfers equal opportunities with male golfers.

### **Tenuyl v Delaney and Calcium Nominees Pty Ltd**

Between May 1992 and August 1993, the complainant was employed on a casual basis at a cafe where she prepared fast food and drinks. At the time she started work she was 15 years old. Her employer, the proprietor of the business, was aged 53.

The complainant alleged that during the first few months, she and her employer would talk about personal matters. But as her sixteenth birthday approached, he started making comments such as 'ten weeks until you're the legal age.' After her birthday, he began putting her pay directly into the pocket of her pants, fondling her thighs and sometimes her breasts as he did so. The unwelcome touching became worse and although the complainant was highly distressed, she felt that she could not quit her job because she was helping her father, who was on sickness benefits, to lease a video recorder. After an incident amounting to indecent assault occurred, the complainant did not return to the cafe and sought help from her school counsellor.

Evidence presented at the inquiry indicated that the sexual harassment had a marked effect on the complainant. She became moody and withdrawn, rarely socialised with her friends, wore different clothing and stopped participating in sporting activities. A professional counsellor stated that her feelings and behaviour were consistent with those experienced by victims of sexual assault.

Inquiry Commissioners Atkinson and Kalantzis found that the complaint was substantiated and awarded the complainant a total of \$23 285 damages for emotional injury, future treatment costs, lost wages and interest on lost wages. The respondent was also ordered to provide the complainant with a written work reference.

## Education and promotion

### **Asia women's fellowship**

Shahrizat Abdul Jalil PM, the first recipient of the Asia Women's Fellowship, visited Sydney from 12 to 16 April 1996 as part of a tour organised by the HREOC and the Asia-Australia Institute, and sponsored by the Department of Foreign Affairs and Trade.

The Fellowship was launched in 1994. Each year it will bring to Australia an eminent women from the Asian region for an exchange of ideas with others in her field of interest.

### **Agender'**

Issue No 3 of Agender', the annual newsletter of the Sex Discrimination Commissioner, was released in November 1995 and nearly 11 000 copies were distributed nationally.

Agender' is an illustrated publication which features news, reports on policy, research and special project work of the Sex Discrimination Unit, case studies of conciliated sex discrimination complaints and complaints referred to public hearing, a legal issues page and publications review.

The newsletter provides an overview and summary of the work of the Sex Discrimination Unit to government, the media and public and private sector organisations, service providers and practitioners.

### **Inaugural human rights and women's equality lecture**

As part of the celebrations for the tenth anniversary of the SDA, the Law Council of Australia and the Sex Discrimination Commissioner agreed to co-sponsor an annual lecture by a prominent person in the human rights/women's rights area. The inaugural lecture was given on 17 May 1996 in Canberra by the Hon. Elizabeth Evatt AC. Her lecture focused on the need to promote the culture and heritage rights of indigenous women.

### **Superannuation**

The 1991 superannuation amendments to the SDA which came into effect in June 1994 have continued to generate many industry inquiries and policy development issues for the SDU. The Unit has advised and worked with superannuation fund administrators, trustees, employers and unions to promote the implementation of the amendments. An article by a senior policy officer entitled 'Moving Towards Sex Equality in Superannuation' was published in 'Australian Superannuation News', 12 March 1996.

### **Indigenous women's community education project**

After three years of hard work by local communities, an advisory committee and staff of the Cairns office, a video and voice track suitable for radio has been produced explaining the SDA and its complaint procedures. The video is based on scenarios developed and acted out by Cape and Island Indigenous communities. It is available in Creole and English. Other languages will be dubbed as required by each community.

## **Translations**

Three brochures produced by the Sex Discrimination Commissioner, 'Sexual Harassment: Knowing Your Rights', 'Your Guide to the Sex Discrimination Act' and 'Your Rights at Work: Women Workers and the Sex Discrimination Act' were published in Chinese, Arabic and Vietnamese. The translated brochures have been widely distributed to ethnic community groups and other organisations which work with women from non-English backgrounds.

## **Pregnancy brochure**

A new brochure was produced called 'The Sex Discrimination Act and the Rights of Pregnant Workers'. The brochure covers issues such as protection from direct and indirect discrimination, maternity leave rights and health and safety considerations.

## **Papers and speeches**

The Commissioner delivered 21 speeches and papers during 1995-96. The staff of the Sex Discrimination Unit also gave over 20 speeches, seminars and workshops during the year.

Copies are available and may be obtained from the Commission. Some of the more topical speeches are listed below.

6 July 1995: 'Access, Equity and the Sex Discrimination Act'. National Conference on Access and Equity in Tertiary Education, Melbourne.

4 August 1995: 'EEO and Diversity in Employment: How to achieve it?'. Australian Human Resources Institute Conference, Sydney.

15 August 1995: 'Equity Provisions and Enterprise Agreements: Why So Few?'. Women, Management and Industrial Relations Conference, Sydney.

22 September 1995: 'Sexual Harassment: The Legal Framework'. Women and Law Conference, University of Sydney.

24 September 1995: 'Equal Remuneration for Work of Equal Value: Discrimination Issues, Legislation and Strategies'. Labour Lawyers Conference, Sydney.

1 October 1995: 'Sex Discrimination: The Road Ahead'. Women and Labour Conference, Macquarie University, Sydney.

2 October 1995: 'Superannuation and Family Relationships'. Australian Superannuation Funds Association National Conference, Melbourne.

30 November 1995: 'Going it Alone: Women and Small Business'. Fourth International Women in Leadership Conference, Edith Cowan University, Perth.

26 January 1996: 'Women's Rights, Human Rights: Achievements and Aspirations'. Women's Electoral Lobby National Conference, Sydney.

27 March 1996: 'Discrimination and Working Hours'. AMP and Finance Sector Union Joint Summit, Sydney.

25 April 1996: 'Peeling the Inequity Onion: How Australia's industrial system deals with discrimination in employment and pay equity'. Sixth International Interdisciplinary Congress on Women, University of Adelaide.



1 May 1996: '1996 Amendments to the Sex Discrimination Act'. Government Lawyers' Group, Canberra.

28 June 1996: 'Superannuation and Industrial Relations: Policy Challenges'. Australian Superannuation Funds Association Conference, Sydney.

## Research

The Sex Discrimination Commissioner undertakes research to promote the objects of the SDA. During the 1995-96 period, the Commissioner conducted research in two key areas.

### **Flexible working hours project**

The Sex Discrimination Commissioner and the Australian Council of Trade Unions jointly commissioned an independent researcher to examine the impact of enterprise bargaining on working hours. Funding for the research project was provided by the Sex Discrimination Commissioner.

The research examines how changes to hours worked and the span of hours worked under the enterprise bargaining system affect women and workers with family responsibilities. It demonstrates that enterprise bargaining in predominantly female sectors of employment has concentrated on changes to working hours, and that safeguards protecting women and workers with family responsibilities need to be strengthened in order to ensure equity.

The findings of the research will be published and launched in November 1996. Practical guidelines to help workers with family responsibilities negotiate fair working hours will also be produced.

### **Women, superannuation and actuarial data**

This project is being financed by the Association of Superannuation Funds of Australia (ASFA). It examines the reasons for the use of sex-based actuarial tables, and whether alternative approaches should be used. It will be an important tool for examining whether the exemption applied to superannuation and insurance schemes which discriminate on the basis of actuarial data should continue. The findings of the research will be jointly released by ASFA and the Sex Discrimination Commissioner in November 1996.

## Guidelines

The Sex Discrimination Commissioner is empowered to prepare and publish guidelines for the avoidance of discrimination and sexual harassment. During the 1995-96 period, the Commissioner was engaged in four main projects of this nature.

### **Special measures guidelines**

The Sex Discrimination Commissioner produced the '1996 Guidelines for Special Measures under the Sex *Discrimination* Act 1984' to increase awareness and understanding of the recently amended special measures provisions in the SDA. The guidelines aim to encourage the implementation of measures designed to achieve equality by offering a means by which employers, educational institutions, providers of goods, services, facilities and accommodation and administrators of Commonwealth laws and programs can assess their own equity initiatives for consistency with the SDA. The guidelines explain the importance of sex specific initiatives

as a strategy for eliminating systemic discrimination, provide criteria based on case law to assist in determining when an action or program is likely to constitute a special measure, provide case examples which illustrate special measures and explain the complaint handling process for complaints of discrimination under the SDA.

## **Sexual harassment guidelines for educational institutions**

'Sexual Harassment and Educational Institutions: A Guide to the Federal Sex Discrimination Act' was published in June 1996. The purpose of the guidelines is to assist schools, vocational education and training colleges and universities to prevent and eliminate of sexual harassment in the working and learning environment.

Educational institutions have important dual responsibilities under the SDA because they are both employers and providers of education. The guidelines examine the principles applying to sexual harassment and explain the legal obligations of educational institutions. They address the complex legal and jurisdictional issues that arise for the different sectors of education under Federal law and provide practical advice on developing policies and handling complaints.

## **Sexual harassment code of practice**

The Sex Discrimination Commissioner is developing a series of voluntary codes of practice on a number of relevant subject areas.

The majority of enquiries received concern sexual harassment, a Sexual Harassment Code of Practice is the first to be released for public consultation and trial. The Code is designed to address the specific needs of employers in a comprehensive and accessible way. It explains who is covered by the sexual harassment provisions in the SDA, defines terms and concepts from the legislation and case law and recommends practical measures that can be taken to reduce the risk of liability. It also contains specific information on prevention strategies that can be adopted by small business. For employers who have already implemented an anti-sexual harassment program, the Code can be used as a self-audit tool to review the program's effectiveness.

Comprehensive explanatory notes accompany the Code which contain examples from the case law and additional information on issues such as developing internal sexual harassment policies and complaint procedures, defamation, record keeping practices and termination of employment.

Although the Code itself is not legally binding or enforceable, it does incorporate mandatory aspects of the legislation and established principles. Implementation by employers is voluntary, but highly recommended. The Code will be publicly released in October 1996.

## **Enterprise bargaining manual**

A manual addressing the interests of women workers in enterprise bargaining was developed to help managers, unions and workers address issues of equity for women and workers with family responsibilities in the development of enterprise agreements. The manual will be available in September 1996.

## **Advice to Government and Parliament on sex discrimination issues**

The Sex Discrimination Commissioner may review proposed and existing legislation to assess consistency with the provisions of the SDA, and to recommend to the Attorney-General improvements to Commonwealth legislation, policy and practices in addressing discrimination issues.

## **Review of the Commonwealth laws exemption under the Sex Discrimination Act**

Section 40(2) of the SDA provides a permanent exemption for action performed in direct compliance with certain legislation in force as at 1 August 1984, including social security, taxation and health law. Section 40A of the SDA required that the operation of the exemption be reviewed by 1 June 1996 and this review must include (but need not be limited to) a recommendation as to whether the exemption should be removed.

The Attorney-General's Department coordinated the review of the exemption in relation to taxation and health legislation whilst the Sex Discrimination Commissioner coordinated the review of the Social Security Act exemption.

The Attorney-General's report on these reviews was tabled in Parliament on 26 June 1996. The report recommended the amendment of section 40 of the SDA so as to remove the exemption in respect of certain Acts of Parliament (*National Health Act 1953* and the *Papua New Guinea (Members of the Forces Benefits) Act 1957*) and to require it to be limited to applying to the marital status provisions (section 6) of the SDA for some other legislation (the *Gift Duty Assessment Act 1941*, the *Income Tax Assessment Act 1936*, the *International Tax Agreements Act 1953*, the *Sales Tax (Exemptions and Classifications) Act 1935*, the *Taxation (Unpaid Company Tax) Assessment Act 1982* and the *Social Services Act 1980* of Norfolk Island).

The Attorney-General recommended that the exemption in relation to the Social Security Act be retained for the present pending a closer review of provisions in the Social Security Act and other legislation (such as, taxation, superannuation and Austudy) which are based on notions of dependency. Work on the review has commenced.

Copies of the report are available from the Department of the Federal Attorney-General.

## **Submission to the Senate Economics References Committee Inquiry into the Workplace Relations and Other Legislation Amendment Bill 1996**

The *Workplace Relations and Other Legislation Amendment Bill 1996* was referred by the Senate to the Economic References Committee. The Committee called for submissions from interested parties on the terms of reference. In June 1996, the Sex Discrimination Commissioner made a submission on behalf of HREOC on the basis of the Commission's statutory functions under the HREOCA, which include the review of legislation for inconsistency with human rights obligations or any discriminatory provision which impairs equality of opportunity or treatment.

The submission raised a number of concerns about the possible impact of the Bill particularly on women, people from non-English speaking backgrounds, people with disabilities, indigenous people, and young people.

HREOC argued that the Bill does not provide adequate protection for these groups because:

- Australia's observance of international obligations designed to protect these groups is reduced by the removal of reference to a number of international conventions ratified by Australia;
- the role and power of the Australian Industrial Relations Commission is reduced;
- there are no adequate or appropriate mechanisms to enable equal remuneration to be achieved between men and women;

- there is no coherent framework for the regulation of different forms of work such as part-time and casual employment where many women and other disadvantaged groups are concentrated;
- the Bill is prescriptive in relation to the structure and function of unions in ways that unduly infringe the right of union members to associate freely on terms and within structures that they themselves determine;
- it reduces the role of representative bodies, for example, by reversing amalgamations and the introduction of 'bargaining agents';
- in relation to Australian Workplace Agreements, the Bill focuses on individual bargaining without ensuring adequate protections for disadvantaged employees; and
- many areas of crucial importance to the achievement of equality for all Australians are left to be addressed by regulations, which are yet to be drafted.

The Senate Committee is due to report in August 1996.

### **Submission to the Senate Select Committee on superannuation**

In August 1995, the Sex Discrimination Commissioner made a submission to the Senate Standing Committee on Superannuation with regard to superannuation for people with intermittent working patterns. Her submission argued that the remaining exemptions relating to superannuation in the SDA need to be removed if the basic interests of this group (most of whom are women) are to be addressed. Her recommendations were supported by the Senate Committee. Its report is now being considered by the Commonwealth government.

### **Amendments to the Sex Discrimination Act**

The *Sex Discrimination Amendment Bill* 1995 was passed by both Houses of Parliament and received Royal Assent on 16 December 1995. The amendments are:

- the insertion of a Preamble in the SDA;
- the insertion of potential pregnancy as a prohibited ground of direct and indirect discrimination;
- the removal of the reasonableness defence from direct pregnancy discrimination;
- a simplified test for indirect discrimination and a reversal of the onus of proving reasonableness;
- the limitation of the defence force exemption; and
- an amendment to the special measures provision which recognises that special measures to overcome historical disadvantage are not discriminatory.

The Sex Discrimination Unit has produced a fact sheet on the amendments and continues to respond to enquiries and requests for advice.

## Other activities

### Interventions

#### Personal/carer's leave test case

In August 1995 the Sex Discrimination Commissioner intervened on behalf of HREOC before the Australian Industrial Relations Commission (AIRC) in Stage two of the personal/carer's leave test case. The HREOC written submission was prepared by the Sex Discrimination Unit and the oral submission was made by the Sex Discrimination Commissioner on the basis of HREOC's legislative responsibility to eliminate discrimination in employment. HREOC submitted that discrimination against workers with caring responsibilities, 80 percent of whom are women, arises where employment conditions fail to accommodate unpaid caring responsibilities. HREOC supported the introduction of an additional five days paid carer's leave entitlement as part of the award safety net to better enable carers to balance their work and caring commitments. In particular, HREOC argued that eligibility for carer's leave should not be restricted by narrow and discriminatory definitions of 'family' which would exclude access to the leave for carers of same-sex partners, kin relations, extended family relations and people with disabilities who are not related to the carer by blood or marriage. HREOC recommended that leave be available to an employee to care for persons who are dependent on the employee for care, support and attention.

The AIRC did not grant the application for an additional five days paid carer's leave. However, the AIRC noted HREOC's submission regarding the difficulties experienced by carers in participating in paid employment where accommodation of caring responsibilities is left to employers' discretion. The decision ensured access to paid leave as an award entitlement by extending access to five days per annum aggregated entitlement of existing paid sick leave and compassionate/bereavement leave for caring purposes. Noting HREOC's proposals, the AIRC decided that carer's leave should be available to provide care and support for ill members of the employee's immediate family or household requiring their care and support. The AIRC also introduced various flexibility provisions to allow access to make-up time, time in lieu, rostered days off and part-time work for carer's leave purposes.

#### Section 150A award reviews

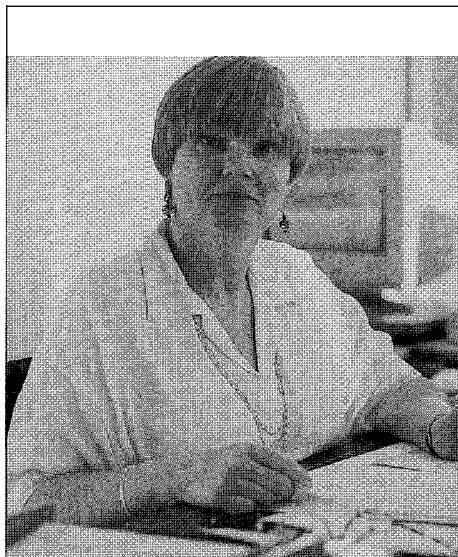
The Sex Discrimination Unit had been participating in the Australian Industrial Relations Commission's (AIRC) pilot review of Federal industrial awards under section 150A of the *Industrial Relations Act 1988*. One of the criteria for review was that discriminatory provisions be removed. HREOC has been providing advice on these matters.

The outcome of the pilot program as set down in the AIRC's decision of October 1995 was the formulation of a 'model' anti-discrimination clause to be inserted into awards. This requires respondents to awards to make every endeavour to ensure that neither the award provisions nor their application and operation are discriminatory in their effects.

Further, the AIRC decided that the third safety net wage adjustment would be awarded subject to the insertion of the anti-discrimination clause, and the commencement of discussions between award parties about removing discrimination. In that decision, the AIRC noted that HREOC's participation in the pilot reviews had benefited the review process, and welcomed HREOC's continued involvement in ongoing reviews.

The Sex Discrimination Unit also participated in the preparation of the AIRC's manual for reviewing awards, contributing information on discrimination definitions and concepts and how to identify discrimination in awards and provides ongoing advice to award parties.

# Disability Discrimination Commissioner



Elizabeth Hastings, Disability Discrimination Commissioner

Elizabeth Hastings took up her appointment with the Human Rights and Equal Opportunity Commission as Australia's first Disability Discrimination Commissioner in February 1993. Ms Hastings has long been an advocate in Australia for the rights of people with disabilities. She was a founding member of a number of major disability organisations and has also written a great deal on disability issues.

Ms Hastings has practised as a psychologist and psychotherapist for over twenty years and was a Commissioner with the original

Commonwealth Human Rights Commission from 1981 until 1986. In 1981 she was a member of the Victorian Executive Committee for the International Year of Disabled Persons and a delegate to the inaugural Disabled People's International Congress in Singapore.

Ms Hastings was a founder member of the Victorian Consultative Committee on

Disability and the Victorian Branch of Disabled People's International and was involved with the establishment of the Disability Resources Centre in Victoria. She has been published widely on issues relating to disability.

## Statement from the Disability Discrimination Commissioner

Three and a half years ago a new federal law was enacted to protect the rights of people who have disabilities to equal access to the community in which they live. The Disability Discrimination Act (DDA) requires that people with a disability be treated equitably and without unnecessary discrimination when they seek employment; when they wish to purchase or use goods, services and facilities provided to the general public; when engaging in educational activities; in their interactions with the Commonwealth government and its agencies; in access to premises; when travelling by public transport; in transactions relating to accommodation, insurance and finance; in sporting activity; and in the provision of appropriate information and communication.

The DDA provides for complaint-driven remedy for individuals or groups of individuals who are aggrieved under the Act; for the establishment of disability Standards to clarify specific provisions; and for the lodgement of Action Plans by providers of goods, services and facilities.

When the Act was first proclaimed people with disabilities were both relieved that action at last had been taken at the federal level, and sceptical about the changes which could be expected. Both relief and scepticism have been vindicated in the last year.

On the relief side of the equation there have been some significant developments both through the use of the complaints mechanism, and through intense and cooperative effort of interested parties in the progress towards the development of Standards. It has

been most satisfying to work in these processes with representatives of both those who have obligations under the DDA and those whose rights the DDA protects, as well as representatives of the relevant regulatory bodies.

Last year Telstra was found by the Commission to have been in breach of the legislation in not providing, on the same basis as telephone handsets are provided to the general customer, TTYs (Telephone Typewriters for the Deaf) to consumers who needed them. On 1 March Telstra publicly and proudly launched its scheme for provision of a voucher for a TTY (or equivalent computer equipment), to all people who are deaf or who have a communication disorder such that they require a TTY. Telstra also announced its intention to develop an Action Plan to ensure non-discriminatory provision of its services and facilities to people who have disabilities. It is gratifying indeed to have such a positive response from this major corporation.

In June this year the Australian Transport Council (ATC) accepted the draft Public Transport Standard as a 'technically feasible' method of providing accessible public transport. This Standard was developed through consultation and cooperation with all interested parties, including the private sector. The Standard is now undergoing a regulatory impact statement. Given that the ability to move from place to place easily and with minimal cost is as important for people with disabilities as for everybody, and that there is a twenty year minimum time line for implementation of the Standard, I trust that this absolutely vital aspect of community life will soon be moving towards availability for all Australians as we go about our ordinary personal and business affairs.

The preparation for circulation of a revised Building Code of Australia which reflects the purposes of the DDA; the completion of a draft employment Standard for consultation; and the establishment by the Ministerial Council on Employment, Education, Training, and Youth Affairs of a task force to develop disability Standards in education, are three more major steps towards eliminating disability discrimination in Australia.

After frustrating delays a discussion paper on possible development of a Standard for Commonwealth information and communication is also shortly to be circulated for comment.

I trust there will be no further unnecessary delays in the development of these and other Standards. For each day or week or month of delay there is the construction of another inaccessible shop, the unlawful denial of another employment opportunity, another ill-informed or misinformed citizen, another person isolated for want of transport, another educational career limited before it begins. Unfortunately the urgency which people with disabilities feel about their unlawful, unnecessary and unacceptable exclusion from the ordinary affairs of life is not mirrored in the urgency of the community to stop such exclusion. People who have disabilities have for centuries made do, have lived on the margin of society, have been grateful for the crumbs dropped from the community table. Those crumbs are no longer sufficient to satisfy citizens who have every right, now legislatively guaranteed, to expect full enjoyment of the amenities and responsibilities of membership of the Australian community.

The advances that have been achieved have all been stimulated by successful complaints under the DDA and, when brought to completion, will reduce the numbers of such complaints markedly.

I and the staff of the Commission continue to work towards community compliance with the DDA. Guides to the development of Action Plans for various types of enterprise and organization have been completed and extensively distributed in the last year. Many Action Plans have been received from a wide range of organisations. Quite frequently the agreement to develop an action plan is part of a conciliated settlement between complainant and respondent, and I anticipate this will result in many more being lodged over the coming year. The development of an Action Plan is a very good way for organisations to get to grips with the

DDA and to see how their ordinary activities may inadvertently discriminate against people who have disabilities but who may well have money to spend, or a legitimate expectation that they should be involved with those activities.

Late last year TransPerth launched its Action Plan for all metropolitan public transport. The Plan is based largely on the draft Standard in public transport already accepted by the ATC, which would seem to be good evidence not only of the 'feasibility' of the Standard, but of its practicability for a major transport provider.

As I indicated in my statement for last year's Annual Report, there are still some serious issues to be addressed, not all of which can be easily reached by the DDA. Access to justice continues to be problematic for people who have disabilities, particularly those whose disability results in impaired communication, impaired judgment, or disturbed or disturbing behaviour. Access to the political processes of our State and Commonwealth Governments is also not guaranteed for people who have a disability. Integrity of body is by no means guaranteed for young women who have an intellectual disability: unknown numbers of young women are 'sterilized' every year without the permission of the courts. For the relative few which get to court, there is still uncertainty about the role of the separate representative, and still a failure to focus on the right of the child to have sterilization imposed only as a treatment of last resort.

I regret profoundly that I cannot report any improvement in these areas over the past year, and that we still live in a society which denies such basic rights to its most vulnerable and silenced citizens.

## **Functions under the Disability Discrimination Act**

The Commission has a range of functions under the *Disability Discrimination Act* 1992. These include complaint handling, education and promotion, advice to Parliament and the government on disability discrimination issues, compliance activities and advising on disability standards.

The Disability Discrimination Commissioner is required under the Act to investigate and conciliate complaints about disability discrimination. The Commissioner is also the Commission's principal representative in performing the Commission's other functions under the Act, apart from the complaint hearing function which is performed by hearing commissioners.

### **Temporary exemptions**

As reported in the last Annual Report, the Commission granted a conditional temporary exemption to the South Australian Minister for Transport, the Passenger Transport Board and Trans Adelaide for a period of 12 months. This exempted the applicants from the operation of section 24 of the DDA so far as it concerns lack of access to buses by people who use wheelchairs. The purpose of the exemption was to allow these public transport authorities to conduct trials of accessible vehicles and implement strategies for more generally accessible public transport.

Upon expiry of the exemption the parties approached the Commission with a DDA action plan describing the steps they would take to improve accessibility of buses. After consultation with interested parties, the Commission granted a further exemption, until 6 November 1996, on condition that the action plan be implemented.



## Complaint handling

### Complaints lodged under the DDA: 1 July 1995 to 30 June 1996

Complaint numbers lodged under the DDA declined significantly in 1995-96, probably as a result of two factors: the easing of the pent-up demand that was released after commencement of complaint handling in 1993; and the activation of a number of policy initiatives that address discrimination on a systemic basis.

The distribution of complaints followed a similar pattern to 1994-95 (Table 10a). The State with the highest number of complaints was again Victoria, although the number there was down significantly from last year. This reflects progress in dealing with the backlog of complaints transferred to Victoria from Central Office following commencement of the cooperative arrangement with the Victorian Equal Opportunity Commission.

Table 10a: DOA complainants type of disability

| Type                                       | Central    | Qld       | NT        | Tas       | ACT       | Vic        | Total      |
|--|------------|-----------|-----------|-----------|-----------|------------|------------|
| Physical disability                        | —          | 24        | 8         | 26        | 5         | 51         | 114        |
| Intellectual disability                    | 14         | 1         | 1         |           | —         | 24         | 40         |
| Psychiatric disability                     | 16         | 2         | 12        |           | 2         | 24         | 56         |
| Neurological disability                    |            | —         |           | 4         | 3         | 6          | 13         |
| Sensory disability                         | 28         |           | 2         | —         | 3         | 31         | 64         |
| Learning disability                        | 11         | 1         |           | —         | 3         | 1          | 16         |
| Work related disability                    | 14         |           |           | —         | 9         | 20         | 43         |
| HIV/AIDS                                   | 1          |           |           | —         | 1         | 11         | 13         |
| Other organisms capable of causing disease | 4          | 3         | 3         | —         | 1         | 1          | 12         |
| Physical disfigurement                     | 5          | 2         | —         |           |           | —          | 7          |
| Other                                      | 29         | 1         | —         | 9         | —         | 66         | 105        |
| Not disclosed                              | 164        | —         | —         |           | —         | 73         | 237        |
| <b>Total</b>                               | <b>286</b> | <b>34</b> | <b>26</b> | <b>39</b> | <b>27</b> | <b>308</b> | <b>720</b> |

Table 10b: DDA area of complaint

| Category   | Central    | Qld       | NT        | Tas       | ACT       | Vic        | Total      |
|--|------------|-----------|-----------|-----------|-----------|------------|------------|
| Employment                                       | 113        | 12        | 10        | 17        | 17        | 166        | 335        |
| Education  | 28         | 1         | 3         | 2         | 5         | 18         | 57         |
| Access to premises                               | 19         | —         | —         |           | 1         |            | 20         |
| Goods, services, facilities                      | 106        | 14        | 9         | 17        | 1         | 94         | 241        |
| Accommodation, land                              | 8          | 2         |           | 2         | 1         | —          | 13         |
| Clubs, incorporated associations                 | 5          |           |           | —         |           | 14         | 19         |
| Spot   | —          | 1         | 1         | —         |           | —          | 2          |
| Administration of Commonwealth laws and programs | 6          | 3         | 3         |           | —         |            | 12         |
| Advertisements                                   |            | —         |           |           | —         |            | 0          |
| Superannuation and insurance                     | 4          | —         | —         | —         | 2         | —          | 6          |
| Trade unions, accredited bodies                  | 1          | —         | —         | —         | —         | —          | 1          |
| Other  | 4          | 1         | —         | 1         |           | 16         | 22         |
| <b>Total</b>                                     | <b>294</b> | <b>34</b> | <b>26</b> | <b>39</b> | <b>27</b> | <b>308</b> | <b>728</b> |

\*multiple areas per complaint

Employment remains the single largest area of complaint overall, although it is in this area that figures for Victoria are markedly improved with a near halving in numbers (Table 10b).

The effort and commitment of the highly professional DDA complaints handling team are now yielding results in terms of reduced waiting periods and an improved closure rate. Sustaining these efficiencies now depends on an appropriate match between complaint numbers and resources.

Table 10C: DDA type of complainant

| Type                           | Central    | Qld       | NT        | Tas       | ACT       | Vic        | Total      |
|--------------------------------|------------|-----------|-----------|-----------|-----------|------------|------------|
| Male                           | 150        | 18        | 10        | 17        | 15        | 171        | 381        |
| Female                         | 121        | 9         | 15        | 17        | 9         | 135        | 306        |
| More than one individual       | —          | 5         | 1         | 2         | —         | —          | 8          |
| On behalf of a person or group | 10         | 2         | —         | —         | 3         | —          | 15         |
| Representative complaint       | 5          | —         | —         | 3         | —         | —          | 8          |
| Trade union                    | —          | —         | —         | —         | —         | —          | 0          |
| Other                          | —          | —         | —         | —         | —         | 2          | 4          |
| <b>Total</b>                   | <b>286</b> | <b>34</b> | <b>26</b> | <b>39</b> | <b>27</b> | <b>308</b> | <b>722</b> |

Table 10d: type of respondent

| Type   | Central    | Qld       | NT        | Tas       | ACT       | Vic        | Total      |
|--|------------|-----------|-----------|-----------|-----------|------------|------------|
| Male   | 4          | —         | 1         | —         | —         | 46         | 51         |
| Female   | 3          | —         | —         | —         | —         | 22         | 25         |
| Educational institution                                      | 22         | 1         | —         | —         | 5         | —          | 28         |
| Non-government organisation                                  | 16         | —         | 3         | —         | —         | 4          | 23         |
| Private enterprise   | 87         | 11        | 4         | —         | 6         | 126        | 234        |
| Trade union, professional organisation                       | 3          | —         | —         | —         | —         | —          | 3          |
| Local government   | 6          | —         | 2         | —         | —         | 13         | 21         |
| State/Territory government department or statutory authority | 41         | 2         | 8         | —         | 2         | 59         | 112        |
| Commonwealth government department or statutory authority    | 80         | 3         | 7         | 3         | 14        | 28         | 135        |
| Other  | 24         | 17        | 1         | 36        | —         | 10         | 88         |
| <b>Total</b>   | <b>286</b> | <b>34</b> | <b>26</b> | <b>39</b> | <b>27</b> | <b>308</b> | <b>720</b> |

## Case studies

### Employment: Psychiatric disability

A woman with a history of psychiatric illness was employed in a customer service position with a large organisation. With no warning, the employer asked her to undergo a medical examination by the company doctor, a general practitioner. The following day the woman was sent home on sick leave on the recommendation of the doctor. She was told she had exhibited unprofessional behaviour by arriving late for work, taking leave without a medical certificate, and making inappropriate remarks to customers. These matters had not been raised with the woman before, and she angrily denied the allegations, but the decision stood. Within a few days, the woman obtained a report from her psychiatrist confirming her fitness for work, but it was three months before she was permitted to resume work. During this period the woman suffered financial hardship.

Prior to the investigation of the complaint the respondent reimbursed the woman for lost wages and lost sick leave credits. In settlement of the complaint the respondent provided a written apology to the complainant and financial compensation of \$7 200. The company also agreed to review its policies. Settlement was amicable and the woman retains a responsible position in the company.

#### Insurance

A young woman applied to an insurance company for disablement insurance to cover the three year period of a loan. On the application form she disclosed an operation for a malignant melanoma twelve years earlier. Cover was refused. The woman requested a review of the decision, and provided a medical report which stated that the likelihood of a recurrence of her condition was remote as she had remained symptom free for 12 years since her surgery. She invited the company to telephone her surgeon for an expert opinion. The company did not contact the surgeon, and declined to offer insurance. The complaint was settled by the respondent offering free insurance cover for the remaining period of the loan.

#### Employment: Physical disability

A young woman applied for a position as a driver with a large organisation which requires its employees to work in remote areas of Australia and to assist relief efforts in other countries. As part of the selection process the woman was required to undergo a medical examination which revealed that within the last three years she had her gall bladder removed, and a stomach stapling operation for obesity. The woman was notified that she failed the medical test because of her gall bladder operation.

When contacted by the Commission the respondent checked the medical record, and advised that it was the stomach stapling operation, not the gall bladder operation, that caused it to reject the woman's application. Medical evidence suggested, the respondent said, that the complainant would be unable to eat certain foods, and the conditions of employment were such that often no choice of food was available. The respondent also expressed concern that the woman's obesity may have an underlying psychological base, and that she may suffer late complications from the surgery. The woman provided a specialist medical report which challenged these assumptions, and the respondent agreed to consider a second application.

Access to premises, goods and services and facilities: Associate with mobility disability A married couple were holidaying in a coastal resort. Plans for a new building to replace the existing motel were displayed in their motel foyer for inspection and comment by guests. The man noted that the proposed development did not include access for people with mobility disabilities. As the husband of a person who uses a wheelchair for mobility he complained to the Commission that should the building go ahead as planned he would be unable to enjoy a holiday at the motel with his wife. Prior to investigation of the complaint, the plans were modified to include a lift and a unit with wheelchair access. The complainant was not satisfied, however, that his wife could access all the facilities, including the tennis court, pool, and the luxury top floor units.

A conciliation conference was held and the respondent agreed to place the accessible unit in a central location, on the same level as the motel entrance, and to provide ramped access to the swimming pool and tennis court. Agreement was also reached on the design features of the accessible unit, including height of light switches, and dimensions of the en-suite bathroom. Arrangements were made for further consultation between the parties when the building specifications became available.

## **Complaints resolved through formal Commission hearings**

Under the Act, complaints may be referred to the Commission for hearing if the Commissioner considers that a matter cannot be settled by conciliation or if the Commission would be more effective in dealing with the matter.

In 1995-96 the Disability Discrimination Commissioner referred 47 matters to the Commission for hearing. Of these, 12 were settled by further negotiation and 7 matters were heard. Three decisions were delivered and four were reserved as at 30 June 1996.

Of the three decisions delivered, two complaints were upheld and one was dismissed.

## **Development of Disability Standards**

The Commission has a function under the DDA of reporting to the Attorney-General on matters related to the development of Disability Standards. Section 31 of the DDA allows the Attorney-General to formulate 'Disability Standards' (which take effect subject to Parliamentary approval or amendment, and which it is unlawful to contravene) in relation to: employment; education; accommodation; public transport services and facilities; and the administration of Commonwealth laws and programs.

Disability Standards are intended to specify requirements for equal opportunity and access for people with a disability in greater detail and with more certainty than is provided by the existing provisions of the DDA.

Progress in the specific areas provided for under section 31 of the DDA is set out below.

### **Public transport**

The Disability Discrimination Commissioner represented the Attorney-General on a taskforce (which commenced meeting in June 1995), established by the Australian Transport Council to prepare draft Disability Standards. This taskforce included representatives of Transport Ministers, private bus and taxi industries, and people with a disability. Ministers approved the draft Standards, developed after extensive consultative processes, in June 1996. The proposed Standards form a key part of a strategy approved by Transport Ministers to achieve equal access to public transport for people with a disability over a 20 year period. The Attorney-General's Department will be preparing a Regulatory Impact Statement on the draft Standards, in consultation with interested parties, in the second half of 1996.

### **Employment**

Consultations were conducted up to March 1996 on a Discussion Paper and Resource Paper released in July 1995 which was prepared by the Commission on issues regarding possible DDA Disability Standards in the employment area. These papers were prepared on behalf of a sub-committee of the National Advisory Committee on Discrimination in Employment and Occupation and including representatives of employers, trade unions, people with a disability, and Federal and State and Territory Governments. The consultation period was extended beyond that originally proposed to facilitate effective input from interested sections of the community.

On the basis of submissions received, the subcommittee decided to release draft Standards in this area for further public comment and requested the Commission to undertake the drafting. Draft

Standards were due to be issued in August 1996 for a three month public comment period. If proceeding further with Standards in this area is decided to be appropriate, the Commission expects to be able to submit proposed Standards to the Attorney-General early in 1997.

## **Commonwealth Government information and communications**

In early 1996 the Commission prepared a draft Discussion Paper on possible Disability Standards in relation to equal access to Commonwealth Government information and communications. This draft was prepared for a working party chaired by the Attorney-General's Department. Release of a revised paper by the Department has been delayed but is expected early in 1996-97.

Issues raised include: what sort of alternative formats must be used by Commonwealth agencies in addition to standard print documents; should these formats always be used or only in some circumstances; what standards should apply to equal access to telephone communications with Commonwealth agencies and to access to computerised information and communications; and what standards should apply to equal accessibility of Commonwealth information to people with intellectual or cognitive disabilities.

## **Education**

Early in 1995, the Ministerial Council on Education, Employment, Training and Youth Affairs established a Task Force to consider the development of disability Standards in education. The Task Force consists of representatives from each State and Territory Education Department, plus two disability representatives, a representative of the Federal Attorney-General, and a selection of University, TAFE and other representatives.

The Commissioner has maintained close contact with this Task Force to contribute effectively to outcomes which promote the objects of the DDA. With the aim of identifying the barriers to equal access to education and the means for their removal she has undertaken a series of personal consultations with a range of education providers and other organisations with a direct involvement in education at all levels.

These consultations, with a total of 63 different groups and organisations, were completed between April and July 1996 in Brisbane, Melbourne, Adelaide, Canberra and Sydney. This has not been a comprehensive survey of the whole system, but rather a sampling process to gain a contextual picture of the issues in the range of sectors. The groups consulted encompassed education policy makers and school, vocational, TAFE, and university administrators, parent organisations, Special Educators, pre-school and early intervention groups, ancillary school support staff, independent and Catholic school education providers, State Commonwealth and independent school teachers' unions, private training organisations and the adult and community education sector. It is anticipated that the Education Disability Standards process will take some time due to the range and complexity of the issues.

## **Education and promotion**

### **Joint HREOC and National Children's and Youth Law Centre education project**

The work of the Ministerial taskforce and the Disability Discrimination Commissioner's consultations are complemented by a joint project of HREOC and the National Children's and Youth Law Centre, funded by the Australian Youth Foundation. Involving children with disabilities and their parents, the project will inform the Commission and the Taskforce of the

issues confronting young people with disabilities in seeking access to education; and promote greater awareness of the education provisions of the DDA. Young people with various disabilities and of different ages, including Aboriginal and Torres Strait Islander young people and young people from non-English speaking backgrounds, will participate in focus groups, a survey, and a national phone-in. The outcomes will be used by the Commission to develop further strategies for public education, to inform the complaints handling processes, to identify any amendments to the DDA which may be warranted, and to contribute to the development of Standards. Peak disability groups were consulted in the planning stages, and the joint project will be finalised in November 1996.

## **Built Environment and the Building Code of Australia**

The Commission has contributed to the work of the Australian Building Code Board (ABCB) throughout 1995-96 in assisting a review of the access provisions of the Building Code of Australia (BCA), with a view to subsequent adoption of the results of this review in Disability Standards under the DDA.

This review was commenced in response to the outcome of access related complaints, concerns expressed by local government authorities about their potential liability as building and planning regulators and the desire on the part of building owners and operators for a greater degree of certainty over their responsibilities in relation to the DDA.

Representatives from the ABCB, Local Government Association, Building Owners and Managers Association, builders, people with disabilities and the Attorney General's Department have contributed to the development of a draft Discussion Paper on the review. This was completed in June 1996, and the Paper is due for release in July 1996 for a period of public comment. Following that the ABCB will consider submissions prior to releasing for further comment a revised paper with specific proposals for changes to the BCA.

## **Regional visits**

**The** Disability Discrimination Commissioner has continued with her commitment to a program of regional visits during 1995-6. Public forum and meetings with disability organisations, local and State government, business, educational services, legal representatives and service providers took place in Brisbane, Hobart, Launceston, Alice Springs and Adelaide. Whilst the major focus for regional visits continues to be promoting the objects of the DDA through community awareness activities specific sectors have been targeted to encourage the use of Action Plans as a mechanism for achieving compliance with the law.

## **Communication with Disability Discrimination Act Legal Advocacy Services**

These services, which operate as part of the Community Legal Centre network, are independent from the Commission and provide free information, advice and legal representation to people with a disability or their associates in relation to disability discrimination. The services have been closely associated with significant complaints and hearings throughout 1995-6 and also undertake a range of community awareness and legal education activities.

The Commission maintains regular contact with the Disability Discrimination Act Legal Advocacy Services (DDALAS) through an informal liaison mechanism whereby requests for information and questions concerning policy issues are quickly responded to by staff. In addition the Disability Discrimination Commissioner meets quarterly with representatives of

the DDALAS network to discuss issues of mutual interest and concern. During 1995-6 the Commissioner met with DDALAS workers in New South Wales, Victoria, South Australia, Tasmania, Western Australia and Queensland.

### **Disability Discrimination Act resource and training project**

This project has involved the development of education and legal resources on the use of the DDA for the legal and para-legal sector. Funding was provided on a one off basis by the Office of Legal Aid and Family Services in 1994. One initiative was the development of legal education workshops aimed specifically at providers of legal advocacy services to Aboriginal and Torres Strait Islander people with a disability. The Disability Discrimination Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner have agreed on a joint project to create elective units on disability discrimination law as part of the National Indigenous Legal Curriculum Development Project (NILCDP). The NILCDP will be designing an accredited course at Certificate, Diploma and Degree level for Aboriginal and Torres Strait Islander legal and para-legal workers. The disability discrimination law units will also be available as a stand alone resource for use by a broad range of people working in the Aboriginal and Torres Strait Islander communities.

### **Disability peak representative organisations**

The Commissioner is committed to close communication with national disability community peak representative organisations, through regular meetings as well as in relation to major Commission projects and decisions. During 1995-96 Commission representatives met twice with the following organisations: National Council on Intellectual Disability, National Federation of Blind Citizens of Australia, Australian Psychiatric Disability Coalition, Deafness Forum of Australia, Carers Association of Australia, ACROD, Australian Federation of AIDS Organisations, Head Injury Council of Australia, Australian Council of Social Service, the National Ethnic Disability Alliance, the National Caucus of Disability Consumer Organisations and the National Coalition for the Development of DDA Standards.

# Privacy Commissioner



Kevin O'Connor, Privacy Commissioner

Kevin O'Connor, Australia's first Privacy Commissioner, was appointed on 1 January 1989 for a five year term. His term has since been extended twice, to December 1994 and then to December 1996.

Before his appointment, Mr O'Connor was Deputy Secretary in the Victorian Attorney-General's Department and Secretary to the Standing Committee of Attorneys-General. His professional experience is in law and government with particular emphasis on law reform and human rights. Mr O'Connor graduated in Law from Melbourne University and holds Masters degrees in Law from the Universities of Melbourne and Illinois.

## Statement from the Privacy Commissioner

The Information Privacy Principles contained in the Privacy Act are today an important influence on the personal information management practices of Commonwealth government departments and other agencies. In recent years I have been pleased to see support from all major parties in the Federal Parliament for an extension of similar standards to the private sector generally.

The change of government in March 1996 brought a renewal of the commitment given by the previous government to improving and extending coverage. In a speech he gave to the Chartered Institute of Company Secretaries in June 1996, the new Attorney-General emphasised the Government's intention to 'as a priority, work with industry and the States to provide a co-regulatory approach to privacy within the private sector in Australia, comparable with best international practice.'

There is also support for an extension of coverage of the Federal Act from many in the private sector who recognise the desirability of creating a climate of trust in new forms of information technology by affording reasonable personal information safeguards. At the same time several State Governments are considering the need for privacy legislation to cover their own administrations. My office has been actively consulted by a number of governments and I am seeking to encourage an approach broadly consistent with the principles embodied in the Federal Privacy Act.

In recent years my office has undertaken research into information privacy issues relating to three minority groups who, historically, have been exposed to the possibility of unreasonable intrusion into their privacy: people with disabilities, Aboriginal people and Torres Strait Islanders.

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The following studies relating to indigenous groups were completed during the year:

- 'Aboriginal and Torres Strait Islander privacy awareness consultation and research' (August 1995); and
- 'Families on File - Laws Practices and Policies for access to Personal Records by Aboriginal and Torres Strait Islander People' (May 1996).

Two discussion papers arising from my 1993 publication 'Private Lives? An initial investigation of privacy and disability issues', were also produced during the year:

- 'Consumer Access to Medical Records' (October 1995); and
- 'Natural Justice and Privacy - Policy and Procedures of Boards and Tribunals' (November 1995).

Term (b) of the Attorney-General's terms of reference for the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families requires the Human Rights and Equal Opportunity Commission, among other things, to examine the 'current laws, practices and policies relating to access to individual and family records and to other forms of assistance towards locating and reunifying families.' The 'Families on file' paper (released in May 1996) which my office produced to assist the Inquiry provides a unique insight into privacy issues for Aboriginal and Torres Strait Islander people seeking to re-establish links with their birth families. Relevant information is in a variety of collections including those of State governments and of church and non-government welfare organisations, and is subject to a range of controls. The 'Families on file' paper is an important piece of original research which seeks to describe and clarify current practices and legal controls. It is currently in use to assist the information gathering process of the Inquiry.

With the breakdown in barriers to communications resulting from new information technology, privacy of personal information has become an issue of increasing international concern and debate. The European Union Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data was formally adopted by the European Parliament and the Council of Ministers on 24 October 1995. Among other things, it obliges member countries to enact legislation prohibiting the international transfer of personal data unless it will enjoy an adequate level of privacy protection in the receiving environment. This prohibition has significant implications for countries outside the European Union, such as Australia, which as yet do not have privacy protections across all sectors. The Government has cited this as one reason for considering extensions of privacy protections because of implications for trade and international communications.

In February 1996 Australia hosted an international conference on Security, Privacy and Intellectual Property Protection in the Global Information Infrastructure in conjunction with the Organisation for Economic Cooperation and Development (OECD). This was followed by the inaugural meeting of a Group of Experts on Security, Privacy and Intellectual Property Protection in the Global Information Infrastructure. Of particular interest to my office in this area are the privacy implications of data protection through encryption and the very active debate on privacy controls, surveillance and censorship on the Internet. As a result of this conference, Australia was given a significant leadership role as Chair of an OECD working group which has cryptography as a first priority amongst other privacy and security issues.

The International Labour Organisation is developing a Code of Practice on the Protection of Workers' Personal Data which is to be considered by a meeting of experts in October 1996. A draft has been produced and Australian employer and employee bodies and my office have been consulted. The draft code provides a comprehensive framework which reflects internationally recognised privacy standards for those in the workplace. My office has commenced work on an information paper on employment and privacy issues in the Australian context.

In June 1995 I released an exposure draft of an information paper on the privacy implications of genetic testing, prepared at the request of the government, in response to a report from the House of Representatives Standing Committee on Industry, Science and Technology. Feedback was received from practitioners in fields such as clinical genetics, insurance risk assessment, occupational medicine and forensic science as well as from interest groups representing people with disabilities. The information paper has been revised in the light of this input. I will be launching the published document in September 1996.

## **Functions under the Privacy Act**

### **Policy and regulatory advice and development**

#### **Review of the Freedom of Information Act 1982**

The Australian Law Reform Commission and the Administrative Review Council concluded a review of the *Freedom of Information Act 1982* with the tabling of the final report in Parliament on 24 January 1996. The report recommends the creation of a separate statutory office of Freedom of Information (FOI) Commissioner to administer the FOI Act and the removal of overlaps between the FOI Act and the PA for access and correction rights for personal information. The report also recommends that a national legislative scheme be introduced to provide information privacy protection in all sectors. The Privacy Commissioner has provided input to the Government's response to the recommendations of this review.

#### **In Confidence**

In June 1995, the House of Representatives Standing Committee on Legal and Constitutional Affairs tabled 'In Confidence', the report of its Inquiry Into the Protection of Confidential Personal and Commercial Information Held by the Commonwealth. Most significantly, the report recommends that the PA should be extended to the private and public sectors by way of a national privacy code. One of the recommendations made in the report was that 'the Privacy Commissioner coordinate a review of the reasons for allowing access to public registers, particularly where technology permits the information contained on public registers to be used for purposes in addition to that for which it was collected...'. The Privacy Commissioner is preparing an information paper to identify public registers held by Commonwealth Government agencies and examine privacy issues that the registers and agency practices raise which should be published before the end of 1996.

#### **Connecting You Now**

The Senate Economics Reference Committee released a report in November 1995 on the impact on industry, employment and the community of telecommunications developments to the year 2000 and beyond, entitled 'Connecting You Now'. The report recommends that the Information Privacy Principles in the PA should be expanded to cover new telecommunications privacy risks in both the public and private sectors.

## Health industry

Governments in Australia are currently giving considerable attention to the health sector. Issues being examined include service delivery, eliminating overlaps in services and administration, and improving the collection and flow of standards and relevant information. Reform proposals, endorsed by Council of Australian Governments, include redefining the respective roles of the Commonwealth, State and Territory Governments. Where health services are undertaken directly by the Commonwealth or Australian Capital Territory Governments, the associated personal information is protected by the PA. It is recognised that any increase in the collection of medical and health information and any increase in the monitoring of patient care will require attention to be given to privacy questions.

The National Health Information Development Plan released by the Australian Institute of Health and Welfare and the Australian Health Ministers' Advisory Council identifies, as two of its highest priorities, an increased capacity for linking records of individuals and the improvement of health outcomes information. This will be monitored closely by the Privacy Commissioner's Office to ensure that privacy protections are applied.

The Privacy Commissioner will be making input to a recently commenced House of Representatives Standing Committee on Family and Community Affairs Inquiry into Health Information Management and Telemedicine, which is considering developments in information technology in the health sector and will be reporting on ethical, privacy and legal issues.

### Australian Childhood Immunisation Register

The national register of childhood immunisations administered by the Health Insurance Commission contains information about children under the age of seven. It commenced operation on 1 January 1996 under Health Insurance Commission Regulations. In July 1995, the Privacy Commissioner provided input to the Department of Health and Family Services and asked that his comments be relayed to the Minister. He expressed concern about the compulsory nature of the register, the spread of potential disclosures from the register - State and Territory Governments, local councils and divisions of general practice may be entitled to information from the register for immunisation purposes - and the lack of clear policy on the length of time for which information will be held and when and how it will be destroyed.

### Other health service delivery reforms

The Privacy Commissioner assisted with the development of privacy protocols for the coordinated care program for patients who have chronic health conditions or complex care needs, and with the ambulatory care reform program covering provision of hospital services to out patients and other non resident clients. The protocols require informed consent by patients before their information is used for research or program assessment purposes.

### Australian Medical Association Code of Ethics

The revised Code of Ethics released by the Australian Medical Association (AMA) at the end of 1995 provides for disclosure of patient medical information 'where the health of others is at risk'. The Privacy Commissioner has provided input to the AMA. He argues that there should be consumer input into such a position statement as well as a clear set of guidelines on:

- when such a disclosure might occur (what threshold of risk to health must be satisfied);
- the steps that should be followed before making a disclosure; and
- a set of safeguards applying to any such disclosures.

## **Commonwealth security vetting**

Since 1980, the Protective Security Manual (PSM) has set the Government's policy, standards and guidelines for sound protective security management within the Commonwealth sphere. Part V of the PSM, Personnel Security, includes suggestions for interview questions that could be considered highly intrusive or irrelevant covering subjects such as sexuality, drug use, political beliefs, hobbies and all overseas travel. The has provided comment on the PSM and the Attorney-General's Department will be consulting with him on a review of the PSM which commenced in June 1996.

## **DNA database**

The Privacy Commissioner's office was asked at the end of May 1996, to meet with the National Institute of Forensic Science to discuss a proposal for a database of DNA profiles of offenders convicted of certain serious crimes. The proposal is being developed by a working group reporting to the Australasian Police Minister's Council. At this stage, the proposal is that the database will be used as an identification tool only. There are a number of issues to be considered, including: validity of the information; what the legislative framework should be; the scope of the legislation; and issues surrounding ownership, and quality, control of, and access to, the data base. The Privacy Commissioner and the Human Rights Commissioner are to be consulted as the proposal is developed further.

## **Video surveillance**

In June 1996 Nigel Waters, the Head of the Privacy Branch, addressed a Privacy Issues Forum in New Zealand on the subject of Street Surveillance and Privacy. He pointed out that privacy and civil liberties issues need to be weighed up carefully when authorities are considering introducing any further street video surveillance schemes and reviewing existing schemes, particularly as their effectiveness in reducing crime - as opposed to displacing it - is not clear

## **Paedophilia**

Spent convictions schemes in general faced some criticism by witnesses at a parliamentary inquiry into organised criminal paedophile activity. Claims were made to the Joint Parliamentary Committee on the National Crime Authority that spent convictions laws hamper law enforcement. The Commissioner wrote to the Committee in September 1995 pointing out that offences against minors, including sexual offences, are specifically excluded from the Commonwealth spent convictions scheme. The Committee also commented on the idea of a national register of suspected paedophiles. While recognising the sensitivity of the issue, the Commissioner stressed that any publicly accessible national database of convictions would increase the risk of discrimination that State and Commonwealth spent convictions laws aim to prevent and that to store unsubstantiated allegations of sexual abuse goes against principles of natural justice.

## **Developments in Commonwealth information management**

High level reviews of Commonwealth information handling management practices, including a paper produced by the Office of Government Information Technology, 'Framework and Strategies for Information Technology in the Commonwealth of Australia and the Data Centre Consolidation and Modernisation Study' represent important developments for information privacy during 1995-96. The Privacy Commissioner has expressed the view in providing submissions to these reviews that personal information held by Commonwealth agencies is, in

effect, held 'in trust' for specific defined purposes, especially if it is collected through the exercise of statutory or monopoly power. In this regard, personal information is unlike other government information, which might be regarded as a public resource where a presumption of openness applies.

## **Calling Number Display**

The introduction of Calling Number Display (CND) by telephone companies in some overseas countries has been controversial from a privacy point of view. It has not yet been commercially offered in Australia although, with the progressive upgrading of telephone exchanges to digital technology, the capability will soon exist to offer such services. Privacy issues associated with the CND service were examined in detail in 1995-96 by the Privacy Advisory Committee of the telecommunications regulator, AUSTEL. The committee recommended that CND be provided on an 'opt-out' basis subject to strict privacy safeguards.

## **Smart cards**

Since the last Annual Report, Australia has become a testing ground for smart card development particularly in relation to stored value financial applications. Privacy has emerged as one of the major issues in consumer acceptance of smart cards: the response of consumers to a number of trials - for example, the QuickLink stored-value card pilot at the University of Newcastle and the MasterCard Trial in the Australian Capital Territory, has demonstrated that they want to be satisfied that their privacy is being protected in the development of new technology. The Privacy Commissioner has had considerable involvement in stimulating debate on the issue. In December 1995, he launched an information paper on the subject, 'Smart Cards: Implications for Privacy'.

There also continues to be interest in the use of smart cards in the health sector. In June 1996 in an address to the Smart Card Advisory Network, the Privacy Commissioner raised a number of concerns including the unresolved issue of an individual's right of access to their own medical records. This is critical if they are to be able to make informed decisions about disclosure of the information through smart card technology.

## **Review of disability services legislation**

In August 1995 the Australian Law Reform Commission published a discussion paper reviewing Commonwealth disability services legislation. The paper discusses the rights of people with a disability (including confidentiality and privacy) and asks whether these should be set out under legislation. The Privacy Commissioner presented a submission on the paper, supporting the notion that disability service providers should be made subject to legally binding obligations to protect people's privacy.

## **Random drug testing**

During 1995-96, the Privacy Commissioner continued his discussions with the Department of Defence about proposals for random drug testing. The Privacy Commissioner opposes random drug testing, especially where it is likely to capture prescription drugs and lead to the unnecessary collection of other irrelevant information about an individual. He has suggested that it would be more productive, and an appropriate collection of information, to develop tests of Australian Defence Force (ADF) members' impairment prior to being placed in charge of vehicles, equipment, or weapons. As at June 1996 random drug testing using urinalysis had not been introduced in the ADF although the matter is continuing to be considered.

## **Credit reporting**

In May 1996 the Privacy Commissioner released a new edition of the Credit Reporting Code of Conduct booklet which now includes the legally binding Code of Conduct and Explanatory Notes as revised in March 1995, history notes, user friendly suggestions for consent and notice wordings and an updated list of determinations. Also in May 1996, the Commissioner released a guideline, 'The handling of credit reports by records management agents and other contractors', which contains advice for credit providers and credit reporting agencies on how to preserve privacy controls when contracting out record management functions. In June 1996 the Privacy Commissioner issued a credit reporting determination covering those categories of business which do not come under the definition of 'credit provider' in the PA but who nonetheless provide credit and require access to credit reports issued by a credit reporting agency.

## **Tax file numbers and superannuation**

After consultations with the Privacy Commissioner by representatives from the superannuation industry, revised amendments to superannuation and tax laws were re-introduced into Parliament in June. The amendments, aimed at assisting people who have small contributions in a number of funds or whom a superannuation fund considers 'lost', allow that they be asked, but not required, to quote their tax file number. Superannuation funds will then be able to use the tax file number to locate, combine or transfer benefits for that individual but will be prohibited from using it as a general purpose administrative number.

## **Complaint handling**

During the year 13 000 phone and 516 written enquiries were received on issues ranging from general privacy concerns to specific PA complaints. Of the written enquiries, 127 were assessed as potentially involving an 'interference with privacy' under the PA, as defined by section 13, and were therefore referred to as complaints.

Complaints by category were:

- information privacy principles: 74;
- credit reporting: 40;
- tax file numbers: 11;
- spent conviction: 1; and
- data matching: 1.

146 complaints were resolved during the year including some which arose before the beginning of the reporting year. In every one of the 54 cases where a preliminary view was reached that a complaint was well founded, it was resolved by negotiation after the respondent conceded that there had been a breach of the Act and undertook remedial action. Consequently, the Privacy Commissioner was not required to exercise his formal section 52 determination powers for the second year in succession.

During the year compensation was paid in 15 cases with amounts ranging from several hundred dollars (for out of pocket expenses) to \$21 000. The Commissioner takes the view that compensation is only appropriate where the loss or harm is a direct consequence of the

interference with the privacy of the individual. As with tort law, damages are aimed at compensating the individual where it is not possible to put the individual back in the position they were in prior to the interference occurring.

## **Case studies**

The following case studies illustrate typical complaints under the PA with their outcomes.

**Bank incorrectly faxes detailed credit information to third party - section 18N**

The complainant and his wife applied for a loan with a bank, and provided the bank with all their financial details including tax returns. The bank's branch office then faxed these details (plus comments on the credit worthiness of the complainants) in a 19 page fax to its head office. Unfortunately, the fax was incorrectly sent to an unrelated third party.

The bank responded to the complaint by directing all its branch offices to ensure that the head office fax number was stored in the autodial memory of each fax machine. This should ensure that an incorrect number is not typed into the fax machine. The bank also paid \$500 each to the complainant and his wife for their embarrassment.

**Agency advises staff that complainant claims to have legionnaire's disease IPP 10**

An agency agreed to pay a woman \$10 000 compensation for her embarrassment over two notices sent to all staff at a government establishment. The complainant reported that she had legionnaire's disease and an 'all staff' notice advised that the air-conditioning towers at the affected location were to be cleaned. The woman's name and her personal medical condition were included in the notice. A later notice advised that the woman did not have legionnaire's disease, whereas she did have a form of the disease which was not caused by the air-conditioning. Not only was this advice incorrect but it embarrassed her further because it may have been interpreted as suggesting that she had invented an illness.

**Inappropriate use of pregnancy information by personnel section - IPP 10**

A woman employed by a government agency became pregnant and, for personal reasons, did not want this fact known to her colleagues. She made discreet enquiries about her maternity leave entitlements with her personnel section. A personnel officer later returned her call, by leaving a message with a colleague asking her to ring personnel 'about her maternity leave'. The woman subsequently resigned.

The agency apologised to the woman and, as a gesture of good will, waived an overpayment of \$284. The agency also organised some further Privacy Act training for personnel staff.

**Anonymous dob-in not protected IPP 11**

A person from an ethnic community wrote to a welfare payment agency to advise that a member of the community was fraudulently obtaining a benefit. The letter was written in a community language and the agency employed a casual interpreter to translate the letter. The person named in the letter was later given a copy of the letter and certain persons then threatened the complainant. The complainant also lost standing within his community as a result of this disclosure.

Circumstantial evidence strongly suggested that the interpreter knew the person named in the letter and made a copy of it when it was translated. The agency accepted responsibility for the disclosure and paid the complainant \$5 000.

## **Education and promotion**

In August 1995 the Privacy Commissioner released an information paper which brings together the findings of four surveys on the community's knowledge of privacy protection and its opinion on a range of privacy issues. In the most recent survey, almost three quarters of the respondents ranked 'confidentiality of personal information' as very important, second only to education in a list of social issues. This community concern is reflected in the media interest in privacy issues and in the 13 000 enquiries received by the privacy enquiry service. During the year the Privacy Commissioner responded personally to over 120 requests for comment from the media.

This high level of interest resulted in increased demand for information products and training at a time of budgetary constraint. Economies have therefore been introduced such as electronic distribution of publications through the Commonwealth Managers Toolbox and the Internet, and a certain amount of cost recovery through charging for some publications. The office has also found it necessary to request contributions to help cover expenses for speeches and training. Over 40 presentations were given by staff during the year and the Privacy Commissioner gave 18 speeches, copies of which are available through his office.

## **Internet**

In June 1996 the Privacy Commissioner launched the Commission home page on the World Wide Web through an on line discussion on privacy issues organised by the Sydney Morning Herald. The Privacy Commissioner's sub-page is at <http://www.hreoc.gov.au/hreoc/privacy>.

It is yet to be seen whether the Internet will increase the demands on the Privacy Commissioner's office due to improved access and wider publicity or whether it will relieve the workload through the self service nature of Internet usage. This aspect will be closely monitored. Promotion of the service will be gradual and controlled and directed toward providing user-friendly information to reduce the need for an expansion of telephone and written enquiries.

## **Privacy Contact Officers network and newsletter**

Each organisation subject to the Information Privacy Principles of the PA appoints a Privacy Contact Officer who takes responsibility for ensuring implementation of information privacy within the agency. A network of 130 Privacy Contact Officers has been established to allow exchange of information on practical aspects of implementing privacy protections including staff training. The network is organised by a Steering Committee of five experienced Privacy Contact Officers and a representative from the Privacy Commissioner's office. Three network meetings were held during the year and three issues of the network newsletter, 'Privacy Link', were produced.

## **Publications**

The following publications were produced since the last Annual Report.

August 1995: 'Community Attitudes to Privacy'. Information Paper Number 3.

November 1995: 'Seventh Annual Report on the Operation of the Privacy Act'. Reporting period 1 July 1995 to 30 June 1996.



November 1995: Guidelines: 'Use of Data Matching in Commonwealth Administration'.

December 1995: 'Smart Cards: Implications for Privacy'. Information Paper Number 4.

February 1996: Discussion Paper: 'Consumer Access to Medical Records', prepared by Meg Montague and issued jointly by the Privacy Commissioner and the Victorian Office of the Public Advocate.

February 1996: Discussion Paper: 'Natural Justice and Privacy: Policy and Procedures of Boards and Tribunals', prepared by Meg Montague and issued jointly by the Privacy Commissioner and the Victorian Office of the Public Advocate.

March 1996: 'Revised National Health Medical Research Council Guidelines for the Protection of Privacy in the Conduct of Medical Research' including the Privacy Commissioner's Reasons for Approval of the Revised Guidelines.

May 1996: 'Personal Information Digest 1995'.

June 1996: 'Australian Capital Territory Personal Information Digest 1995'.

March 1996: 'Credit Reporting Code of Conduct and Explanatory Notes' issued by the Privacy Commissioner under section 18A of the PA in September 1991 and including all amendments as at March 1996.

May 1996: Policy Guidelines and Advice Paper: 'The handling of credit reports by record management agents and other contractors'.

May 1996: 'Databases' Information Sheet.

May 1996: Revised 'Credit Reporting' Fact Sheets.

May 1996: Credit Reporting Fact Sheet 6: 'Credit Reporting Databases'.

## Compliance activities

### **Audit program**

Thirty two formal audits were conducted: 16 on compliance with the Information Privacy Principles which involved 22 federal agencies; 15 on compliance with the credit reporting provisions; and 1 on compliance with the Tax File Number Information Guidelines. One informal audit was conducted on the new Employment Services Regulatory Authority and two selected contracted case managers. The main purpose of this audit was to develop privacy sensitive information handling practices. Credit information audits and a tax file number audit were conducted by consultants under the direction of Privacy Branch staff. A summary of the audits undertaken on government agencies, findings, recommendations and agency responses in relation to the Information Privacy Principle audits may be found in the 'Eighth Annual Report on the Operation of the Privacy Act'.

To assist in improving compliance in the private sector, Privacy Branch staff held a number of credit and tax file number information seminars in country regions of New South Wales where there was unlikely to be any audit activity in the immediate future. Seminars were conducted in Ballina, Coffs Harbour and Wagga Wagga.

## **Investigations**

A number of matters relating to Information Privacy Principles, consumer credit and tax file number information were investigated. The Privacy Commissioner was satisfied with action taken by the record keepers, which included referring some matters for criminal investigation and instituting procedures to prevent recurrence.

## **Monitoring the data matching program**

The sunset clause for the Data matching program (Assistance and Tax) Act was extended to 22 January 1999.

The Privacy Commissioner's staff have continued inspections under this Act of the procedures and practices for investigating data matching discrepancies in state, area and regional offices of participating agencies. This year staff inspected 39 offices and as a result agencies have modified their procedures in accordance with the Privacy Commissioner's recommendations.

Other monitoring activities conducted during the year have included:

- reviews of the procedures for handling data that is used by the program within each participating agency;
- checks of the computer code that is used in the program against the matching rules that are specified in the Technical Standards Report to ensure that the program is performing to specifications;
- examinations of the sampling procedures used by each agency for selecting cases for further investigation; and
- reviews of the computer security within the matching agency. Generally

agencies have complied with the technical requirements of the Act and guidelines.

## **Liaison**

### **International liaison**

An important OECD conference held in Australia in February 1996 is noted in the Statement from the Privacy Commissioner.

In August 1995 the Privacy Commissioner attended meetings of the International Working Group on Data Protection in Telecommunications in Berlin. In September he attended a Privacy Laws and Business Conference, the annual Data Protection Commissioners' Conference and a Global Information Infrastructure Conference, all in Copenhagen.

On 9-11 May 1996, the Privacy Commissioner attended an international conference in Canada, 'Visions for Privacy in the 21st Century', organised by the Information and Privacy Commissioner of British Columbia. Highlights of the conference included analyses from Germany and Canada of models for cooperation between privacy regulators in a federal environment, examination of privacy issues in cyberspace, a discussion on medical

identification and stored information cards, an analysis of the Health Insurance Commission in New Zealand from a privacy point of view and of federal health confidentiality legislation in the United States of America, and the promotion of privacy in the private sector.

In June 1996 the Privacy Commissioner and the Head of the Privacy Branch, attended a Privacy Issues forum in New Zealand. Health issues were a major topic as well as visual surveillance. The Privacy Commissioner participated as a panellist in three sessions including one which took the form of a debate on cards.

## **The Privacy Agencies of Australia and New Zealand**

The Privacy Commissioner and members of other privacy bodies in the States and Territories and in New Zealand met in February 1996. The meeting, hosted by the Australian Capital Territory Attorney-General's Department, discussed the development of a code of practice on direct marketing, the extension of privacy protections to the private sector, research guidelines, cross border electronic gaming, protocols for release of disaster victim details, the release of information by members of parliament and the likely effect on Australia of the European Union Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data.

## **Privacy Advisory Committee**

The Privacy Advisory Committee is a statutory body set up under the PA to advise the Commissioner generally, to make recommendations on guidelines and to assist with community education and consultation. The Act specifies that this Advisory Committee should have representatives from various community sectors and interests including trade unions, civil liberties, information technology, social welfare and public or private sector management. The Committee met four times during the year and provided input on a range of policy matters including genetic privacy, caller ID, smart cards, the Melham Committee Report, Pharmaceutical Benefit Scheme databases, the Commonwealth Protective Security Manual, publication of identified judgements on the Internet, databases of information on employees and Commonwealth Employment Service policy on collecting and disclosing information on clients' HIV/AIDS or criminal record status.

# Queensland Anti-Discrimination Commission and Human Rights and Equal Opportunity Commission and Queensland Anti Discrimination Tribunal

from the Queensland Anti-Discrimination Commissioner

The Commission has two broad functions: a complaints based, individual redress function for people who believe themselves to have suffered unlawful discrimination and/or sexual harassment; and a broader, proactive, community development function around equal opportunity and anti-discrimination matters. These are described in more detail in the body of this Report.

Proclamation of the Queensland Anti-Discrimination Act in June 1992 saw a significant increase in the number of complaints being lodged with what had hitherto been the Queensland Office of the HREOC. The increase then tapered but continued in line with experience both federally and in other states. The Commission could not keep pace, a growing backlog developed and complainants faced delays in having their grievances addressed through the statutory process. By 30 June 1995 the queue had grown to almost 700 complaints and the delay in many cases to over 15 months.

The Commission's success this year has been dramatic, and its staff have much to be proud of in achieving a high level of service delivery from a low base. For the first time more complaints were resolved in a reporting year than received, and indeed twice as many complaints were resolved than in any previous year. The backlog queue reduced from 685 to 133, the turnaround time has dramatically reduced, and until late in the year new complaints have been actioned promptly on being accepted.

A number of factors have contributed to the success. On the supply side as it were, modest, temporary additional funding from the Department of Justice and Attorney-General and an equal in-kind contribution from the Insolvency and Trustee Service of Australia enabled the Commission to put together a project team dedicated to the backlog. The Legal Aid Office also prioritised advice and assistance to complainants.

Most significantly, the Commission improved its processes and techniques. Discounting both the temporary additional resource and the higher than usual number of backlog complaints which finalised for reasons more to do with their age than their merits or complexities, complaint closure rates demonstrate an efficiency dividend this year of 25 percent on years past.

At the same time the Commission has addressed the demand side of the equation. It has carefully targeted its community education activities to the domain of prospective respondents, employers in particular, in an effort to reduce the number of complaints by better positioning respondents to avoid practices which are discriminatory in either fact or perception. It has initiated discussion with other complaint agencies to rationalise the duplication of resources sometimes caused by overlaps in jurisdiction, and developed protocols for referring complaints to other dispute resolution forums sometimes better suited to the circumstances.

Regrettably, all current indications point to these achievements not being sustainable during 1996-97. Temporary project funds have expired, yet 133 complaints still remain in the old backlog.

Resource constraints for the 1996-97 period mean that the Commission will assess all complaints against not only legislative requirements but priority criteria. These criteria will be the gravity of the harm alleged by the complainant, the likelihood of that harm being compounded if action is not taken, the likelihood of a systemic outcome impacting positively on others in like circumstances, and the history and availability of any alternative remedies. Complaints which do not meet these criteria will be dealt with only after priority complaints and as resources permit.

There is a further and even more fundamental uncertainty ahead. Funding of anti-discrimination legislation in Queensland is governed by a cooperative agreement between the State and Commonwealth Attorneys-General. The agreement expires in December 1996. It has been an agreement which is very favourable to Queensland compared with agreements between the Commonwealth and other States, and the most likely future is one which sees a standardisation which reflects arrangements elsewhere. The State will be required to address the question of increasing funding for its anti-discrimination legislation at a time when budget outlays are contracting.

This scenario brings into sharp relief a question for government about the integrity of anti-discrimination law and practice in Queensland post December. The shortfall between supply and demand will be of an order sufficient to compromise in a most fundamental way not only the Commission, but the legislation it administers.

Clearly government must seriously address escalating costs in this area of public expenditure as in many others. It shouldn't go unnoticed however, that at 40 cents per year Queensland's per capita expenditure on implementation of anti-discrimination law is already the lowest of any mainland State or Territory. The next lowest spending States are New South Wales and Victoria, which each spend more than a quarter as much again. Western Australia spends two and a half times as much, and the Northern Territory ten times as much as Queensland's per capita contribution. On the other hand, the Commonwealth per capita contribution to Queensland is and has been twice that it has made to South Australia and Western Australia and four times that it has made to New South Wales and Victoria.

Nor should fundamental principles be compromised by casting about for 'efficiencies' through administrative restructuring. It is imperative that anti-discrimination law and practice remain fully and genuinely accessible to those who are most vulnerable, and that it continue to function independently and at arm's length from government in both actuality and perception. It is significant in this context that one in five of all complaints allege that state government agencies are vicariously liable for acts of discrimination or sexual harassment.

The problem of escalating costs arises from the volume of work. The solution will be to build on the drive for efficiency which is already well advanced and to squarely tackle the demand side of the equation by building into the Act an 'up-front' discretion allowing the Commission to better control complaint numbers and to direct scarce resources to where they are most needed. Government will need to give careful consideration to these matters over coming months.

That said, the vast majority of matters that come to the Commission's attention have significance well beyond that attached to them by the individuals directly concerned. At the end of the day the legislation administered by the Commission and Tribunal not only provides redress for individuals but establishes benchmarks for acceptable behaviour towards whole categories of people who are vulnerable to discrimination.

Major themes warrant comment. As in past years, almost one in three complaints involve allegations of sexual harassment, overwhelmingly of women in their workplaces. What is particularly worrisome is the frequency with which young women are harassed by older male supervisors in small businesses. Several such matters have gone to public hearing in recent

months, have resulted in significant compensation, and have attracted welcome media attention serving to highlight the seriousness of the issue. On the positive side it is pleasing to be able to report conciliation outcomes resulting in significant progress being made by some large employers in both the public and private sectors in the identification of systemic problems with sexual harassment and discrimination, and the implementation of policies, procedures and training packages which address them. Particular mention should be made in this regard of the Queensland Police Service.

It is also pleasing to report the positive response by many indigenous organisations to this issue following the Tribunal's upholding of the first sexual harassment complaints by Aboriginal women against their employers, an Aboriginal community organisation. The Commission subsequently worked with a number of such organisations to increase awareness of their responsibilities as employers in these circumstances.

Disability complaints continue to feature prominently, and in some instances to cause great anxiety. Service providers in particular are often fearful of the cost and other implications of legislation designed to ensure wherever possible that people with disability enjoy the same access to places and services as their non-disabled peers in the community. Their anxieties are much exaggerated. Most disability complaints, like most others, settle amicably in conciliation, resulting frequently in outcomes benefiting many others in similar circumstances to the particular complainant. The case studies in the body of the report illustrate the point.

Further, service providers have had cause during the year for reassurance that whilst it sets high standards and requires reasoned argument, disability discrimination legislation will not cause them an unsustainable burden. In one much publicised case the Education Department claimed that T's exclusion from a regular primary school classroom was lawful despite discriminating against her on the grounds of her disability. It argued successfully, that given the nature of her particular disability her continued inclusion imposed an unjustifiable hardship on her classmates, the broader school community and the Department because of the cost to them both in dollar terms and those of the quality of their educational experience.

In another example, the Department of Public Works and Housing sought the Tribunal's opinion of how the legislation would apply to its planned design of Stage V of the Southbank Cultural Centre, in particular its planned seating arrangements and the access afforded people with disabilities. The Tribunal engaged all stakeholders in a process of dialogue seeking consensus within the spirit and intent of the Act, and was able to form an opinion to the broad satisfaction of all. The process demonstrated the capacity inherent in the legislation to pre-emptively solve otherwise bitter and unnecessary community disputes.

Finally there is the issue of racial discrimination. Without doubt, Aboriginal and Torres Strait Islander people, but also those within ethnic communities have expressed concerns of heightened vulnerability in recent times. During the first quarter of 1996, the Commission received a two-fold increase in the number of inquiries relating to racial discrimination and racial hatred. This has not translated to an increase in the number of formal complaints, reflecting both the anonymity of the authors of racist acts and publications, and the weakness of the racial hatred provisions of the Anti-Discrimination Act. There is a strong view in the indigenous and ethnic communities that these provisions ought be strengthened and the Commission agrees with that view.

It would be a tragedy for reconciliation if, for budget driven reasons or others, the existing provisions of the Act and the Commission's capacity to give effect to them are further diminished.

John Briton  
Queensland Anti-Discrimination Commissioner

# Queensland Anti-Discrimination Commission

The Queensland Anti-Discrimination Commission was established by the *Queensland Anti-Discrimination Act 1991* (QADA) which was proclaimed on 30 June 1992.

Its functions, and those of the Federal HREOC in Queensland are performed from joint offices in Brisbane, Rockhampton and Cairns in the framework of a cooperative agreement between the Federal and Queensland Governments.

The Queensland Anti-Discrimination Commissioner, who also performs the functions of the HREOC State Manager, reports directly to the Queensland Attorney-General on a regular basis.

The Act aims to promote equality of opportunity for everyone by protecting them from unfair discrimination in various areas of public life, from sexual harassment and from conduct such as discriminatory advertising and victimisation.

The Commission's functions are set out in section 235 of the Act. They fall into two broad categories. One is an individual redress function:

To inquire into and attempt to conciliate complaints of discrimination and sexual harassment.

The other is a broad, proactive, systemic set of community development functions, including in particular:

- to promote an understanding, an acceptance and the public discussion of human rights in Queensland;
- to undertake research and educational programs to promote the purposes of the Act; and
- to consult with relevant organisations on ways of improving services and conditions affecting disadvantaged groups.

## Complaint handling

The Commission handles discrimination complaints lodged pursuant to the Commonwealth HREOCA, RDA, SDA, DDA and the QADA.

The QADA makes it unlawful to discriminate either directly or indirectly against a person or group of people because of their:

- sex;
- marital status;
- pregnancy;
- parental status;
- breastfeeding;
- age;
- race;
- impairment;
- religion;
- political belief or activity;
- trade union activity;

- lawful sexual activity;
- association with, or relation to, someone identified on the basis of any of these attributes;

in the areas of:

- work;
- education;
- goods and services;
- accommodation;
- disposition of land;
- superannuation and insurance;
- club membership and affairs;
- administration of state laws and programs; and
- local government.

The Act also prohibits sexual harassment in any situation. Sexual harassment is broadly defined to include any unwelcome sexual conduct that is offensive, humiliating or intimidating.

It requires that a complaint be in writing and set out reasonably sufficient detail to indicate an alleged contravention of the Act. The Commission's objective in its complaint handling service is to ensure an effective, efficient, timely and fair assessment and resolution of all complaints.

## **Complaint procedures**

The Commission's front line response is its telephone advisory service which received 14 413 calls during the year across the three regional offices, an increase of 13 percent over 1994-95. Of these, almost 10 000 were from callers indicating that they had suffered discrimination, sexual harassment or some other human rights abuse or unfair treatment. In addition, 460 individuals made in person enquiries at Commission offices.

Inquirers are informed about the Commission's jurisdiction and legislative requirements, referred elsewhere as appropriate, and advised how they might best approach self management of their grievance. In the 1995-96 period a total of 1 886 or 13 percent of all callers were advised on the basis of information provided that they had grounds to lodge a complaint.

The subsequent administrative process is that all written 'complaints' alleging discrimination, harassment or other breaches of human rights or unfair treatment, along with written requests for policy advice, are initially registered as inquiries. They are then assessed against legislative criteria with only those inquiries which satisfy more criteria going on to be formally accepted and registered as complaints. While there are no legislative requirements to this effect under the Federal legislation, the QADA requires that the Commission must decide whether to accept or reject a complaint within 28 days of receipt.

During the year the Commission received a total of 1 698 written inquiries, an increase of 30 percent over 1994-95. A total of 1 596 were finalised, of which 162 were requests for policy advice. The remaining 1 434 enquiries were all 'prospective complaints'. Of these, 669 or 46 percent were formally accepted, 89 were referred elsewhere for an alternative remedy, and 676 or 47 percent were assessed as being outside jurisdiction, lacking in substance, or otherwise short of legislative thresholds.

A total of 698 complaints were formally accepted during the year. This figure represents an increase of 7 percent over 1994-95, consistent with the rate of increase in recent years and broadly consistent with experience federally and in other states.



## **Complaint backlog**

A number of incoming complaints of this order was in line with expectation at the beginning of the year, and represented a considerable challenge. The demand upon the Commission's complaint handling service has always considerably exceeded its capacity to keep pace, with the result that it began the year with 929 complaints on hand, 685 of which were in a backlog in an ever-lengthening queue awaiting allocation to a complaint handler for action. The number of complaints in the backlog was one and a half times greater than the number of complaints resolved in the previous year. The delay between receipt and allocation was in many cases longer than 15 months.

The Commission's strategy in response to this challenge was to contain the backlog to all those complaints on hand going into the year, and deal with them with a separate and dedicated resource as a time limited project. A project team was put together headed by a senior Commission complaint handler, assisted by temporary staff funded through a \$50 000 grant from the Department of Justice and Attorney-General and staff seconded 'free of charge' from the Insolvency Trustee Service of Australia.

A further strategy involved the utilisation of the Commission's on-going complaint handling resource to deal with 'new' complaints received during the year, allocating them for action promptly upon their being accepted as complaints.

In addition, the Commission implemented the revised and streamlined complaint handling procedures, which were developed during the latter part of 1994-95 and further enhanced during the year. These revised procedures include the following.

Tighter 'gate-keeping' in particular an expectation of more information as to what is 'reasonably sufficient information to indicate an alleged breach of the Act.' Further, it is noteworthy that the 7 percent increase in the number of complaints received in 1995-96 is significantly less than the 30 percent increase in the number of written inquiries, indicating the more vigorous gatekeeping in action. A complaint form was developed which assists prospective complainants to know what information is required and how best to structure it so that legislative requirements are more transparent to them;

Complaint handlers have been accorded more flexibility and room for individual professional judgement in their handling of complaints. They have been encouraged to adopt a more proactive role, and to establish and adhere to tight time frames. Achievement of these outcomes is supported by built-in procedures and in respect of difficult complaints;

The Commission also developed a streamlined referral process to the Queensland Anti-Discrimination Tribunal.

## **Performance figures**

The Commission's performance during 1995-96 has been a dramatic improvement on that of years past. This is evident by a comparison of the complaint figures processed, set out below

The total number of 'old' complaints on hand reduced from 929 to 291, with the backlog queue awaiting allocation for action reducing from 685 to 133.

A total of 273 or 40 percent of all 'new' complaints accepted during the year were finalised, these having an average 'life cycle' as complaints of four months compared to an average 'life

cycle' of 14.5 months for 'old' complaints. Of the 425 complaints accepted during the year and still on hand at 30 June 1996, only 107 or 25 percent were more than six months old.

A total of 911 complaints were finalised, twice as many as in any previous year and 213 more than the number of 'new' complaints accepted during the year. 1995-96 is the first year since it was established that the Commission finalised more complaints than it was obliged under legislation to accept.

A 25 percent efficiency dividend, measured by complaint throughput per complaint handler per month, was achieved by discounting the higher than usual number of 'old' complaints which were finalised for reasons more to do with their age than their complexity or merits, achieved a 25 percent 'efficiency' dividend measured by complaint throughput per complaint handler per month.

This performance is illustrated in the tables included with this report:

- table 11 describes the outcomes of inquiries dealt with during the year;
- table 12 describes the outcomes on closure this year of 'new' and 'old' complaints; and
- table 13 describes the Acts under which those complaints were brought; and
- tables 14 to 15 describe how the QADA in particular is being utilised by Queenslanders and the Commission's client profile under that Act.

## **Case studies**

Impairment discrimination in receiving goods and services

Mr Barry Jones and Ms Margaret Rivas, Director of Coral Haven Pty Ltd trading as Ampol Goodna, recently reached agreement by conciliation in relation to a complaint which Mr Jones had lodged with the HREOC under the DDA.

Mr Jones uses a wheelchair and for that reason has difficulty in accessing petrol at self-serve service stations. A conciliation conference was held at the service station so that each party could identify their concerns with the issue as well as identify options for resolving this complaint.

Ms Rivas agreed to erect a sign displaying the wheelchair logo and wording to the effect, 'If you require assistance, please flash your lights or beep your horn'. It was further identified that this would be useful for a range of people who have difficulty with self service and would also be useful for the service station as the petrol bowser and sign were in full view of the console operator.

Both parties were satisfied with this outcome and agreed that it would be useful to advertise this option as a means of assisting other people with the same issue. The parties also gave their express authority that they be identified.

Impairment discrimination in receiving goods and services

A paraplegic man, who quite frequently has the need to rent a car, complained that a car rental company in his home town was not able to provide a car with hand controls, even when he gave considerable prior notice of his requirements. In a conciliation agreement it was agreed that, subject to operational availability, the car rental company would, with up to three working days notice, provide a rental vehicle with hand controls at a specific location. The company only has hand controls on one type of vehicle at this time, but may consider fitting other hand control sets to other motor vehicles in the future.

### Shopping centre complex improves disability access

A person with a disability complained to the Commission alleging that inadequate access to a major shopping mall discriminated against people with disabilities as well as people who were frail or elderly.

As a result of a conciliated settlement, a major refurbishment of the shopping centre was completed with action being taken to improve those areas of access identified at the conciliation.

### Pregnancy discrimination

A woman alleging discrimination on the basis of pregnancy made a complaint to the Commission. The woman stated that she was employed as a secretary in a full time permanent position. The woman stated that she informed her employer that she was pregnant and told him she wished to finish work to commence maternity leave. The woman stated that soon after this her hours were significantly reduced and her employer stated it was due to a downturn in business. The woman stated that an advertisement was placed with the local Commonwealth Employment Service office advertising for an office junior. She subsequently resigned her position with the employer.

The complaint was settled by conciliation. Under the terms of the conciliation agreement the former employer agreed to provide a written work reference and financial compensation.

### Sexual harassment

A woman complained to her employer that there was a peep-hole in the ladies' toilet through which male members of staff spied on her and others using this facility. When the employer failed to make a permanent repair of the hole, the woman took her complaint to the Commission.

At the conciliation conference, the employer apologised to the woman for any distress that she had experienced and agreed to permanently repair the damaged wall. The employer also agreed to pay for a holiday for the woman up to the value of \$3 000 as compensation for the stress she had suffered.

### Sexual harassment

A woman and her two adult daughters lodged complaints alleging sexual harassment by an obscene telephone caller. The calls were alleged to have been made over a period of one year and were frequent and at any time of the day.

The woman and her two daughters, who lived in the same house, alleged that they were subjected to stress and anxiety never knowing when the calls would come. The women alleged the caller had said he knew there were only women living in the house. One of the daughters eventually moved to other accommodation because she was frightened.

The calls were traced by the phone company and the man was found guilty in Court and placed on probation. However, the women wanted compensation and an apology for the humiliation and stress they alleged they had endured over the period of time.

In conciliation, the man apologised for the hurt and upset he had caused the women and paid the mother \$7 500 and the two daughters \$6 000 each by way of compensation.

### Large sum paid to settle sexual harassment case

A woman was employed for several years with a government authority. During that time she progressed steadily in her career working in a variety of key areas. She became both highly experienced and well trained and had excellent career prospects. She was transferred to a

major regional centre, hoping to further expand her career prospects. However, she alleged that she was sexually harassed by three senior supervisors over a period of eighteen months.

The woman claimed that the supervisors would make derogatory comments in front of employees who were subordinate to the woman. She said this soon undermined her authority with these employees who in turn treated her badly. She alleged that rosters were changed at short notice and important documents, which required her response, went missing. Despite her every effort to confront the men, she alleged that a campaign of harassment made it increasingly difficult for her to do her job. She complained of her treatment to the appropriate officer, who dismissed her complaint and accused her of trying to usurp another senior officer who was also one of the harassers. She took leave and her health suffered. Finally she resigned from the job and complained to the Commission.

At the conciliation settlement, the employing authority apologised and because of the severity of the harassment, agreed to pay the woman \$160 000 as payment for pain, suffering and humiliation.

#### Lawful sexual activity

A tour boat company made a rule prohibiting its employees from forming sexual relationships with one another. The company said that this rule was necessary to avoid 'unprofessional incidents' occurring in front of its customers. But the rule was broken when the skipper of one of the company's boats became involved in a relationship with one of the company's officers. The manager told them that one of them would have to leave. As a result, they both resigned and were obliged to move away from the area to obtain work. The boat's skipper had to move interstate to obtain work at the same level. As a result of their separation, the relationship between them ended.

Following conciliation of each complaint, the company paid \$20 000 as compensation to the skipper and \$11 000 as compensation to the administrative officer.

#### Racial discrimination

A young Aboriginal man working in a government department complained to the Commission of racial discrimination by a supervisor, which had caused him considerable personal distress and fear of losing his full time temporary job.

The Department investigated the complaint and confirmed that the racially derogatory comments had occurred. A number of witnesses had heard the remarks. The complaint was settled at conciliation, with the Department agreeing to apologise in writing to the complainant; a payment of compensation; and agreement that all staff in the area would undertake a training course on anti-discrimination legislation and cross cultural awareness. The supervisor was disciplined for his behaviour and all supervisors received training on their responsibilities in relation to anti-discrimination legislation.

#### Racial discrimination

A young woman on work experience was subjected to racist remarks. A conciliation conference was successful in giving the complainant an opportunity to express her feelings about the remarks. It also gave the respondent company an understanding of the impact of the behaviour on the young woman and they acknowledged the poor treatment had occurred.

The conciliated agreement included a payment of \$3 500 for pain, suffering and humiliation, written apologies from both the individual and the employer, and counselling for the individual on harassment and discrimination.

### Racial discrimination

A Chilean man alleged racial discrimination in the workplace. He claimed he had been denied promotion and ongoing employment opportunities and that this was linked to his ethnic background. He said that members of a selection panel had made derogatory comments about his accent and that there was a 'general view' that his qualifications weren't as good as others because they were obtained overseas. He claimed he made repeated applications for training opportunities which were denied.

At conciliation it was agreed that he be paid the sum of \$7 000 by way of compensation. The company and the man also set up a training and development plan which built in regular feedback and the company reviewed their selection procedures.

### Age discrimination

A man who wished to stand as a candidate for a political party at a recent election claimed he was discriminated against when the party refused to endorse his pre-selection. The party claimed it was unable to endorse the complainant as a candidate because it is against their rules since he was over the age prescribed in their rules for candidates.

The matter was settled with the Party agreeing to alter its rules, deleting this discriminatory condition from their rules.

## Community development function

The Commission has affirmed community education and liaison activities as ongoing priorities. It has dedicated a small team to these functions drawing on other staff as needed, particularly in the regional offices. Concomitant with its role of informing prospective complainants of their rights and entitlements under the Act, the Commission has focused attention on preemptive programs, with particular regard to prospective respondents.

The Commission's objectives are to support the effective and efficient discharge of its complaint handling functions, and to influence attitudes, behaviours, policies and practices in the community which reduce discrimination and promote equal opportunity.

The Commission implemented a number of strategies to achieve these objectives, which are set out below:

- The Commission developed protocols with other complaints and dispute resolution agencies with overlapping jurisdictions to ensure referrals to the most appropriate agency. This has also enabled the rationalised and better sequence of the handling of grievances in multiple jurisdictions, and provides for exchange of investigatory information as appropriate without diminishing the rights of complainants to the particular redress each jurisdiction can offer.
- So far protocols have been developed with the Community Justice Program, and the Queensland Industrial Relations Commission. Also, discussions have commenced with the former Public Sector Management Commission, now the Office of Public Service.
- The Commission also developed cooperative arrangements with the Chief Executive Officers of major public sector agencies who are respondents to multiple complaints. These arrangements seek to ensure single point accountabilities within those agencies to better expedite complaint resolution and to identify policy or practice issues common to complaints in order that systemic issues can be rectified as necessary.

- Other cooperative arrangements were developed with peak industry bodies representing businesses, who are likely to be respondents to complaints, to better position those bodies to represent the interests of their members and to expedite complaint resolution. Protocols for liaison were established with Queensland Hotels Association and Queensland Accommodation Association.
- The Commission delivered targeted education and training sessions, with an emphasis on joint activities with key industry bodies. Joint activities include seminars with the Queensland Chamber of Commerce and Industry, the Workers Compensation Board (Qld), the Queensland Law Society and Legal Aid (Qld). Targeted activities were undertaken in relation to the real estate and hospitality industries and to community organisations delivering services to indigenous communities regarding their responsibilities in relation to anti-discrimination legislation. Commission staff have delivered 170 training sessions during the year.
- Early in 1996, the Commission developed and implemented a fee for service policy. The policy aims to balance statutory obligations to promote awareness of human rights, with strategic efficient and effective use of resources.
- The library provides specialised resources to employers and service providers seeking to develop appropriate policies and procedures to prevent discrimination. It has also actively developed resources for legal practitioners and advocates, including a register of all Anti-Discrimination Tribunal decisions as well as decisions from federal and interstate jurisdictions. A trial is underway to establish a register of conciliated outcomes. These resources better position legal representatives to provide advice to clients regarding resolution of complaints. The library which is open to the public on Thursdays, had 277 visitors during the year.
- The Commission also conducted regular and structured consultations with key constituencies with a view to ensuring the Commission's services are in touch with and responsive to community needs.

## **Committees**

The Commission participates strategically in a range of committees and working parties with a view to influencing policy development to take account of equal opportunity issues and to facilitate systemic change. Committee work included:

- participation along with the Bureau of Ethnic Affairs and other state agencies in the Community Relations Consortium overseeing a project designed to develop models of community relations best practice in local communities;
- acting in a consultancy capacity to working parties set up by the Queensland Industrial Relations Commission Review of Awards;
- participating in the Police Ethnic Advisory Group which advises the Police Service on policy and practice in policing a multicultural community;
- sitting on two working parties established by the Board of Senior Secondary School Studies to examine assessment and certification issues for students with disabilities and students with special needs. It is significant that one of the committees was established as an outcome of a complaint by a student with a disability who sought systemic change as an outcome;
- establishing a Watchhouse Register Group in response to the Mornington Island Report by the Race Discrimination Commissioner. The Criminal Justice Commission has since

appointed the Group and another which was established by the North Queensland office, as an Advisory Group in relation to its research project into watchhouse conditions and overcrowding; and

- sitting on a working party with the gay, lesbian, bisexual and transgender communities. Draft strategies have been agreed upon for the next six months, including workshops and information dissemination strategies. A Commission representative continues to attend meetings of the Police, Gay, Lesbian and Transgender Liaison Committee as part of our strategy to develop better links with the community.

## Submissions

The Commission has also prepared a number of submissions to inquiries and task forces, with a view to ensuring input from a human rights perspective. Submissions have been prepared for:

- the Criminal Justice Commission's research project on Aboriginal witnesses in courts;
- the Criminal Justice Commission's research project into watchhouse conditions and overcrowding;
- the Post Compulsory School Education Taskgroup regarding post-school options for students with disabilities;
- the Standing Committee of Attorneys-General Working Party on the 'harmonisation' of State and Federal anti-discrimination law and practice. This process is designed to lead to enhanced efficiency of anti-discrimination law and practice through the removal of technical and other inconsistencies in legislation.

The Commission also undertakes projects which address key identified needs. In the 1995-96 period, there were four such projects.

The development of a sex discrimination information package in video format for Aboriginal and Torres Strait Islander Women in conjunction with the Sex Discrimination Commissioner. The project was oversighted by an advisory group of indigenous women from North Queensland.

A research project examining how race issues are reported in the media was established, due for completion early in the next year. A report for use by community groups, schools, universities and media professionals will be widely distributed. Funding for the project was provided by the Race Discrimination Commissioner, to mark the 20th Anniversary of the RDA in 1995.

The research includes analysis of case studies in metropolitan and regional newspapers and television news and content analysis over the 20 year period that the RDA has been in force. The project addresses a need expressed by ethnic and indigenous communities to examine the portrayal of indigenous and multicultural issues which is perceived to be more often negative than positive.

Work has continued regarding implementation of the Tribunal's exemption in relation to some aspects of age discrimination and 'schoolies week'. Follow up has included consultation with stakeholders regarding draft materials, liaison with the Residential Tenancies Authority regarding implementation and comments on the draft Residential Tenancies Act Regulations.

### Rockhampton watchhouse

The Commission has also intervened in a number of matters of public concern, the most significant of which was the proposed redevelopment of the Rockhampton watchhouse. Plans for a new watchhouse were announced during 1995. However, the plans appeared to contain a

number of features which were in contravention of the ICCPR and the Australian Correctional Standard, in particular the underground cell accommodation.

These concerns were drawn to the attention of the Human Rights Commissioner, who raised them at senior level with the Queensland Government. This resulted in extensive consultation with the indigenous community about their specific concerns. A full review was then undertaken of the proposed watchhouse plans by Mr Joe Reiser, an environmental psychologist at the James Cook University.

As a result of these processes the Attorney-General, launched the new watchhouse, with a scale model, at a public function in the Supreme Court Building on 30 May 1996. The Attorney-General commented on the process which had led to the review of the watchhouse in the planning stage and the changes which had been made to meet the standard on having an above ground facility, natural lighting, smoking areas, adequate natural ventilation, visiting areas and improved accommodation for the staff.

#### Media

The Commission and senior staff gave 129 media interviews on matters of public interest involving human rights issues. A major theme of media interest has been racial hatred and community relations issues, particularly in the context of reconciliation.

A team comprising the Commission's Aboriginal staff in Brisbane and members of the community development and complaint handling teams have implemented an outreach strategy in Aboriginal and Torres Strait Islander communities. The aim has been to strengthen the links between Aboriginal and Torres Strait Islander communities and the Commission and better position management committees of community organisations to meet their responsibilities in relation to anti-discrimination legislation. It also aims to assist community members to resolve issues at a local level.

An Indigenous Project Officer was employed for nine weeks as part of this strategy, which included distribution and collation of a questionnaire to gather information on the communities' knowledge of the Commission, agency visits and workshops on rights and responsibilities.

The Brisbane Aboriginal staff also participated in a national project, which is the initiative of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The staff are on the Curriculum Development Committee of the Legal Service Education Program.

**Table 11: QADC - outcomes for inquiries closed**

| <b>Outcome</b>                             | <b>1993-94</b> | <b>1994-95</b> | <b>1995-96</b> |
|--|----------------|----------------|----------------|
| Written advice provided                    |                |                | 162            |
| Complaint accepted                         | —              | —              | 669            |
| Complaint not pursued - alternative remedy | —              | —              | 89             |
| Prospective complaint outside jurisdiction | —              |                | 476            |
| Prospective complaint declined or rejected |                |                | 103            |
| Alleged contravention too old              | —              | —              | 20             |
| Contact lost                               | —              | —              | 78             |
| <b>Total</b>                               | <b>1 136</b>   | <b>1 595</b>   | <b>1 597</b>   |

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**Table 12: QADC –complaints closed in 1995/96: summary by outcome**

| Total                                      | Complaints lodged after 1/7/95 |            | Complaints lodged before 30/6/95 |            |
|--|--------------------------------|------------|----------------------------------|------------|
|  |                                | %          | Total                            | %A         |
| Conciliated                                | 121                            | 45         | 159                              | 25         |
| Not conciliated - referred for hearing     | 39                             | 14         | 105                              | 16         |
| Not conciliated - not referred for hearing | 2                              | 1          | 5                                | 1          |
| Referred elsewhere                         | 9                              | 3          | 5                                | 1          |
| Declined, rejected, outside jurisdiction   | 10                             | 4          | 40                               | 6          |
| Complaint withdrawn by complainant         | 64                             | 23         | 125                              | 20         |
| No contact from complainant, lost interest | 28                             | 10         | 199                              | 31         |
| <b>Total</b>                               | <b>273</b>                     | <b>100</b> | <b>638</b>                       | <b>100</b> |

**Table 13: QADC complaints closed to date: summary by Act**

|              | 1991-92    |            | 1992-93    |            | 1993-94    |            | 1994-95    |            | 1995-96    |            |
|--------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
|              | No         | %          | No         | %          | No         | %          | No         | %          | No         | %          |
| QADA         | —          |            | 113        | 32         | 348        | 74         | 255        | 59         | 749        | 82         |
| RDA          | 53         | 23         | 44         | 13         | 34         | 7          | 43         | 10         | 49         | 5          |
| SDA          | 125        | 53         | 129        | 37         | 64         | 14         | 60         | 14         | 43         | 5          |
| DDA          |            |            |            |            | 4          | 1          | 20         | 5          | 52         | 6          |
| HREOCA       | 55         | 24         | 62         | 18         | 19         | 4          | 52         | 12         | 18         | 2          |
| <b>Total</b> | <b>233</b> | <b>100</b> | <b>348</b> | <b>100</b> | <b>469</b> | <b>100</b> | <b>430</b> | <b>100</b> | <b>911</b> | <b>100</b> |

**Table 14: Complaints lodged under the CADA by category of complainant and respondent**

| Type of complainant | 1993-94    | 1994-95    | 1995-96    |
|---------------------|------------|------------|------------|
| Male                | 84         | 185        | 208        |
| Female              | 186        | 429        | 370        |
| Group, organisation | 8          | 52         | 40         |
| Other               | 26         | 43         | 1          |
| <b>T o t a l</b>    | <b>304</b> | <b>709</b> | <b>619</b> |

| Type of respondent    | 1993-94    | 1994-95    | 1995-96    |
|-----------------------|------------|------------|------------|
| Queensland Government | 65         | 135        | 93         |
| Private enterprise    | 239        | 574        | 526        |
| <b>Total</b>          | <b>304</b> | <b>709</b> | <b>619</b> |

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**Table 15: Complaints opened under the Queensland Anti-Discrimination Act by area and ground of complaint**

| <b>Ground</b> | <b>Accomodation Administration<br/>of State laws</b> | <b>Education</b> | <b>Employment Goods and<br/>services</b> | <b>Insurance</b> | <b>Outside<br/>specified areas</b> | <b>Victimisation</b> | <b>1993-94<br/>Total</b> | <b>1994-95<br/>Total</b> | <b>1995-96<br/>Total</b> |
|---------------|--|------------------|--|------------------|------------------------------------|----------------------|--------------------------|--------------------------|--------------------------|
|---------------|--|------------------|--|------------------|------------------------------------|----------------------|--------------------------|--------------------------|--------------------------|

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|                        |           |           |           |            |           |          |           |           |                  |                  |                  |
|------------------------|-----------|-----------|-----------|------------|-----------|----------|-----------|-----------|------------------|------------------|------------------|
| Age                    | 2         | -         | 1         | 30         | 3         |          |           |           | 21 (6.9%)        | 46 (6.4%)        | 36 (5.8%)        |
| Association            | 1         | 1         |           | 4          | 3         | -        | -         | 2         | 1 (0.3%)         | 4 (0.5%)         | 11(1.8%)         |
| Impairment             | 5         | 13        | 19        | 67         | 34        | 3        |           |           | 54 (17.7%)       | 175 (24.6%)      | 141 (22.8%)      |
| Marital status         | 4         |           |           | 9          |           |          | -         |           | 5 (1.6%)         | 23 (3.2%)        | 13 (2.1%)        |
| Pregnancy              |           |           |           | 48         |           |          |           |           | 28 (9.2%)        | 38 (5.3%)        | 48 (7.8%)        |
| Political activity     |           |           |           | 1          |           |          |           | -         | 3 (0.9%)         | 4 (0.5%)         | 1 (0.1%)         |
| Political belief       | -         | -         | -         | 1          | -         | -        |           |           | 2 (0.6%)         | -                | 1(0.1%)          |
| Parental status        | 4         |           |           | 16         | 1         |          |           |           | 6 (1.9%)         | 16 (2.2%)        | 21(3.4%)         |
| Race                   | 17        | 7         | 5         | 38         | 27        |          |           | 2         | 54 (17.7%)       | 108 (15.2%)      | 96 (15.5%)       |
| Religion               | 1         |           |           | 5          |           |          | -         | -         | 4 (1.3%)         | 5 (0.7%)         | 6 (1.0%)         |
| Sex                    | 1         | -         | -         | 36         | 7         |          |           |           | 27(8.8%)         | 69 (9.7%)        | 44 (7.1%)        |
| Sexual harassment      |           |           |           | 143        | 1         |          |           | 28        | 90 (29.6%)       | 194 (27.3%)      | 172 (27.8%)      |
| Lawful sexual activity |           | 1         |           | 11         | 3         |          |           |           | 9 (2.9%)         | 22 (3.1%)        | 15 (2.5%)        |
| Trade union activity   |           |           |           | 7          |           |          |           |           |                  | 5 (0.7%)         | 7 (1.1%)         |
| Victimisation          |           |           |           |            |           |          |           | 7         |                  |                  | 7(1.1%)          |
| <b>T o t a l</b>       | <b>35</b> | <b>22</b> | <b>25</b> | <b>416</b> | <b>79</b> | <b>3</b> | <b>28</b> | <b>11</b> | <b>304(100%)</b> | <b>709(100%)</b> | <b>619(100%)</b> |

*\*under the Queensland Anti-Discrimination Act sexual harassment may occur in any area of life and is not confined to specific areas*

# Queensland Anti-Discrimination Tribunal

The Tribunal is comprised of the President, Ms Roslyn Atkinson, and three other members, Mr Stephen Keim (Barrister-at-law), Ms Cate Holmes (Barrister-at-law), and Ms Suzette Coates (Solicitor). All are part time and are assisted by a registrar and an administrative support officer. For the purpose of conducting hearings, the Tribunal is constituted by either the President or any of the members sitting alone.

Consistent with the significant increase in complaint throughput of the Commission, the Tribunal received more than four times and finalised more than five times the number of matters in 1995-96 than in any previous year. The Tribunal's workloads and throughputs are described in Tables 16 to 18.

The Tribunal employs a strict case management system, which requires parties to agree to a timetable for the filing of documents and completing other steps necessary to ready the matter for hearing. This timetable is monitored and enforced, and in the Tribunal's experience this encourages the parties to consider settlement options at an early stage in the proceedings. The system involves the holding of a directions hearing as soon as possible after the referral of a complaint from the Anti-Discrimination Commissioner. At the directions hearing, the parties are consulted as to an appropriate timetable for the filing of documents, and conciliation dates and hearing dates are also set. The Tribunal has had considerable success in conciliating complaints prior to hearing. Of the complaints finalised by the Tribunal this year, more than 80 percent were resolved without need for a full hearing. Complaints which cannot be conciliated by the Tribunal, or settled between the parties themselves, are usually heard by the Tribunal within four to six months from the date of referral.

## Decisions on appeal

This year, seven Tribunal decisions have been taken on Appeal to the Supreme Court of Queensland. These are listed below.

### **Lynton v Maugeri**

Heard by Member Stephen Keim. Racial discrimination and accommodation.

The Tribunal found that the complainant had been discriminated against on the basis of race, and awarded general damages of \$18 000 as compensation for loss and damages. The Appeal was dismissed with costs.

### **Seaton v The Commissioner of Fire Service**

Heard by Member Cate Holmes. Impairment and pre-employment area.

The Tribunal found that the complainant had been discriminated against on the basis of impairment, and awarded damages for loss of income in the amount of \$4 520. The Tribunal also ordered that the complainant be reinstated as a station officer, with his date of employment deemed to be the date on which he was originally offered employment. The Appeal was dismissed with costs.

## **Hashish v Minister for Education of Queensland**

Heard by Member Cate Holmes. Interim application, impairment and age and education. The Tribunal ordered that the respondent was prohibited from doing any act preventing the complainant (a blind and deaf student) from attending the school and from doing any act preventing him from continuing to receive appropriate special education services, pending the hearing of the complaint. On Appeal, the interim order was quashed.

## **In the matter of an opinion of the Tribunal, and of an agreement between Mount Isa Mines Ltd and Australian Manufacturing Workers Union and Others**

Heard by President Roslyn Atkinson.

The Tribunal provided an opinion that a clause in a draft enterprise agreement was discriminatory in its effect, on the ground of marital status. The Appeal was allowed and the opinion of the Tribunal was set aside. Costs were agreed between the parties.

## **Hopper v Mount Isa Mines Limited and Others**

Directions were made by President Roslyn Atkinson as to discovery of relevant material. These directions were appealed to the Supreme Court of Queensland. The Appeal was dismissed.

## **Skellem v Colonial Gardens Resort Townsville and Another**

Member Suzette Coates. Pregnancy and employment.

The Tribunal found that the complainant had been discriminated against, and was awarded the amount of \$13 870 for loss and damages, and economic loss. The Appeal was dismissed for want of prosecution, with costs.

## **Moore v Brown and Black Community Housing Service; Doyle v Riley and Black Community Housing Service**

President Roslyn Atkinson. Sexual harassment and employment.

The Tribunal found that both complainants had been discriminated against and awarded \$13 240 to the complainant Doyle for lost wages and damages for offence, humiliation, intimidation and damages to the complainant Moore in the amount of \$20 000 for loss of income and damages for hurt and humiliation. Three related Appeals were dismissed, with various orders as to costs.

The following matters have also been of particular interest this year:

## **Real Estate Institute of Queensland exemption**

Tribunal President Roslyn Atkinson granted managers and owners of holiday accommodation, in certain areas, exemption from the QADA to allow collection of bonds to be trialed over two years. The bonds, if charged, must be charged to all tenants in all three periods (nine days prior to and including the running of the Indy Car Race on the Gold Coast, the `footy finals' period between mid September and mid October, and `schoolies week' between mid November and mid December), from 1 January, 1996. The collection of bonds before then is not covered by the exemption.

The Real Estate Institute of Queensland originally sought to impose bonds only on young people during schoolies week. However, discussions between all parties, facilitated by the Tribunal President and the Anti-Discrimination Commissioner, concluded that young people on 'schoolies week' should not be singled out as a group. The Tribunal decided such direct discrimination should remain unlawful. The resulting consent order also deals with disputes over bonds, the gathering of facts and statistics, and the procedure for notifying tenants of their rights in relation to bonds.

## **Tribunal Opinion — Queensland Cultural Centre, Stage V, Southbank Playhouse**

On request from the Department of Public Works and Housing of the Queensland Government, the Tribunal provided an opinion as to whether the proposed design of a major extension to the existing Queensland Performing Arts Centre was discriminatory, particularly with respect to the ground of impairment, ie access and goods and services issues. The Tribunal consulted extensively with the Department, architects, the Brisbane City Council, lobby groups representing impaired persons, and other concerned parties. The consultation involved three briefing sessions and the consideration of several alternate design plans for the Theatre complex in question. In conclusion, the Tribunal provided its opinion as to which of the proposed design plans were not in breach of the QADA.

### **v Minister for Education**

Member Cate Holmes. Impairment and education.

The Tribunal found that the complainant (a severely disabled child) had been discriminated against in her exclusion from a mainstream class in a regular school, but that the respondent had established the exemptions of unjustifiable hardship and authorisation by earlier legislation. The complaint was dismissed. Costs were agreed between the parties.

### **Ivory v Griffith University**

President Roslyn Atkinson. Interim application, age and employment.

Although Dr Ivory had agreed to retire at a certain age when first employed by the University, an issue had arisen between the parties as to whether or not that agreement remained in force *vis a vis* the transitional provision in the QADA which provided for the phasing out of imposed compulsory retirement age. The Tribunal determined that there was sufficient material before it to determine that there was a real issue to be determined between the parties, and the

balance of convenience favoured the interim order in the complainant's favour prior to a full hearing of the complaint.

### **Smith v Buvet and Another**

President Roslyn Atkinson. Sexual harassment and employment.

The complainant was a young woman of 18 years in her first employment, living away from home, who was subjected to sexually intimate conversation and questioning, touching and attention from her employer. The Tribunal found that the complainant had been discriminated against, and awarded damages in the amount of \$20 000 for hurt and humiliation, loss of income, loss of income earning capacity, and special damages, together with costs.

**Table 16: Matters received by the Queensland Anti-Disc.,**

| Period         | Exemption Applications | Complaints referred | Requests for opinions | Applications for interim orders | Miscellaneous matters | Total |
|----------------|------------------------|---------------------|-----------------------|---------------------------------|-----------------------|-------|
| 1992-93        | 3                      | 2                   | 4                     |                                 |                       | 9     |
| 1993-94        | 1                      | 13                  | 2                     |                                 | -                     | 16    |
| 1994-95        | 4                      | 23                  | -                     | 3                               | 5                     | 35    |
| <u>1995-96</u> | <u>2</u>               | 123                 | 10                    | 10                              | 12                    | 158   |

**Table 17: Matters finalised by the Queensland Anti-Disc. in 1995-96**

| Period         | Exemption Applications | Complaints referred | Requests for opinions | Applications for interim orders | Miscellaneous matters | Total |
|----------------|------------------------|---------------------|-----------------------|---------------------------------|-----------------------|-------|
| 1992-93        | 2                      | 1                   | 3                     |                                 |                       | 6     |
| 1993-94        | 2                      | 4                   | 2                     |                                 |                       | 8     |
| 1994-95        | 2                      | 14                  | 1                     | 1                               | 5                     | 23    |
| <u>1995-96</u> | <u>5</u>               | 86                  | 9                     | 10                              | 12                    | 122   |

**Table 18: Breakdown of matters finalised and outstanding in 1995-96***Finalised*

| Matters                               | Exemption Applications | Complaints referred | Requests for opinions | Applications for interim orders | Miscellaneous matters | Total |
|---------------------------------------|------------------------|---------------------|-----------------------|---------------------------------|-----------------------|-------|
| Dismissed                             |                        | 3                   |                       | 1                               |                       | 5     |
| Upheld                                | 3                      | 13                  | 9                     |                                 | 11                    | 36    |
| Conciliated prior to hearing (QADT) - |                        | 25                  |                       |                                 |                       | 25    |
| Conciliated prior to hearing (QADC) - |                        | 4                   |                       |                                 |                       | 4     |
| Settled prior to hearing              |                        | 31                  |                       |                                 |                       | 31    |
| Withdrawn prior to hearing            | 2                      | 10                  |                       |                                 |                       | 12    |
| Opinion given                         |                        |                     | 6                     |                                 |                       | 6     |
| Opinion refused                       |                        |                     | 3                     |                                 |                       | 3     |
| <u>Total</u>                          | <u>5</u>               | 86                  | 9                     | 10                              | 12                    | 122   |

Outstanding

| Matters                               | Exemption<br>Applications | Complaints<br>referred | Requests for<br>opinions | Applications for<br>interim orders | Miscellaneous<br>matters | Total      |
|---------------------------------------|---------------------------|------------------------|--------------------------|------------------------------------|--------------------------|------------|
| Heard - decision                      |                           |                        |                          |                                    |                          |            |
| pending                               | —                         | 6                      | 1                        | 1                                  | —                        | 8          |
| Part heard                            | 1                         | 5                      | —                        | —                                  | —                        | 6          |
| Listed for hearing                    | —                         | 26                     | —                        | —                                  | —                        | 26         |
| Awaiting listing                      | —                         | 16                     | —                        | —                                  | —                        | 16         |
| Awaiting<br>conciliation              | —                         | 3                      | —                        | —                                  | —                        | 3          |
| Settled - awaiting<br>final agreement | —                         | —                      | —                        | —                                  | —                        | 0          |
| <b>Total</b>                          | <b>5</b>                  | <b>86</b>              | <b>9</b>                 | <b>10</b>                          | <b>12</b>                | <b>122</b> |

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*\*the combined totals of finalised and outstanding matters will not equal the number of matters received because of the carryover from 1994-95 of matters outstanding as at 30 June 1995.*



# ACT Human Rights Office

## Commonwealth and Territory cooperation

The Australian Capital Territory (ACT) Human Rights Office was established in 1991 by agreement between the ACT Government and the Commonwealth. The Office is jointly funded by the ACT and Commonwealth Governments and is staffed by officers of the HREOC.

The ACT Human Rights Office deals with complaints under the *Discrimination Act* 1991 (ACT) and under Commonwealth discrimination laws.

## ACT Discrimination Act

The Act makes discrimination on the following grounds unlawful:

- sex;
- sexuality;
- transsexuality;
- marital status;
- race;
- pregnancy;
- status as a parent or carer;
- religious or political conviction;
- impairment;
- membership or non-membership of an association or organisation of employers or employees;
- age;
- profession, trade, occupation or calling; and
- association with a person who has one of these attributes.

Sexual harassment, racial vilification and victimisation are also unlawful under the Act.

The Act operates in the areas of employment, education, access to premises, the provision of goods and services, requests for information, accommodation and clubs.

## ACT Discrimination Commissioner

Ms Robin Burnett's appointment as Commissioner was continued for the year and on 14 November 1995, the Commissioner's appointment became full time. The Commissioner has a range of powers under the Act which includes conducting public hearings and making determinations, making suppression orders, interim decisions and orders for information. Such decisions can attract review by the ACT Administrative Appeals Tribunal.

The Commissioner's increased involvement in complaints has led to the use of powers not previously exercised and the first opportunity to assess their impact. It is anticipated that legislation will be passed in the next financial year to address the issues that have arisen from the exercise of certain powers.

The Commissioner delegates the powers of investigation and conciliation of complaints to the staff of the Office. This separation of functions remains an essential ingredient of complaint handling as the Act requires that nothing said or done during the course of conciliation can be used as evidence in a hearing. Procedures have been put in place to ensure that the Commissioner is insulated from such information.

## **Investigation of complaints**

The Office received a total of 142 complaints of discrimination during the year, with 87 complaints falling under the Act (Table 20).

As in previous years, the main grounds for complaint are discrimination on the grounds of sexual harassment, race or impairment (Table 19). However, the grounds on which the complaints are made continue to expand. For example, in 1992-93, 9 out of 15 possible grounds were identified in complaints whilst in 1995-96, 13 out of 15 possible grounds were identified and the first complaints on the grounds of transsexuality were received. The broad range of grounds within the Act appears to mirror the issues that the ACT community raises with the Office.

While age-based compulsory retirement became unlawful under the Act in March 1996, the Office has not received the number of complaints that may have been expected. This may reflect limited knowledge in the community regarding this provision, which the Office will seek to redress through its limited community education program.

As in previous years, the majority of complaints are made in relation to employment (Table 21).

The majority of complaints handled by the Office, as in previous years, are either conciliated or withdrawn (Table 22). Conciliated outcomes can include apologies, change in practices, financial compensation or access to previously denied opportunities. Complaints which are withdrawn by the complainant may include outcomes such as private agreements reached between the parties or their legal representatives, the complainant is satisfied by the explanation offered by the respondent, or the complainant may decide that they no longer wish to pursue their complaint for other reasons.

Further details of complaints made under the Act can be found in the Annual Report of the ACT Discrimination Commissioner.

Table 19: Complaints under the Discrimination Act since July 1992

| Ground<br>Number                    | 1992-93 |     | 1993-94 |     | 1994-95 |     | 1995-96 |     |
|-------------------------------------|---------|-----|---------|-----|---------|-----|---------|-----|
|                                     |         | %   | Number  | c/o | Number  | %   | Number  | %   |
| Sex                                 | 5       | 12  | 15      | 21  | 8       | 11  | 5       | 6   |
| Sexuality                           | 3       | 7   | 1       | 1   | 1       | 1   | 1       | 1   |
| Transsexuality                      |         |     | —       |     | —       |     | 2       | 2   |
| Marital status                      | 1       | 2   | 1       | 1   | 3       | 4   | 5       | 6   |
| Status as a parent<br>or carer      | 1       | 2   | 4       | 6   | 1       | 1   | 1       | 1   |
| Pregnancy                           | 4       | 9   | 3       | 4   | 8       | 11  | 2       | 2   |
| Race                                | 6       | 14  | 6       | 9   | 10      | 13  | 21      | 24  |
| Religious, political<br>conviction  | —       |     | 2       | 3   | 2       | 3   |         | —   |
| Impairment                          | 13      | 31  | 30      | 44  | 15      | 20  | 32      | 37  |
| Sexual harassment                   | 9       | 21  | 7       | 10  | 16      | 21  | 11      | 13  |
| Racial vilification                 | 1       | 2   |         |     | 1       | 1   | 1       | 1   |
| Union membership,<br>non-membership |         |     | 1       | 1   | 5       | 7   | 2       | 2   |
| Age                                 |         |     | —       |     | 2       | 3   | 4       | 5   |
| Profession                          |         |     | —       |     | 1       | 1   | —       |     |
| Victimisation                       | —       |     | —       |     | 2       | 3   |         | —   |
| <b>T o t a l</b>                    | 43      | 100 | 70      | 100 | 75      | 100 | 87      | 100 |

Table 20: New complaints received within jurisdiction

| Act                | Number |
|--------------------|--------|
| SDA                | 13     |
| RDA                | 11     |
| HREOCA             | 4      |
| DDA                | 27     |
| Discrimination Act | 87     |
| <b>Total</b>       | 142    |

Table 21: Complaints lodged under the Discrimination Act by area of complaint ground

| Access to Goods, services,<br>Category | Employment | Education | premises | facilities | Clubs    | Accomodation | Public Act | Total     |
|--|------------|-----------|----------|------------|----------|--------------|------------|-----------|
| Sex                                    | 2          |           |          | 3          |          | —            | —          | 5         |
| Sexuality                              | —          |           |          | 1          | —        | —            |            | 1         |
| Transsexuality                         | —          | —         |          | 2          | —        | —            |            | 2         |
| Marital status                         | 1          | —         |          | 1          | —        | 3            |            | 5         |
| Status as a parent<br>or carer         | 1          | —         |          | —          | —        | —            |            | 1         |
| Pregnancy                              | 2          | —         | —        |            |          |              |            | 2         |
| Race                                   | 13         |           | —        | 4          |          | 4            |            | 21        |
| Religious, political<br>conviction     | —          |           | —        |            |          |              |            | 0         |
| Impairment                             | 16         | 5         | 1        | 7          | —        | 3            | —          | 32        |
| Sexual harassment                      | 8          | 3         |          | —          | —        | —            |            | 11        |
| Racial vilification                    | —          | —         |          | —          | —        | —            | 1          | 1         |
| Union membership,<br>non-membership    | 2          | —         |          | —          |          | —            |            | 2         |
| Age                                    | 3          | 1         | —        |            |          |              |            | 4         |
| Profession                             |            |           | —        |            |          |              |            | 0         |
| Victimisation                          | —          |           |          |            |          |              | —          | 0         |
| <b>Total</b>                           | <b>48</b>  | <b>9</b>  | <b>1</b> | <b>18</b>  | <b>0</b> | <b>10</b>    | <b>1</b>   | <b>87</b> |

Table 22: Outcome of complaints lodged under the Discrimination Act

| Outcome                     | Number of complaints |
|-----------------------------|----------------------|
| Conciliated                 | 34                   |
| Withdrawn                   | 33                   |
| No contact from complainant | 6                    |
| Declined                    | 8                    |
| Outside jurisdiction        | 1                    |
| Referred elsewhere          | 1                    |
| <u>Referred for hearing</u> | 3                    |
| <b>Total</b>                | <b>86</b>            |

## Hearings and reviews

In 1995-96 much of the time of the Discrimination Commissioner was taken up with the hearing *Marshall v De Demenico and The Territory*. After a series of direction hearings and a public hearing into the complaint, the Commissioner brought down a decision finding that the complaint of sexual harassment was not substantiated. The complainant sought review by the Administrative Appeals Tribunal, which is ongoing. The Tribunal's decision in regard to who was the complainant's employer, Mr De Demenico or the Territory, has been appealed to the ACT Supreme Court.

The Commissioner has commenced hearing an application for costs lodged by Mr De Demenico with respect to expenses incurred in the hearing of the complaint by the Commissioner. A decision has not been made.

In another case of sexual harassment, the matter was adjourned on the first day of hearing when the complainant produced evidence as to the whereabouts of the alleged harasser, who had not been previously located, and the complainant advised of her intention to commence criminal action against the alleged harasser. The hearing of the matter was adjourned awaiting the outcome of any criminal action.

Following Professor Alston's decision in *Dalla Costa v ACT Department of Health*, Mrs Dalla Costa sought review by the Administrative Appeals Tribunal as to whether Professor Alston should have awarded expenses to the Dalla Costas. Following President Curtis's decision that such an application would require a de novo review of the original decision, the parties settled privately.

Commissioner Burnett declined to further investigate three complaints made by a bricklayer who, at times, acted as an independent contractor for construction companies. The complainant alleged that he had been discriminated against because he was not a member of a union and had been denied same employment and/or service conditions because he was not a member. The Commissioner declined the matter as she was of the opinion that the ACT legislation had to give way to the conflicting provisions in the relevant federal award and registered enterprise agreement. The Commissioner's decisions are currently under review by the Administrative Appeals Tribunal.

## **Education and promotion**

The Office has a limited role in the provision of educational and promotional activities and responds to requests from the community for assistance. Such assistance includes public speaking to agencies, employers and educational institutions and the provision of information to students undertaking legal studies.

The Office also provided placements for law students wanting to undertake work experience or as part of their postgraduate studies for admission to the Bar. In recognition of the significant contribution these students have made to the Office, this opportunity is taken to say thank you.



# Northern Territory

The 1995-96 financial year was a period of consolidation for the Northern Territory Regional Office. Although complaint lodgement figures remained high, the pattern of rapid and dramatic growth in complaint and inquiry numbers experienced during the previous two years settled. Functions for this Office fall into two main categories:

- complaint and inquiry handling; and
- community education.

The Northern Territory Regional Office also had some involvement in various national projects.

## Complaint and inquiry handling

While the final complaint numbers for the 1995-96 year were considerably lower than for the 1994-95 financial year (down 48.2 percent), they were still significantly higher than for all other previous years. The number of inquiries received by the office increased slightly on the numbers for 1994-95. The distribution of complaints lodged under the various pieces of legislation administered by the Commission was similar to the pattern of lodgements in 1994-95.

The reasons for the fluctuating numbers of complaints is unclear but could be related to the fact that in 1994-95 the Office undertook a mail out of basic information on the Commission to all householders in the Northern Territory. This exercise was not repeated in 1995-96.

The number of complaints finalised in the year also increased, with 14 percent more complaints finalised in 1995-96 compared to 1994-95.

## Community education

Despite resource constraints, the Office continued to give community education a high priority. The Office responded to numerous requests from organisations and individuals for information, as well as requests for speakers at seminars, training courses, meetings and conferences. The Office also provided speakers to schools and tertiary institutions. The Office also undertook more proactive community education activities in the form of the coordination of Human Rights Week, the organisation of various public seminars and meetings and the distribution of information on different human rights and anti-discrimination issues.

The program for Human Rights Week was planned in conjunction with a community committee. Activities included two public seminars, the production and distribution of a poster and a pamphlet, donations of HREOC literature to public libraries throughout the Northern Territory, a mail out of information to community health services and a lunch time concert. Other activities coordinated by committee members for Human Rights Week included an art show and the production of a bibliography on human rights fiction.

The Office's community education and liaison efforts were assisted during the year by the visits to the Northern Territory by the Sex Discrimination Commissioner, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Privacy Commissioner, the Disability Discrimination Commissioner, the Human Rights Commissioner, the Race Discrimination Commissioner and a range of HREOC staff.

In planning and conducting community education activities, the Office maintained its commitment to attempting to provide a service to the whole of the Northern Territory. Whenever possible, travel for complaint handling was combined with advertised 'inquiry clinics', community education and training activities. The Office continued to maintain a toll-free number for people outside Darwin and information was routinely distributed throughout the Northern Territory.

Aside from the outreach activities summarised above, the Regional Office library, pamphlet and publication collection continued to have a high level of usage by students, other individuals and organisations seeking information about a variety of topics in the human rights and anti-discrimination area. There was also a steady demand from the public for copies of various HREOC publications.

## Office administration, staff recruitment and development

The Northern Territory Regional Office continued to aim for effectiveness, appropriateness and efficiency in its overall operations. As the Office has a total staff allocation of only three full time positions, the recruitment and training of high quality staff has been a critical factor in achieving these aims.

In 1995-96, staff members undertook a range of staff development activities, the most important being in the areas of conciliation training and indigenous cultural awareness. As well as accessing formal courses, the Office made use of the more informal staff development opportunities available within the Commission, with visiting Commissioners and Commission staff being routinely requested to run information sessions and workshops for staff.

Responsible financial management and efficient administrative practices continued to be high priorities within the Office. The Office managed within its budget for the year and continued to improve its administrative systems and practices.



# Tasmania

In October 1995 the Tasmanian Regional Office moved to a new more centrally located position in Hobart. The office was officially opened by the President of the Commission Sir Ronald Wilson on 7 December 1995 and provides enhanced facilities for both the public and HREOC staff.

## Functions

The Tasmanian Regional Office has two key functions, including:

- administering the Federal anti-discrimination legislation; and
- community education and promotion functions, including providing advice to employers and community organisations on EEO and human rights matters.

## Complaint handling

The major feature of complaint handling in the year has been an 18 percent increase in complaints under the DDA. Seventy-seven complaints under all Acts were registered during the year, approximately the same level as in the previous year. At any one time the office is normally investigating about 60 complaints. The year saw a slight decline in the number of complaints lodged under the SDA perhaps reflecting the establishment of the Tasmanian Sex Discrimination Commission which provides an alternative opportunity for those with complaints in that sphere.

Of complaints closed during 1995-96 those under the SDA represented some 44 percent of the total; followed by the DDA at 35 percent; the RDA at 13 percent; and complaints under ILO 111 at 8 percent. For complaints opened in the same year, the DDA represented 51 percent, SDA 34 percent, RDA 12 percent and ILO 111 4 percent.

## Community education and promotion

Throughout the year the office continued to provide seminars and workshops for various government and non-government organisations, trade unions, school, colleges and the University. Advice and support was also supplied to employers and other organisations in establishing EEO policy and practices. A further initiative this year was the introduction of a fee-for-service facility provided by a community education consultant engaged by the Commission when more detailed input and training was required. The year also saw a growth of requests for assistance in the development of action plans under the provisions of the DDA, by local government and other affected organisations.

Human Rights Week in early December saw the promotion of human rights in the community through various activities both in Hobart and Launceston such as debate and lunch time talks, the presentation of the Tasmanian Awards for Humanitarian Activities, a free concert and a Human Rights Day March through the Hobart city centre. These events were organised with strong support and input from many non-government organisations. The breadth of activities grows every year and is attracting more and more involvement from community organisations, schools and individuals.

## **Other developments**

The Tasmanian State Government has indicated its intention to introduce wide ranging State anti-discrimination legislation into Parliament and the development of this legislation is well advanced.

# International instruments observed under the HREOCA

The *Human Rights and Equal Opportunity Commission Act 1986* establishes the Commission, provides for its administration and gives effect to seven international instruments which Australia has ratified. These instruments are:

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;
- vote and be elected 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.

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*International Labour Organisation Convention 111* is concerned with discrimination in employment and occupation. Australian adherence to this Convention provides that all people have the right to equal treatment in employment and occupation without discrimination on the basis of:

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

*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.

*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 HREOCA on 24 February 1994. The Declaration recognises the right to freedom of religion. The only limitation to this right are those limits which are prescribed by law and which are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

# Terms of reference for the National Inquiry into the separation of Aboriginal and Torres Strait Islander children

I, MICHAEL LAVARCH, Attorney-General of Australia, HAVING REGARD TO the Australian Government's human rights, social justice and access and equity policies in pursuance of section 11(1) (e), (j) and (k) of the Human *Rights and Equal Opportunity Commission* Act 1986, HEREBY REVOKE THE REQUEST MADE ON 11 MAY 1995 AND NOW REQUEST the Human Rights and Equal Opportunity Commission to inquire into and report on the following matters:

To:

- (a) trace the past laws, practices and policies which resulted in the separation of Aboriginal and Torres Strait Islander Children from their families by compulsion, duress or undue influence, and the effects of those laws, practices and policies;
- (b) examine the adequacy of and the need for any changes in current laws, practices and policies relating to services and procedures currently available to those Aboriginal and Torres Strait Islander peoples who were affected by the separation under compulsion, duress or undue influence of Aboriginal and Torres Strait Islander children from their families, including but not limited to current laws, practices and policies relating to access to individual and family records and to other forms of assistance towards locating and reunifying families;
- (c) examine the principles relevant to determining the justification for compensation for persons or communities affected by such separations;
- (d) examine current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Strait Islander children and advise on any changes required taking into account the principle of self-determination by Aboriginal and Torres Strait Islander peoples.

IN PERFORMING its functions in relation to the reference, the Commission is to consult widely among the Australian Community, in particular with Aboriginal and Torres Strait Islander communities, with relevant non-government organisations and with relevant Federal, State and Territory authorities and if appropriate may consider and report on the relevant laws, practices and policies of any other country.

THE COMMISSION IS REQUIRED to report no later than December 1996.

Dated 2 August 1995

MICHAEL LAVARCH

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# HREOC publications

The following publications were produced by the Commission during 1995-96.

## Human Rights

Discrimination in Employment and Occupation brochure

Report of the Reconvened Mental Illness Inquiry (Victoria)

Children and the Legal Process Inquiry report

Rights of Rural and Remote People occasional paper

## Aboriginal and Torres Islander Social Justit..

Third Report

Native Title Report 95

## Race Discrimination

Alcohol Report

Alcohol Report - A Community Guide

Race Discrimination Information Kit

Battles Great and Small

State of the Nation 1995 report

*Racial Discrimination Act 1975: A Review*

Racial Discrimination Act: A Review Community Consultation Guide

## Sex Discrimination

The Sex Discrimination Act and the Rights of Pregnant Workers Agender  
Issue No 3

Sexual Harassment: Knowing Your Rights  
(Arabic, Chinese and Vietnamese translations)

Your Guide to the Sex Discrimination Act  
(Arabic, Chinese and Vietnamese translations)

Your Rights at Work  
(Arabic, Chinese and Vietnamese translations)

1996 Guidelines for Special Measures under the *Sex Discrimination Act 1984*

Sexual Harassment and Educational Institutions: A Guide to the Federal Sex  
Discrimination Act

## Disability Discrimination

Disability Discrimination Act Action Plans - A Guide for the Tertiary  
Education Sector

Disability Discrimination Act Action Plans - A Guide for Business

Disability Discrimination Act Action Plans - A Guide for Local Government  
(produced jointly with the Australian Local Government Association, telephone  
(06) 281 1211 for copies of this brochure)

# Addresses of Commission offices and agents throughout Australia

Addresses and contact details of HREOC offices are provided below. Teletypewriters (TTY) for hearing and speech impaired callers have been installed.

## National Office

|   |   |
|---|---|
| Level 8, Piccadilly Tower<br>133 Castlereagh Street<br>Sydney NSW 2000<br>GPO Box 5218<br>Sydney NSW 2001 | Human Rights and Equal Opportunity Commission<br>Phone (02)92849600<br>Toll free 1800 021 199<br>TTY 1800 620 241<br>Facsimile (02)92849611<br>Internet address is <a href="http://www.hreoc.gov.au/hreoc/">www.hreoc.gov.au/hreoc/</a> |
|---|---|

## Joint Regional Offices

### Queensland Anti-Discrimination Commission

#### *Brisbane*

|   |   |
|---|---|
| Ground floor, 27 Peel Street<br>South Brisbane QLD 4101<br>PO Box 5363<br>West End QLD 4101 | Phone (07) 3844 6099<br>Toll free 1800 177 822 (Qld only)<br>TTY (07) 3846 4123<br>Facsimile (07) 3846 2211 |
|---|---|

#### *Rockhampton*

|  |  |
|--|--|
| First level, State Government Centre<br>209 Bolsover Street<br>PO Box 1390<br>Rockhampton QLD 4700 | Phone (079) 226 877<br>Toll free 1800 804 288 (Qld only)<br>TTY (079) 212 647<br>Facsimile (079) 226 772 |
|--|--|

#### *Cairns*

|  |  |
|--|--|
| Second floor, Aplin House 19 Aplin Street<br>PO Box 375<br>Cairns QLD 4870 | Phone (070) 317 399<br>Toll free 1800 803 271 (Qld only)<br>TTY (070) 512 349<br>Facsimile (070) 312 127 |
|--|--|

### ACT Human Rights Office Level 2,

|  |   |
|--|---|
| Comcare Building 40 Allara Street<br>Canberra ACT 2600<br>PO Box 222 | Phone (06) 247 3002<br>TTY (06) 247 4117<br>Facsimile (06) 247 3358 |
|--|---|

Civic Square ACT 2608

## Regional Offices

### Human Rights and Equal Opportunity Commission

#### *Darwin*

|   |  |
|---|--|
| 1st floor TCG Centre<br>80 Mitchell Street<br>Darwin NT 0800<br>LMB 4 GPO<br>Darwin NT 0801 | Phone (08) 8981 9111<br>Facsimile (08) 8941 1508 |
|---|--|

### *Hobart*

AMP Society  
Building 27 Elizabeth  
Street Hobart TAS  
7000 GPO Box 197  
Hobart TAS 7001

Phone (03) 6234 3599  
Toll free 1800 001 222 (Tas only)  
Facsimile (03) 6231 0773

## State Equal Opportunity Commissions

### Victoria Equal Opportunity Commission

Fourth floor  
356 Collins Street  
Melbourne VIC 3000

Phone  
Toll free (03) 9602 3338  
TTY 1800 134 142 (Vic only)  
Facsimile (03) 9670 1951  
e (03) 9670 2922

### South Australia Commissioner for Equal Opportunity

Ground floor  
Wakefield House  
30 Wakefield Street  
Adelaide SA 5000

Phone (08)8226 5660  
Toll free 1800188 163 (SA only)  
TTY (08)8226 5692  
Facsimile (8) 8223 3285

### Western Australia Equal Opportunity Commission

Second floor, Westralia Square  
141 St Georges Terrace  
Perth WA 6000  
PO Box 7370  
Cloisters Square WA 6850

Phone (9) 264 1930  
Toll free 1800198 149 (WA only)  
Facsimile (09)264 1960

## Further information

If information on the content of this report or additional copies are required, or any other publication of the Commission, please contact:

### Human Rights and Equal Employment Opportunity

Public Affairs Unit  
GPO Box 5218  
Sydney NSW 2001

Phone (02)92849600  
Toll free 1800 021 199  
TTY 1800 620 241  
Facsimile (02)92849751



# Industrial democracy

The Commission's policy on industrial democracy is to ensure that staff are fully able to contribute to the efficient operation of the Commission. It asserts that staff will enjoy a better quality of working life if they are involved in the decision making process and that in this way the Commission can provide a more effective service to the public. The Commission is therefore committed to the involvement of its staff through the industrial democracy procedures outlined below.

The position of Assistant Secretary Management has as part of its functions the responsibility for implementing industrial democracy principles and practices in the workplace. This responsibility is shared in a general sense by all staff of the Commission through a consultative council.

## Significant activities 1995-96

The Commission's joint union/management consultative council was established six years ago. The council comprises equal numbers of union and management members and regional office management and staff are represented at meetings.

The following sub-committees report to the consultative council:

- equal employment opportunity sub-committee; and
- occupational health and safety and accommodation sub-committee.

The 'Permanent Part Time Work Policy and Guidelines' was developed. A review of the 'Staff Selection Handbook', 'Temporary Employment Policy' and 'Higher Duties Policy' is underway. Drafts of the 'Grievances Policy' and 'Security Guidelines' have also been developed. A review of the 'Performance Appraisal Program' was commenced.

## Consultative mechanisms

Apart from the consultative council, which is the peak management/union consultative forum, there are a number of other consultative mechanisms in the Commission:

- regular meetings between the union delegates and management, to discuss topical matters;
- staff notices issued by the Human Rights Commissioner on matters of interest to all staff (for example, the Commission's statement of principles relating to staff with family or carer responsibilities);
- union meetings, where matters of industrial concern are discussed;
- a weekly staff notice, which informs staff of a wide variety of issues, including personnel matters and other items of interest, which is easily accessible by all staff through the computer network;
- Commission meetings, to which staff have input by way of discussion papers and the minutes of which, except for items of a confidential or sensitive nature, are made readily available to staff via the computer network;

- branch, section and Regional office meetings, where senior officers involve their staff in the process of developing individual programs, tailored to the relevant work area; and
- project and work group meetings, where planning, implementing and monitoring specific projects takes place.

## Occupational health and safety

An occupational health and safety (OH&S) sub-committee forms part of the Commission's 'Occupational Health and Safety Policy and Agreement'. The Commission comprises management and union representatives and meets on a regular basis, or as required if OH&S issues arise in the workplace. Health and safety representatives are also elected in all workplaces of the Commission.

During 1995-96 the OH&S sub-committee:

- arranged training for all Commission supervisors and staff on their responsibilities under the OH&S Act;
- continued to arrange training for new and backup first aid officers;
- continued to provide ongoing OH&S advice and assistance to staff, including initial ergonomic assessments of staff workstations;
- purchased and circulated OH&S reference material;
- conducted an OH&S inspection of the Commission's central office premises and made subsequent recommendations; and
- surveyed staff on the performance of the Commission's 'Employee Assistance Program'. This indicated a high level of satisfaction and the Industrial Program Service continue to provide a free, confidential counselling service to Commission employees and their families.

## Equal employment opportunity

### Equal employment opportunity resources and consultative mechanisms

The Executive Director is the Senior Executive with overall responsibility for equal employment opportunity (EEO) matters within the Commission. The Personnel Manager has responsibility for EEO coordination and grievance handling within the Commission. In the Regional offices, day-to-day responsibility for EEO falls to the Regional Directors.

Within its resources, the Commission assists other federal and state agencies, professional bodies and private companies with training on race, sex and disability discrimination, on cultural diversity in the workplace and on EEO requirements for managers and supervisors.

The consultative mechanism for EEO is part of the industrial democracy process. There is an EEO sub-committee of the consultative council which reports to that forum. The sub-committee consists of three management representatives and three union representatives.

## Achievements 1995-96

Major achievements and initiatives included:

- Indigenous cross cultural awareness training for all staff;
- the Commission granted approval for two applications for home-based work;
- two Aboriginal trainees were appointed under the Public Administration Trainee scheme;
- reasonable adjustment payments were paid to staff with disabilities;
- there are 28 Identified positions within the Commission;
- development of the 'Permanent Part time Work Policy'; and
- work is continuing on the 'Disability Action Plan'.

Statistics showing the representation of EEO groups within classification levels is included in the Commission's response to the Public Service Commission EEO survey.

### or priorities 1995-96

The major priorities for the coming year include developing and implementing the '1997-2000 EEO Plan' and completing and implementing the 'Disability Action Plan'.

## Freedom of Information

The Freedom of Information (FOI) Act provides for legal access to government documents by the general public.

Functions of the agency are broadly outlined in the introduction and detailed in individual program chapters. Decision making generally rests with the Commission (as a collegiate body) or individual Commissioners and senior managers.

The Commission undertakes broad community and industry consultation in its policy development, which is detailed to some extent in each program chapter. External consultation in administrative practices is satisfied through organisational review, interchange with community and other governmental bodies, and union representation and involvement.

### Freedom of information statistics

During the period of 1 July 1995 to 30 June 1996, the Commission received 25 requests for access to documents under the FOI Act:

- 23 requested access to documents relating to complaints;
- 1 relating to research matters; and
- 1 requested access to administration documents.

A total of 22 applications were processed this year (including finalisation of applications from 1994-95).

FOI applications by year processed:

| <b>1992-93</b> | <b>1993-94</b> | <b>1994-95</b> | <b>1995-96</b> |
|----------------|----------------|----------------|----------------|
| 4              | 11             | 34             | 22             |

### Categories of documents

Documents held by the Commission relate to:

- *administration* matters including personnel and recruitment, accounts, purchasing, registers, registry and library records, and indices;
- *conciliation* matters including the investigation, clarification and resolution of complaints;
- *legal* matters including legal documents, opinions, advice and representations;
- *research* matters including research papers in relation to complaints, existing or proposed legislative practices, public education, national inquiries and other relevant issues;
- *policy* including minutes of meetings of the Commission, 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

Printed material available for public distribution are listed in Appendix three.

### Freedom of Information procedures

Initial enquiries concerning access to Commission documents should be directed to the FOI officer by either telephoning (02) 9284 9600 or by writing to:

FOI officer  
Human Rights and Equal Opportunity Commission  
GPO Box 5218  
Sydney NSW 2001

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

- must be in writing;
- must be accompanied by payment of \$30 to cover some of the administrative costs in providing the information;
- includes the name and address of the person requesting the information;
- specifies the documents to be accessed; and
- is processed within 30 days of receipt.

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

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### Facilities for examining documents

The general public may obtain Commission publications and information from offices listed in • Appendix four.

## **Advertising and market research**

### Payments to advertising agencies

No advertising campaigns were undertaken in the reporting year 1995/96

### Payment to market research organisations

|                                    |          |
|------------------------------------|----------|
| Roy Morgan Research Centre Limited | \$19 716 |
|------------------------------------|----------|

# Financial and staffing resources

Table 23: Financial and staffing resources summary

|  | \$(`000) and actual staff years |                      |                |
|--|---------------------------------|----------------------|----------------|
|  | Actual 1994-95                  | Budget & AEs 1995-96 | Actual 1995-96 |
| <b>Budgetary (cash) basis</b>                    |                                 |                      |                |
| Components of Appropriations                     |                                 |                      |                |
| Running costs                                    | 17 301                          | 19 980               | 19 913         |
| Other program costs<br>(excluding running costs) | 1 042                           | 1 624                | 1 373          |
| <b>Total</b>                                     | <b>18 343</b>                   | <b>21 604</b>        | <b>21 286</b>  |
| Less adjustments                                 | 1 952                           |                      |                |
| <b>Total outlays</b>                             | <b>16 391</b>                   | <b>21 604</b>        | <b>18 848</b>  |
| <b>Total revenue</b>                             | <b>1 952</b>                    | <b>1 757</b>         | <b>2 438</b>   |
| <b>Staffing</b>                                  |                                 |                      |                |
| Staff years (actual)                             | 206                             |                      | 229            |

Table 24: Summary thbe of resources

| <b>Reconciliation of programs and appropriation elements for 1995-96 (\$(`000)</b> |                 |                 |                    |                      |                    |             |                    |
|--|-----------------|-----------------|--------------------|----------------------|--------------------|-------------|--------------------|
|  | <b>A+</b>       | <b>B+</b>       | <b>C+</b>          | <b>D=</b>            | <b>E</b>           | <b>-F</b>   | <b>=G</b>          |
| Sub-program  | Approp<br>Bills | Approp<br>Bills | Special<br>Approps | Annotated<br>Approps | Program<br>Approps | Adjustments | Program<br>Outlays |
| Number   | No 166          | No 26z4         |                    |                      |                    |             |                    |
| 3.1  | 18 248 000      | 918 000         | nil                | 2 437 502            | 21 603 502         | 2 437 502   | 19 166 000         |

# Staffing overview

An overview of HREOC's staffing profile as at 30 June 1996 is summarised in the following tables.

Table 25: Staffing overview

| <b>Classification</b> | <b>Male</b> | <b>Female</b> | <b>Full time</b> | <b>Part time</b> | <b>Temporary</b> | <b>NSW</b> | <b>Old</b> | <b>ACT</b> | <b>NT</b> | <b>TAS</b> |
|-----------------------|-------------|---------------|------------------|------------------|------------------|------------|------------|------------|-----------|------------|
| Statutory Office      |             |               |                  |                  |                  |            |            |            |           |            |
| Holder                | 3           | 3             | 6                |                  |                  | 6          |            |            |           |            |
| SES Band 2            | 1           | 1             | 2                |                  | 1                | 1          | 1          |            |           |            |
| SES Band 1            | 4           |               | 4                |                  |                  | 4          |            |            |           |            |
| SOG B                 | 7           | 10            | 17               |                  | 1                | 14         | 1          | 2          |           |            |
| Legal 2               | 1           |               | 1                |                  |                  | 1          |            |            |           |            |
| SOG C                 | 11          | 21            | 30               | 2                | 3                | 26         | 3          | 1          | 1         | 1          |
| Legal 1               | 3           | 8             | 10               | 1                | 2                | 9          | 2          |            |           |            |
| SPAO 1                |             | 1             | 1                |                  |                  | 1          |            |            |           |            |
| SITO C                | 1           |               | 1                |                  |                  | 1          |            |            |           |            |
| SPO C                 |             | 1             | 1                |                  |                  | 1          |            |            |           |            |
| ASO 6                 | 19          | 33            | 50               | 2                | 4                | 41         | 8          | 1          | 2         |            |
| P02                   |             | 1             | 1                |                  |                  | 1          |            |            |           |            |
| 1T02                  | 1           |               | 1                |                  |                  |            |            | 1          |           |            |
| ASO 5                 | 4           | 7             | 11               |                  |                  | 11         |            |            |           |            |
| ITO 1                 | 2           |               | 2                |                  |                  | 2          |            |            |           |            |
| ASO 4                 | 6           | 18            | 22               | 2                | 2                | 17         | 5          | 1          |           | 1          |
| P01                   |             | 1             |                  | 1                |                  |            | 1          |            |           |            |
| A503                  | 3           | 24            | 26               | 1                | 2                | 21         | 4          |            | 1         | 1          |
| A502                  | 3           | 15            | 17               | 1                | 7                | 15         | 2          | 1          |           |            |
| ASO 1                 | 1           | 4             | 5                |                  | 1                | 4          | 1          |            |           |            |
| Public Administration |             |               |                  |                  |                  |            |            |            |           |            |
| Trainees              | 1           | 2             | 3                |                  | 3                | 3          |            |            |           |            |
| <b>Total</b>          | <b>71</b>   | <b>150</b>    | <b>211</b>       | <b>10</b>        | <b>26</b>        | <b>179</b> | <b>28</b>  | <b>7</b>   | <b>4</b>  | <b>3</b>   |

Table 26: Senior EL....7; Service (SES) information

| <b>SES Level</b> | <b>Male</b> | <b>Female</b> | <b>Total</b> |
|------------------|-------------|---------------|--------------|
| SES Band 2       | 1           | 1             | 2            |
| SES Band 1       | 4           |               | 4            |
| <b>Total</b>     | <b>5</b>    | <b>1</b>      | <b>6</b>     |

# Consultants

The need for all consultancies during 1995-96 arose from either the need for new or additional specialised knowledge and/or skills, or insufficient timeframes allowed for existing resources to complete the work.

## e Search

|  |          |
|--|----------|
| <b>Australian Institute of ATSI Studies</b>  | \$2 500  |
| Research: 'Native Title Issues Paper Number 9'                                       |          |
| <b>Mary Banfield</b>   | \$5 000  |
| Research: '1995 State of the Nation' report  |          |
| <b>Centre for Aboriginal Economic Policy Research</b>                                | \$9 500  |
| Research: Community Development Employment Program Inquiry                           |          |
| <b>Centre for Plain Legal Language</b>   | \$5 000  |
| Research: Draft Privacy Principles Guidelines 8-11                                   |          |
| <b>Chris Cunneen</b>   | \$7 500  |
| Research: '1995 State of the Nation' report  |          |
| <b>C Dertimanis</b>  | \$5 100  |
| Research: '1995 State of the Nation' report  |          |
| <b>Edith Cowan University</b>  | \$5 000  |
| Research into the finance industry   |          |
| <b>Sandra Forbes</b>   | \$3 500  |
| Research: Development of Publications policy   |          |
| <b>Associate Professor J Collins</b>   | \$10 050 |
| Research: '1995 State of the Nation' report  |          |
| <b>Mareja Bin Juda</b>   | \$6 413  |
| Research: Sex Discrimination package for Aboriginal and Torres Strait Islander Women |          |
| <b>Lynden Esdaile</b>  | \$4 000  |
| Research into the development of the Commission's action plan under the DDA          |          |
| <b>Martyn Consulting</b>   | \$10 000 |
| Research for the preparation of a discussion paper on digital rights                 |          |
| <b>Helen Mills</b>   | \$2 400  |
| NIATISC liaison  |          |
| <b>Multicultural Centre</b>  | \$8 000  |
| Research: '1995 State of the Nation' report  |          |
| <b>Paul Castley</b>  | \$8 140  |
| Research: 'Alcohol Report' and 'Deaths in Custody'                                   |          |
| <b>Rebecca Peters</b>  | \$26 880 |
| Research: 'Mental Illness' report  |          |
| <b>The Roy Morgan Research Centre</b>  | \$19 716 |
| Research for the Privacy Awareness Program   |          |



|   |           |
|---|-----------|
| Sara Charlesworth<br>Research: Flexible working hours project   | \$17 500  |
| P Whiteford<br>Research: Treatment of marital status in overseas social security systems  | \$11 400  |
| Workplace Studies Centre<br>Research: '1995 State of the Nation' report   | \$8000    |
| <b>Legal</b>  |           |
| Leslie Katz<br>Legal advice   | \$2500    |
| R J Howells Pty Ltd<br>Legal advice   | \$2900    |
| John Basten QC<br>Legal advice  | \$6669    |
| John Griffiths<br>Legal advice  | \$8375    |
| P A Keane<br>Legal advice   | \$2400    |
| Phillip Tahmindjis<br>Legal advice  | \$18837   |
| <b>Community education</b>  |           |
| Cultural Perspectives Pty Ltd<br>Racial Hatred public information and community education campaign  | \$30 000  |
| Higgins Wood and Associates<br>NCEP resource package  | \$100 000 |
| Terry Hood<br>Community liaison and facilitation for the National Inquiry   | \$3 100   |
| K A Price and J Williams-Mozley<br>National Aboriginal and Torres Strait Islander Community Education Project   | \$50 000  |
| Liz De Rome and Associate Pty Ltd<br>Development of video for NCEP  | \$23 250  |
| University of Technology, Sydney<br>Curriculum development for the National Indigenous Legal Curriculum Development Project:<br>Production of a Racial Hatred component of a CD-Rom | \$27 500  |
| Vision Splendid Media Pty Ltd<br>Video production for the National Indigenous Legal Curriculum Development Project  | \$53 605  |
| Lark Associates Education and Training Consultants<br>National Indigenous Legal Curriculum Development Project  | \$7 230   |
| The State of Queensland<br>National Indigenous Legal Curriculum Development Project   | \$30 000  |

|   |          |
|---|----------|
| Privacy audits  |          |
| Deloitte Touche Tohmatsu  | \$39 579 |
| Privacy audits  |          |
| Pannel Kerr Foster  | \$25 075 |
| Privacy audits  |          |
| Price and Newman  | \$4 557  |
| Privacy audits  |          |
| <i>lrh</i>  |          |
| Pacific Media   | \$13 000 |
| Media analysis and report   |          |
| Quay Connection   | \$50000  |
| Develop media education and public information campaign                 |          |
| <b>IT</b> seivices  |          |
| Powernet Services Pty Ltd   | \$87 005 |
| Database design and implementation                                      |          |
| The Statistical Laboratory  | \$2 024  |
| Computer security survey  |          |
| Housley Communication   | \$9 500  |
| Voice and data communications   |          |
| Other   |          |
| Prudence Borthwick  | \$5 500  |
| Publications production for Sexual Harrassment Commissioner             |          |
| Marjorie Thorpe   | \$3 552  |
| <u>Co-Commissioner</u>  |          |
| University of South Australia   | \$3 552  |
| Services of Dr M A Bin-Sallek: Co-Commissioner for the National Inquiry |          |
| Scott MacInnes  | \$8 168  |
| Training  |          |
| Marie Andrews   | \$7 875  |
| Cross cultural awareness training                                       |          |
| Dr Gregory Tillet   | \$7 500  |
| Conciliator training program  |          |
| Communicate   | \$10531  |
| Design: 'Women and Work' handbook                                       |          |
| Provenance Consulting Services  | \$18 246 |
| Records sentencing and disposal services                                |          |

# Financial statements

## HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

### INDEPENDENT AUDIT REPORT

To the Attorney-General

#### Scope

I have audited the financial statements of the Human Rights and Equal Opportunity Commission for the year ended 30 June 1996.

The statements comprise:

Statement by the Commission and Principal Accounting Officer;

Operating Statement;

Statement of Assets and Liabilities;

- Statement of Cash Flows;
- Statement of Transactions by Fund; and
- Notes to and forming part of the Financial Statements.

The Commissioners and Principal Accounting Officer are responsible for the preparation and presentation of the financial statements and the information contained therein. I have conducted an independent audit of the financial statements in order to express an opinion on them.

The audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statements are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial statements are presented fairly in accordance with Australian Accounting Concepts and Standards and other mandatory professional reporting requirements and statutory requirements so as to present a view of the Commission which is consistent with my understanding of its financial position, its operations and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

### **Audit Opinion**

In accordance with sub-section 51(1) of the *Audit Act 1901*, I now report that in my opinion, the financial statements:

- are in agreement with the accounts and records kept in accordance with section 40 of the Act;
- are in accordance with the Guidelines for Financial Statements of Departments; and

present fairly in accordance with Statements of Accounting Concepts, applicable Accounting Standards and other mandatory professional reporting requirements the information required by the Guidelines including the Commission's departmental and administered operations and its cash flows for the year ended 30 June 1996 and departmental and administered assets and liabilities as at that date.

Australian National Audit Office

Aca\_24

David A. Doyle  
Executive Director

For the Auditor-General

1 October 1996

Sydney

**HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION**

**STATEMENT BY THE COMMISSION**

**AND**

**PRINCIPAL ACCOUNTING OFFICER**

---

**CERTIFICATION**

The Commission and the Principal Accounting Officer certify that the attached financial statements for the year ended 30 June 1996 are:

in agreement with the Commission's accounts and records; and

in our opinion, present fairly the information required by the Financial Statements Guidelines of Departments

The seal of the Commission is by resolution duly affixed.



Signed at 4, af<sup>0</sup>--4-k--'6''-(

Dated ( atA42/(-A-C/I<sup>o</sup>tq/6

Dated

*Tom McKnight*  
1 October 1996

Diana Temby  
Executive Director

Tom McKnight  
Assistant Secretary, Management

**HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION**

**OPERATING STATEMENT  
for the year ended 30 June 1996**

|  | <b>Notes</b> | <b>1995-96</b>            | 1994-95            |
|--|--------------|---------------------------|--------------------|
| <b>NET COST OF SERVICES</b>  |              |                           |                    |
| <b>Expenses</b>  |              |                           |                    |
| Employee expenses  | 3            | <b>13,387,312</b>         | 11,110,894         |
| Administrative expenses  | 4            | <b>8,898,912</b>          | 10,585,756         |
| <b>Total expenses</b>  |              | <b><u>22,286,224</u></b>  | <u>21,696,650</u>  |
| <b>Revenues from independent sources</b>                             |              |                           |                    |
| Other revenue  |              | <b>2,596,569</b>          | 1,973,840          |
| <b>Total revenues from independent sources</b>                       |              | <b><u>2,596,569</u></b>   | <u>1,973,840</u>   |
| <b>Net cost of services</b>  | 6.3          |                           | <u>1,973,840</u>   |
| <b>REVENUES FROM GOVERNMENT</b>                                      |              | <b><u>19,689,655</u></b>  | <u>19,722,810</u>  |
|  |              |                           |                    |
| Appropriations used for:   |              |                           |                    |
| Ordinary annual services (net appropriations)                        | 6.2          |                           | 16,390,544         |
| Liabilities assumed by other departments                             | 2.14         | <b>18,848,171</b>         | 1,336,018          |
| Resources received free of charge from other departments             | 5            | <b>46,372</b>             | 48,330             |
| <b>Total revenues from government</b>                                |              | <b><u>18,894,543</u></b>  | <u>17,774,892</u>  |
| <b>Total expenses less revenues</b>                                  |              | <b>(795,113)</b>          | (1,947,918)        |
| Accumulated expenses less revenues at beginning of reporting period  |              | <b><u>(2,296,668)</u></b> | <u>(348,750)</u>   |
| <b>Accumulated expenses less revenues at end of reporting period</b> |              | <b><u>(3,091,780)</u></b> | <u>(2,296,668)</u> |

**ADMINISTERED REVENUES**

**Administered revenues**

Miscellaneous revenues

**10,737**

146

**Total administered revenues**

**10,737:**

146

The accompanying notes form an integral part of these statements

**HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION**

**STATEMENT OF ASSETS AND LIABILITIES**

as at 30 June 1996

|                                      | Notes | 1995-96            | 1994-95        |
|--------------------------------------|-------|--------------------|----------------|
| <b>CURRENT ASSETS</b>                |       |                    |                |
| Cash                                 |       | <b>17,434</b>      | 12,735         |
| Receivables                          | 7     | <b>189,906</b>     | <b>459,439</b> |
| Other                                |       | <b>52,510</b>      | <b>54,628</b>  |
| <b>Total current assets</b>          |       | <b>259,850</b>     | 526,802        |
| <b>NON-CURRENT ASSETS</b>            |       |                    |                |
| Property plant and equipment         | 8     | <b>5,469,696</b>   | 5,510,528      |
| <b>Total non-current assets</b>      |       | <b>5,469,696</b>   | 5,510,528      |
| <b>Total assets</b>                  |       | <b>5,729,546</b>   | 6,037,330      |
| <b>CURRENT LIABILITIES</b>           |       |                    |                |
| Creditors                            | 9     | <b>322,423</b>     | 756,895        |
| Provisions                           | 10    | <b>1,311,179</b>   | 1,079,189      |
| Other liabilities                    | 11    | <b>757,522</b>     | 758,313        |
| <b>Total current liabilities</b>     |       | <b>2,391,123</b>   | 2,594,397      |
| <b>NON-CURRENT LIABILITIES</b>       |       |                    |                |
| Provisions                           | 10    | <b>1,161,295</b>   | 720,057        |
| Other liabilities                    | 11    | <b>5,268,908</b>   | 5,019,543      |
| <b>Total non-current liabilities</b> |       | <b>6,430,203</b>   | 5,739,600      |
| <b>Total liabilities</b>             |       | <b>8,821,326</b>   | 8,333,997      |
| <b>NET LIABILITIES</b>               |       | <b>(3,091,780)</b> | (2,296,666)    |

The accompanying notes form an integral part of these statements

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

STATEMENT OF CASH FLOWS

for the year ended 30 June 1996

|  | Notes | 1995-96             | 1994-95          |
|--|-------|---------------------|------------------|
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>      |       |                     |                  |
| Inflows:   |       |                     |                  |
| Parliamentary appropriations                     |       | <b>18,848,171</b>   | 16,390,544       |
| Section 35 annotated appropriations              |       | <b>2,437,502</b>    | 1,947,987        |
| Outflows   |       |                     |                  |
| Payments to suppliers and employees              |       | <b>(20,735,601)</b> | (18,059,160)     |
| <b>Net cash provided by operating activities</b> | 12    | <b>550,072</b>      | 279,371          |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES</b>      |       |                     |                  |
| Inflows:   |       |                     |                  |
| Proceeds from sale of plant and equipment        |       |                     | 4,185            |
| Outflows:  |       |                     |                  |
| Payment for plant and equipment                  |       | <b>(545,373)</b>    | (292,169)        |
| <b>Net cash used in investing activities</b>     |       | <b>(545,373)</b>    | <b>(287,984)</b> |
| <b>Net increase (decrease) in cash</b>           |       | <b>4,699</b>        | (8,613)          |
| Cash at the beginning of reporting period        |       | <b>12,735</b>       | 21,348           |
| <b>Cash at end of reporting period</b>           |       | <b>17,434</b>       | 12,735           |

CASH FLOWS FROM ADMINISTERED TRANSACTIONS

|  |  |               |     |
|--|--|---------------|-----|
| Inflows •                                |  |               |     |
| • Miscellaneous revenues                 |  | <b>10,737</b> | 146 |
| <b>Net cash provided by administered</b> |  | <b>10,737</b> | 146 |

The accompanying notes form an integral part of these statements



HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

STATEMENT OF TRANSACTIONS BY FUND  
for the year ended 30 June 1996

|   | Notes | 1995-96<br>Budget<br>\$ | 1995-96<br>Actual<br>\$ | 1994-95<br>Actual<br>\$ |
|---|-------|-------------------------|-------------------------|-------------------------|
| <b>CONSOLIDATED REVENUE FUND (CRF)</b>        |       |                         |                         |                         |
| RECEIPTS                                      |       |                         |                         |                         |
| Section 35 receipts                           | 6.3   | 1,757,000               | 2,437,502               | 1,952,172               |
| Miscellaneous receipts                        |       | 1,000                   | 10,737                  | 146                     |
| <b>Total receipts</b>                         |       | <b>1,758,000</b>        | <b>2,448,239</b>        | 1,952,318               |
| EXPENDITURE                                   |       |                         |                         |                         |
| Appropriation Act No. 1                       |       | 17,909,000              | 17,591,171              | 15,163,544              |
| Appropriation Act No. 3                       |       |                         | 339,000                 | 323,000                 |
| Section 35 receipts deemed to be appropriated |       | 1,757,000               | 2,437,502               | 1,952,172               |
| Appropriation Act No.2                        |       | 918,000                 | 918,000                 | 904,000                 |
| <b>Total expenditure</b>                      | 6.1   | <b>20,584,000</b>       | <b>21,285,673</b>       | 18,342,716              |
| <b>LOAN FUND</b>                              |       | nil                     | nil                     | nil                     |
| <b>TRUST FUND</b>                             |       |                         |                         |                         |
| Trust accounts (Commonwealth activities)      | 13    |                         |                         |                         |
| Receipts                                      |       | 37,000                  | 39,745                  | 39,101                  |
| Expenditure                                   |       | 37,000                  | 34,187                  | 42,993                  |
| <b>Total receipts</b>                         |       | <b>37,000</b>           | <b>39,745</b>           | 39,101                  |
| <b>Total expenditure</b>                      |       | <b>37,000</b>           | <b>34,187</b>           | 42,993                  |

The accompanying notes form an integral part of these statements

# HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 1996

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### NOTE 1 - HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION'S OBJECTIVES

The Commission's objective is to *promote respect for, and observance of, the human rights of all people in Australia and their access to equal opportunity*'. Three corporate goals provide a structure for carrying out this objective:

- . administering, as far as possible, the legislation for which the Commission is responsible;
- carrying out the Commission's functions and servicing the community in the most professional, competent and efficient manner possible; and
- managing at all levels to the highest possible standard, and maximising the potential of staff by being a fair and responsible employer.

### NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### 21 Basis of Accounting

The financial statements are required by *section 50 of the Audit Act 1901* and are a general purpose financial report.

The financial statements have been prepared in accordance with the guidelines on "*Financial Statements of Departments*" issued by the Minister for Finance, hereinafter referred to as the *Guidelines* which incorporate Statements of Accounting Concepts and Australian Accounting Standards.

The financial statements have been prepared on an accrual basis and in accordance with historical cost principles and do not take into account current values of non-current assets.

#### 22 Comparative figures

Where necessary, comparative figures have been adjusted to conform with changes in presentation in these financial statements.

#### 23 Asset Capitalisation Threshold

All depreciable non-current assets with an historical cost equal to or in excess of \$2000 are capitalised in the year of acquisition and included on the Commission's Asset Register. Except where stated all plant and equipment is valued at historical cost. All purchases under \$2000 are expensed in the year of acquisition.

#### 24 Depreciation

Depreciation is calculated on a straight line basis so as to write off the cost of each item of property, plant and equipment over its expected useful life.

For leasehold improvements the depreciation is calculated over the lease term or the useful life, whichever is the shorter.

## **25 Leased Assets**

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets, and operating leases under which the lessor effectively retains all such risks and benefits. All leases entered into by the Commission have been classified as Operating Leases and lease payments are treated as expenses in the reporting period in which they are incurred.

## **26 Employee entitlements**

### Long Service Leave

Provision is made for the estimated liability for long service leave entitlements of permanent employees. It is calculated as an estimate of future cash flows required by the Commission for payment of long service leave to eligible employees.

The calculations are based on the average entitlements for staff with greater than three years service and entitlements for staff with greater than four years service. This is consistent with the guidance provided by the Australian Government Actuary which takes into consideration the probability of staff attaining 10 years service and includes a discount of 5% for that portion of the notional value of Long Service Leave not expected to be settled within 12 months. This effectively discounts future cash flows at the Australian long term bond rate.

### Annual Leave/Annual Leave Bonus

These provisions are based on the individual staff leave balances plus an amount representing the accrued entitlement since commencement or the last crediting date.

### Redundancy arrangements

Provision is made for the estimated liability for redundancy arrangements for a number of positions which have been declared excess to requirements as a result of government savings initiatives. The provision only includes severance pay. It excludes accrued salaries recreation leave, leave bonus and accrued long service leave in lieu which are shown in the current balance of the relevant provision.

### Sick Leave

Employees of the Commission are entitled to non vesting sick leave which accumulates with the length of service and is payable upon a valid claim. An assessment of sick leave taken by employees was made which indicated that on a group basis, staff utilise less than their yearly entitlement. As such, no liability for accumulated sick leave has been provided for in the financial statements.

## **27 Agreements equally proportionally unperformed**

Agreements equally proportionally unperformed (AEPUs) reflect agreements between the Commission and third parties in which both parties have performed to an equal extent some of their obligations whilst other obligations have yet to be honoured.

Future payments for the AEPUs have been recognised in the notes to the accounts only.

## **28 Fringe Benefits Tax**

The Commission activities are exempt from all form of taxation except Fringe Benefits Tax.

## **2.9 Insurance**

The Commission pays an annual premium to Comcare which assumes the liability in respect of payments under the *Safety Rehabilitation and Compensation Act 1988*.

In accordance with government policy, other insurable risks and assets are not insured and any losses that may arise are expensed as they are incurred.

## **2.10 Resources received free of charge**

Resources received free of charge are recognised as an expense and revenue wherever values are capable of reliable measurement. Details of resources received free of charge are provided in Note 5.

The expenditure for the services provided has been met from the appropriations from the departments and agencies concerned.

## **2.11 Program statement**

As the Commission constitutes a sub-program of the Attorney-General's portfolio and there is no separate component recognised within the sub-program, the *Guidelines* do not require a program statement to be prepared.

## **2.12 Departmental and Administered items**

The financial statements distinguish between 'departmental' and 'administered' items to enable assessments of efficiency in providing goods and services. Departmental items include assets, liabilities, revenues and expenses which are controlled by the Commission, whereas administered items relate to revenue received on behalf of the Commonwealth which is paid to the Consolidated Revenue Fund.

## **2.13 Bad and Doubtful Debts**

A provision is raised for any doubtful debts based on a review of all outstanding accounts as at year end. Bad debts are written off during the year in which they are identified.

## **2.14 Superannuation**

Staff of the Commission contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. Employer contributions in relation to these schemes have been expensed in these financial statements. Prior to 1995-96, the Commission was not required to make employer contributions in relation to staff membership of these schemes. The costs of superannuation in 1994-95 was a liability assumed by other departments.

No liability is shown for superannuation in the Statement of Assets and Liabilities as the employer contributions fully extinguish the accruing liability which is assumed by the Commonwealth.

## **2.15 Lease Incentives**

Lease Incentives have been disclosed in accordance with the Urgent Issues Group consensus view. This has resulted in rental expenses and fixed assets received free of charge as an incentive to entering into property leases being recognised in the accounts.

The lease incentive recognised as a result is amortised over the lease term by allocating a portion of the rent expense against the current balance. Fixed assets that are recognised are depreciated over the term of the lease.

**NOTE 3- EMPLOYEE EXPENSES**

|                                 | <b>1995-96</b>    | 1994-95    |
|---------------------------------|-------------------|------------|
| Employee entitlements           | <b>11,968,329</b> | 10,488,141 |
| Employee entitlement provisions | <b>1,418,983</b>  | 622,753    |
| <b>Total employee expenses</b>  | <b>13,387,312</b> | 11,110,894 |

**NOTE 4 - ADMINISTRATIVE EXPENSES**

|   |                  |            |
|---|------------------|------------|
| Cooperative arrangements                  | <b>1,078,000</b> | 904,000    |
| Complaint handling and hearings           | <b>375,955</b>   | 377,347    |
| Computer operating expenses               | <b>192,411</b>   | 290,174    |
| Depreciation and amortisation             | <b>992,897</b>   | 976,368    |
| Education and promotional activities      | <b>558,939</b>   | 502,903    |
| Loss on sale and disposal of fixed assets | <b>17,909</b>    | 129,328    |
| Office requisites and equipment           | <b>274,542</b>   | 296,187    |
| Personnel expenses                        | <b>278,712</b>   | 297,627    |
| Property operating expenses               | <b>1,551,496</b> | 2,848,399  |
| Postage and telephones                    | <b>659,219</b>   | 710,817    |
| Travel and subsistence                    | <b>1,521,714</b> | 1,459,356  |
| Training                                  | <b>135,482</b>   | 259,189    |
| Write offs                                | <b>4,000</b>     | 814        |
| Other administrative expenses             | <b>1,257,637</b> | 1,533,248  |
| <b>Total administrative expenses</b>      | <b>8,898,912</b> | 10,585,756 |

**NOTE 5- RESOURCES RECEIVED FREE OF CHARGE FROM OTHER DEPARTMENTS**

|  |               |        |
|--|---------------|--------|
| Department of Finance:                           |               |        |
| Computerised finance ledger and payroll services | <b>11,372</b> | 11,330 |
| Auditor-General:                                 |               |        |
| Auditing the financial statements                | <b>35,000</b> | 35,000 |
| <b>Total resources received free of charge</b>   | <b>46,372</b> | 46,330 |

## NOTE 6 - PARLIAMENTARY APPROPRIATIONS

1995-96  
Appropriation1995-96  
Actual**6.1 - Ordinary annual services****Appropriation Acts 1 and 3  
Division 129**

|   |            |            |
|---|------------|------------|
| 1. Running costs (i)                          |            |            |
| Appropriation Act No 1                        | 17,233,000 | 17,166,613 |
| Appropriation Act No 3                        | 309,000    | 309,000    |
| Section 35 receipts deemed to be appropriated | 2,437,502  | 2,437,502  |
| 2. Other Services                             |            |            |
| Appropriation Act No 1                        | 676,000 1  | 454,558    |
| Appropriation Act No 3                        | 30,000 }   |            |

**Division 812- Payments to or for the States, Northern Territory and the Australian Capital Territory**

|  |         |         |
|--|---------|---------|
| 01. Payments under co-operative arrangements with the States | 918,000 | 918,000 |
|--|---------|---------|

**Total appropriations**

|            |            |
|------------|------------|
| 21,603,502 | 21,285,673 |
|------------|------------|

(i) Included in running costs is an amount carried over pursuant to Cabinet endorsed arrangements of \$67,000.

**6.2 - Appropriations disclosed in the Operating Statement**

|   |                   |
|---|-------------------|
| Total Appropriation   | 21,285,673        |
| Less: Section 35 receipts                                       | 2,437,502         |
| <b>Total appropriations included in revenue from government</b> | <b>18,848,171</b> |

**6.3 - Section 35 receipts disclosed in the Operating Statement**

|  |                  |
|--|------------------|
| Section 35 receipts deemed to be appropriated  | 2,437,502        |
| Plus adjustment for year end accruals          | 159,067          |
| <b>Total revenues from independent sources</b> | <b>2,596,569</b> |

## NOTE 7 - RECEIVABLES

1995-96

1994-95

|                   |         |         |
|-------------------|---------|---------|
| Trade debtors     | 115,449 | 459,439 |
| Other departments | 74,457  |         |

**Total receivables**

|         |         |
|---------|---------|
| 189,906 | 459,439 |
|---------|---------|

**Aging of overdue receivables**

|  |         |         |
|--|---------|---------|
| Less than 30 days overdue                      | 151,629 | 253     |
| Greater than 30 days less than 60 days overdue | 1,038   | 459,186 |
| Overdue greater than 60 days                   | 37,239  |         |

**Total receivables**

|         |         |
|---------|---------|
| 189,906 | 459,439 |
|---------|---------|

**NOTE 8 - PROPERTY PLANT AND EQUIPMENT****1995-96**

1994-95

|   |                  |           |
|---|------------------|-----------|
| Computers, Plant & Equipment at cost              | <b>2,259,401</b> | 2,016,589 |
| Less: Accumulated depreciation                    | <b>1,401,597</b> | 1,056,633 |
|   | <b>857,804</b>   | 959,956   |
| Leasehold improvements at cost                    | <b>5,682,033</b> | 5,115,785 |
| Less: Accumulated depreciation                    | <b>1,158,645</b> | 565,213   |
|   | <b>4,523,388</b> | 4,550,572 |
| Work in Progress at cost for database development | <b>88,505</b>    |           |
| <b>Total Property Plant &amp; Equipment</b>       | <b>5,469,697</b> | 5,510,528 |

**NOTE 9 - CREDITORS**

|                        |                |         |
|------------------------|----------------|---------|
| Trade creditors        | <b>219,612</b> | 307,552 |
| Other creditors        | <b>102,811</b> | 449,343 |
| <b>Total creditors</b> | <b>322,423</b> | 756,895 |

**NOTE 10- PROVISIONS FOR EMPLOYEE ENTITLEMENTS**

## CURRENT PROVISIONS

|                              |                  |           |
|------------------------------|------------------|-----------|
| Recreational leave and bonus | <b>1,111,989</b> | 916,764   |
| Long service leave           | <b>94,583</b>    | 162,425   |
| Redundancy packages          | <b>104,607</b>   |           |
| <b>Total</b>                 | <b>1,311,179</b> | 1,079,189 |

## NON-CURRENT PROVISIONS

|  |                  |           |
|--|------------------|-----------|
| Long service leave                               | <b>1,161,295</b> | 720,057   |
| <b>Total provision for employee entitlements</b> | <b>2,472,474</b> | 1,799,245 |

**Aggregate employee entitlement liability recognised at 30 June including accrued salary and superannuation.****2,575,285**

1,917,842

**NOTE 11 - OTHER LIABILITIES**

|                                |                  |           |
|--------------------------------|------------------|-----------|
| Other liabilities current      | <b>757,522</b>   | 758,313   |
| Other liabilities non current  | <b>5,268,908</b> | 5,019,543 |
| <b>Total other liabilities</b> | <b>6,026,430</b> | 5,777,856 |

Other liabilities represent the balance of lease incentives to be amortised against future rental payments.

**NOTE 12- RECONCILIATION OF OPERATING RESULT WITH NET CASH PROVIDED BY OPERATING ACTIVITIES**

|  | 1995 96          | 1994-95     |
|--|------------------|-------------|
| Total Expenses less Revenue                            | <b>(795,113)</b> | (1,947,918) |
| Depreciation and Amortisation                          | <b>992,897</b>   | 976,368     |
| Loss on sale of Non-Current Assets                     | <b>17,909</b>    | 129,327     |
| Write-Offs   | <b>4,000</b>     |             |
| Proceeds on disposal                                   |                  | (4,185)     |
| Increase/(Decrease) in Employee Entitlement Provisions | <b>673,229</b>   | 84,082      |
| (Increase)/Decrease in Receivables                     | <b>269,533</b>   | (445,454)   |
| Increase/(Decrease) in Prepayments                     | <b>(2,118)</b>   | 55,262      |
| Increase/(Decrease) in Creditors                       | <b>(434,473)</b> | 507,301     |
| Increase/(Decrease) in other Non Current Liabilities   | <b>(175,792)</b> | 924,587     |
| <b>Net cash provided by operating activities</b>       | <b>550,072</b>   | 279,371     |

**NOTE 13 - RECEIPT AND EXPENDITURE OF THE TRUST FUND  
Group 1- Moneys held in Trust for Persons and Authorities other than the Commonwealth**

|                        |                 |          |
|------------------------|-----------------|----------|
| Opening Balance        | <b>549</b>      | 4,441    |
| Receipts               | <b>39,745</b>   | 39,101   |
| Payments               | <b>(34,187)</b> | (42,993) |
| <b>Closing balance</b> | <b>6,107</b>    | 549      |

**NOTE 14 - AGREEMENTS EQUALLY PROPORTIONATELY UNPERFORMED  
PROPERTY OPERATING LEASES AND AGREEMENTS**

|  |                   |            |
|--|-------------------|------------|
| Payments due:                                      |                   |            |
| Not later than one year                            | <b>2,163,887</b>  | 1,330,560  |
| Later than one year and not later than two years   | <b>2,207,286</b>  | 2,074,636  |
| Later than two years and not later than five years | <b>6,104,484</b>  | 6,083,443  |
| Later than five years                              | <b>7,058,847</b>  | 9,131,750  |
| <b>Total</b>                                       | <b>17,534,504</b> | 18,620,389 |

**CONSULTANCY AGREEMENTS**

|                         |                |         |
|-------------------------|----------------|---------|
| Payments due:           |                |         |
| Not later than one year | <b>552,117</b> | 173,256 |
| Total                   | <b>552,117</b> | 173,256 |

**OTHER**

|                         |               |  |
|-------------------------|---------------|--|
| Payments due:           |               |  |
| Not later than one year | <b>26,500</b> |  |
| Total                   | <b>26,500</b> |  |



**NOTE 15 - AUDITORS REMUNERATION**

|   | 1995-96       | 1994-95 |
|---|---------------|---------|
| Auditor-General:  |               |         |
| Auditing the financial statements   | <b>35,000</b> | 35,000  |
| Other Services  |               |         |
| Amounts paid in relation to the audit of the Queensland Anti Discrimination Commission (QADC) | <b>2,000</b>  | 2,000   |
| Total   | <b>37,000</b> | 37,000  |

Under current administrative arrangements only the fee for the QADC is payable by the Commission to the Auditor-General. The balance represents a notional audit fee.

**NOTE 16 - ACT OF GRACE PAYMENTS, WAIVERS AND WRITE-OFFS**

|  |              |         |
|--|--------------|---------|
| Act of Grace Payments:   |              |         |
| Act of Grace Payments made under <i>Subsection 34A(1)</i> of the <i>Audit Act 1901</i> |              |         |
| Waivers  |              |         |
| Waivers pursuant to <i>Subsection 70C(2)</i> of the <i>Audit Act 1901</i>              |              |         |
| Losses and Deficiencies under <i>Subsection 70C(1)</i> of the <i>Audit Act 1901</i>    |              |         |
| Amounts of debts, the recovery of which has been deemed to be uneconomical             | <b>4,000</b> | 814     |
| Lost, deficient, condemned, unserviceable or obsolete stores                           |              | 126,544 |
| <b>Total losses and deficiencies</b>   | <b>4,000</b> | 127,358 |

**NOTE 17- EXECUTIVES REMUNERATION**

The number of executive officers of the Commission whose total remuneration for the financial year is more than \$100,000 is shown below in their relevant remuneration bands.

| REMUNERATION OF      | NUMBER    | NUMBER   |
|----------------------|-----------|----------|
| \$100,000-\$109,999  | 3         | 4        |
| \$110,000-\$119,999  | <b>2</b>  | 1        |
| \$120,000 -\$129,999 | 2         | 1        |
| \$130,000 -\$139,999 | 1         | 0        |
| \$140,000-\$150,000  | <b>3</b>  | <b>0</b> |
|                      | <b>11</b> | 6        |

The aggregate amount of fixed remuneration received, or due and receivable, by the above officers of the Commission

|   |                  |         |
|---|------------------|---------|
| Performance pay is not reported for the above officers as six positions are statutory appointments for whom performance pay is not applicable. No performance payments were made for the remaining officers for 1995-96 due to the cessation of the Performance Pay Scheme. | <b>1,364,039</b> | 671,830 |
|---|------------------|---------|

**NOTE 18- APPROPRIATIONS MADE FOR FUTURE REPORTING PERIODS**

1996-97

**Supply Act (No.1)**

Division 128.1

Running Costs

7,384,000

Division 129.2.01

Other Program Costs

120,000

Aboriginal Deaths in Custody-Legal and Field Officer Training

**Supply Act (No. 2)**

Division 806.01

Payments under co-operative arrangements with the States

389,000

**Total Appropriations**

7,893,000

**NOTE 19- SUPERANNUATION**

**1995-96**

1994-95

Employer contributions to CSS and PSS

**1,504,675**

1,336,018

Actual contributions paid/payable by the Commission to the Australian

Government Employee Superannuation Trust (AGEST) and other

non-Commonwealth schemes.

**23,601**

20,139

**Total Superannuation**

**1,528,276**

1,356,157

# Information available on request

Information listed below will be provided on request.

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Interchange program

## Financial matters

Claims and losses

Purchasing

Information technology purchasing agreements

Payment of accounts

Consultancy services

Capital works management

## internal and external scrutiny

Fraud control

Reports by the Auditor-General

Inquiries by parliamentary committees

Comments by the Ombudsman

Decisions of Courts and Tribunals

Privacy

## Environmental matters

Environmental issues

Energy issues - general, building, transport and equipment

matters

Property usage

Business regulations

.....

|                 |  |
|-----------------|--|
| <b>CAR</b>      | Council of Aboriginal Reconciliation   |
| <b>CDEP</b>     | Community Development Employment Program   |
| <b>CEDAW</b>    | Convention on the Elimination of All Forms of Discrimination Against Women                                       |
| <b>CRC</b>      | Convention on the Rights of the Child  |
| <b>DDA</b>      | Disability Discrimination Act  |
| <b>DDALAS</b>   | Disability Discrimination Act Legal Advocacy Services  |
| <b>DEIDBRB</b>  | Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief     |
| <b>DRC</b>      | Declaration of the Rights of the Child   |
| <b>DRDP</b>     | Declaration on the Rights of Disabled Persons  |
| <b>DRMRP</b>    | Declaration on the Rights of Mentally Retarded Persons   |
| <b>DIMA</b>     | Department of Immigration and Multicultural Affairs  |
| <b>EEO</b>      | Equal Employment Opportunity   |
| <b>FOI</b>      | Freedom of Information   |
| <b>HREOC</b>    | Human Rights and Equal Employment Opportunity Commission   |
| <b>HREOCA</b>   | Human Rights and Equal Employment Opportunity Commission Act   |
| <b>ICCPR</b>    | International Convention of Civil and Political Rights   |
| <b>ICESCR</b>   | International Covenant on Economic, Social and Cultural Rights   |
| <b>ILO 111</b>  | International Labour Organisation (convention concerning discrimination in respect of employment and occupation) |
| <b>NCEP</b>     | National Community Education Program   |
| <b>NTA</b>      | Native Title Act   |
| <b>OECD</b>     | Organisation for Economic Cooperation and Development  |
| <b>OH&amp;S</b> | Occupational Health and Safety   |
| <b>PA</b>       | Privacy Act  |
| <b>QADA</b>     | Queensland Anti-Discrimination Act   |
| <b>QADT</b>     | Queensland Anti-Discrimination Tribunal  |
| <b>RACS</b>     | Refugee Advice and Casework Service  |
| <b>RDA</b>      | Racial Discrimination Act  |
| <b>SDA</b>      | Sex Discrimination Act   |
| <b>UN</b>       | United Nations   |

|  |         |
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