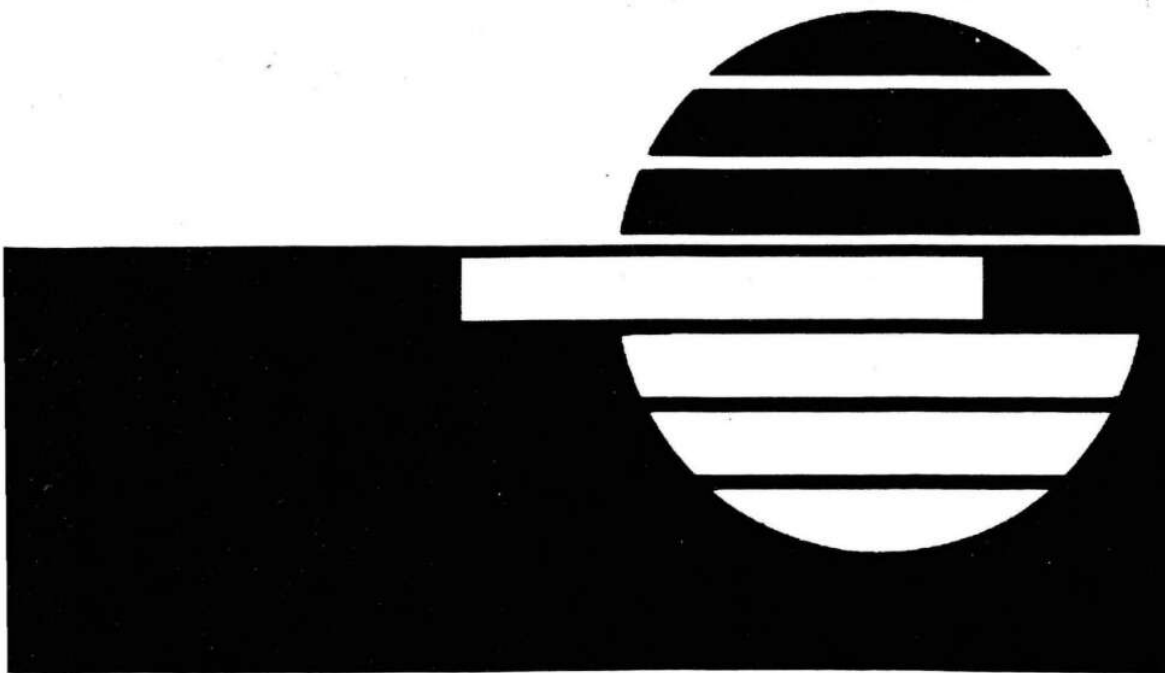


Human Rights & Equal Opportunity Commission

Annual Report

2000 - 2001



Universal Declaration of Human Rights

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

Preamble

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

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

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

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


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

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

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

Now, therefore, THE GENERAL ASSEMBLY,

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

Human Rights and Equal Opportunity Commission 

Human Rights & Equal Opportunity Commission

Annual Report

2000 - 01



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

14 October 2001

**Attorney-General
Parliament House
CANBERRA ACT 2600**

I have the pleasure in presenting the Annual Report of the Human Rights and Equal Opportunity Commission for the period ending 30 June 2001, pursuant to section 45 of the *Human Rights and Equal Opportunity Commission Act 1986*. The report has been prepared in accordance with the requirements of subsections 25(6) and (7) of the *Public Service Act 1922*.

Yours sincerely,



Professor Alice Tay
President, Human Rights and Equal Opportunity Commission

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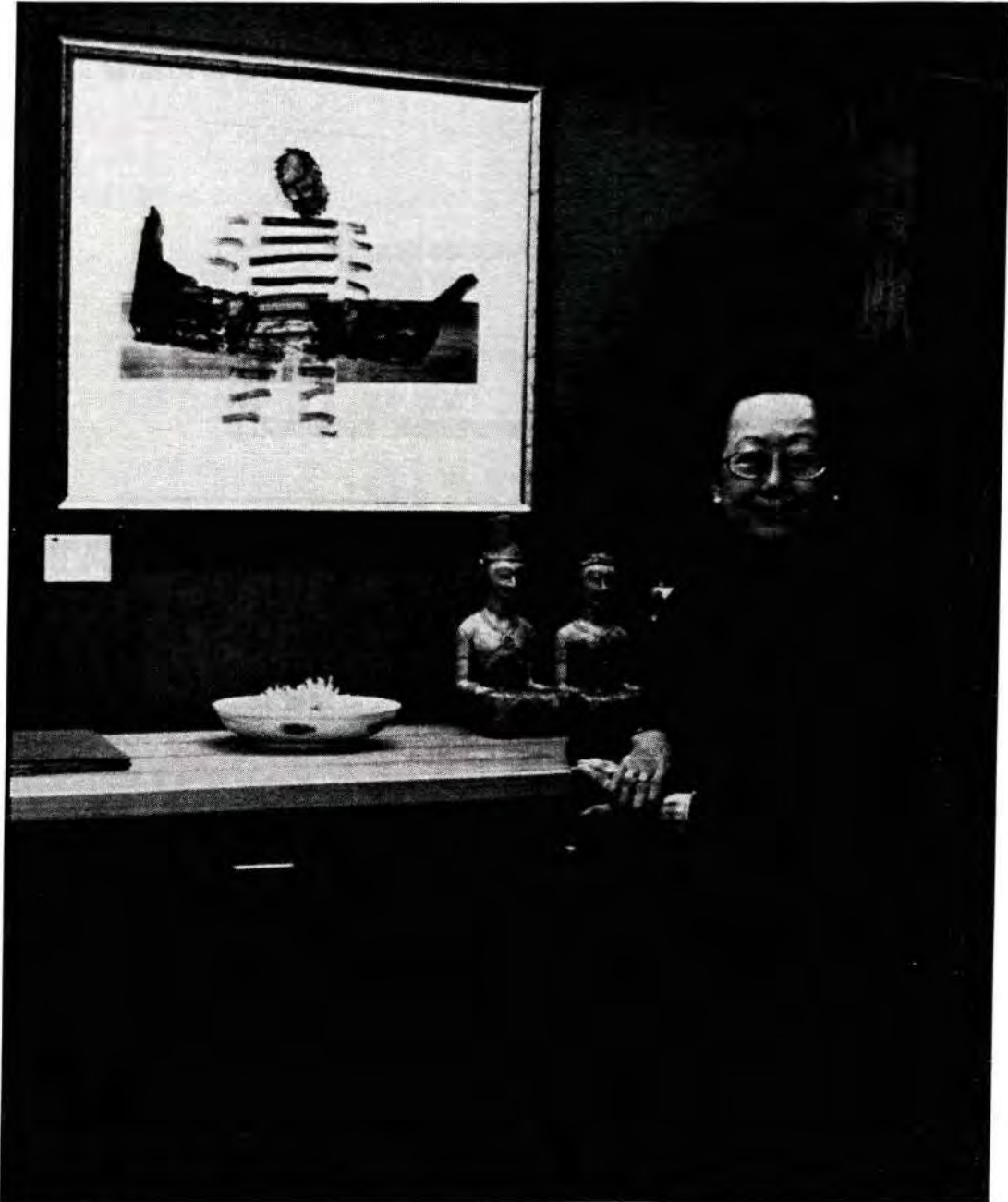
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Professor Alice Tay AM
President, Human Rights and Equal Opportunity Commission
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Professor Alice Tay AM
President, Human Rights and Equal
Opportunity Commission

Statement from the President

The Commission's vision is of and for an Australian society in which the human rights of all people are respected and promoted. Our task is to find practical, pragmatic ways to turn the rhetoric of human rights into an everyday reality for all Australians and build a more tolerant and inclusive community. As this report indicates, this past year has been a period of substantial achievement as we strive towards this goal.

It has also been a period of significant change in terms of our leadership and our responsibilities. In the past year the terms of two Commissioners, Chris Sidoti and Susan Halliday, came to an end. In addition, we have completed our first full year under legislative amendments that came into effect in April 2000, of which a detailed overview can be found in last year's annual report. As a result of these amendments the Commission can be said to have reached a major watershed in its history.

One of the significant changes to our statutory responsibilities contained in this legislation was the transfer of the Commission's function to hear complaints into matters of unlawful discrimination to the Federal Court of Australia or the Federal Magistrates Service. This new procedure was made smooth by the close cooperation that the Commission enjoyed with both Courts. It has also confirmed several positive features of the constitutional change – legal issues that the Commission's hearing function could not deal with can now be more fully examined and pronounced upon by Federal Court and the Federal Magistrates Service in their newly acquired responsibilities. Additionally, in the past year a total of 37 complaints referred to hearing under the previous arrangements were settled and only a small number now remain outstanding.

Human Rights and Equal Opportunity Commission

Further changes to the structure of the Commission outlined in the *Human Rights Legislation Amendment Act No 2*, which proposes the creation of three Deputy Presidents to replace the current five specialist Commissioner functions, remain before Parliament. However, a timetable for the implementation of this legislation remains uncertain.

Work of the Commission: programs, policies and projects

Addressing the human rights issues and concerns of a community is a wide-ranging and multi-layered task. There are no simple answers to countering discrimination, intolerance and disadvantage. Therefore, the work of the Commission reflects the many important human and societal aspects of promoting and protecting human rights, including resolving complaints of discrimination, implementing education programs, running national inquiries into issues of particular concern, conducting research and providing policy advice to government and other agencies. The Commission also takes an active role on the international stage, providing advice and assistance to governments and national human rights institutions in our region and further afield to strengthen and promote the observance of international human rights standards.

Receiving and conciliating individual complaints of discrimination remains a core statutory function of the Commission's work. A total of 35% of complaints were successfully conciliated – above the Commission's target of 30% – and the average time from receipt to finalisation of a complaint was seven months. This focus on the timely and successful resolution of complaints has led to high satisfaction levels from complainants and respondents alike. In addition, a new facility was established on our website that allows complaints to be lodged electronically, with complaint information available in 11 community languages.

Human Rights education is one of the highest priorities of the Commission and forms a fundamental part of all our activities. Effective education requires well-researched and well-structured programs that provide individuals and groups with the opportunity to learn, share ideas and grow in their understanding. It is also a form of advocacy as it challenges and encourages people to recognise and make room for those on the margins and to treat each other with greater understanding, tolerance and generosity.



Over the past year, the Commission has developed a comprehensive education and information program to reach a broad cross-section of the community. The 'Youth Challenge' series - an interactive, curriculum-based program on sex, race and disability discrimination - was presented to secondary school students across the country. We were delighted to work in partnership with other state Equal Opportunity Commissions to present this innovative program to students in regional areas. We also established *Action Exchange* with the National Children's and Youth Law Centre, a project that recognises the practical and creative contributions that young people make to promoting tolerance and respect for human rights in our community.

The Commission initiated substantial education activities to raise awareness about its complaint-handling role, presenting information sessions to 170 community and stakeholder groups throughout Australia. Additionally, specialist investigation and conciliation training courses were provided for a range of government and non-government agencies in Australia and overseas.

Following a Commission-led *National Summit on Racism and Civil Society* in May 2001, we have commenced a series of public forums around the country to listen to people's views and experiences of racism and to collect ideas for overcoming racial discrimination and intolerance. These forums will provide valuable information that the Commission will present to the forthcoming *World Conference against Racism, Racial Discrimination, Xenophobia and other forms of Intolerance*, to be held in South Africa later in 2001.

The Commission's website was revised and re-launched during the year to provide visitors with easier navigation and access to information. We have also continued to develop our electronic mailing lists, which allow us to distribute information to people quickly and efficiently and keep them abreast of human rights issues. Engaging with national, metropolitan and regional media outlets is also an important way that the Commission has been able to highlight and advocate on important human rights issues in the past year. Furthermore, individual Commissioners have developed a range of targeted education projects, as outlined in greater detail in this report.

As we near the end of the Decade for Human Rights Education, the Commission will redouble its efforts to ensure open, informed and productive discussion of human rights with a view to promoting real and lasting change.

Human Rights and Equal Opportunity Commission

In August 2000, Chris Sidoti completed his five-year term as Human Rights Commissioner. His deep commitment to the protection and promotion of human rights informed his work. He was closely involved in the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families* and more recently completed a national inquiry into education and human rights as they affect people in rural and remote Australia. Other areas of concern were age discrimination, religious freedom, the rights of gay and lesbian people and the rights of refugees and asylum seekers. He was also instrumental in the establishment of the Asia Pacific Forum of National Human Rights Institutions. His energy and enthusiasm will be greatly missed.

Dr Sev Ozdowski commenced his appointment as Human Rights Commissioner, along with a one-year position as Acting Disability Discrimination Commissioner, on 8 December 2000. Formerly Chief Executive of South Australia's Office of Multicultural and International Affairs, Dr Ozdowski brings to the Commission a wealth of experience in law, human rights, immigration and multiculturalism. Since his commencement, he has visited a number of immigration detention centres to monitor their processes for dealing with unauthorised arrivals. One of his initial goals is to enhance Australians' knowledge and understanding of human rights through a national dialogue on human rights.

In the past year a number of very positive steps have been taken to improve access to services for people with disabilities. These include a pilot scheme by the major cinemas of captioned movies for people with a hearing impairment and improved mobile phone services for people using hearing aids. These significant changes are the result of the Commission's open and constructive approach to resolving complaints of discrimination from individuals and clearly highlight how individual complaints can provide the impetus for the elimination of systemic discrimination. Further, the Commission has been working closely with the Australian Bankers Association and community and industry groups to establish industry standards that offer older Australians and people with a disability improved access to new technologies and e-commerce facilities. Dr Ozdowski and Susan Halliday, the previous Acting Disability Discrimination Commissioner, received valuable support in this work from Deputy Disability Discrimination Commissioner, Graeme Innes.



The Sex Discrimination Commissioner, Susan Halliday, completed her three-year term in April 2001. During that time Ms Halliday achieved a remarkable amount to promote the rights of women. Her recent accomplishments included guidelines for employers arising from the National Inquiry into Pregnancy and Work, advocacy for improved pay equity standards and the rights of casual employees, a campaign targeting advertising that demeans women and the production of a range of publications to promote gender equality. She was a strong advocate for Australia's adoption of the Optional Protocol to the Convention on the Elimination of Discrimination Against Women and was part of the Australian Government delegation at the Beijing + 5 conference in New York in 1999. Her outstanding work will be ably continued by the incoming Sex Discrimination Commissioner, Pru Goward.

In the wake of the 2000 Olympic Games, Indigenous disadvantage, the 'stolen generations', reconciliation and calls for a treaty continued to be at the forefront of national debate. Throughout the past year, Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner Dr William Jonas has highlighted the human rights dimensions of these critical issues through his annual Social Justice and Native Title Reports to federal Parliament. He has called for a commitment to overcoming Indigenous disadvantage as an urgent national priority and has continued to advocate for the establishment of a reparations system to assist Indigenous people forcibly removed from their families as an alternative to protracted and costly litigation.

Of course, such an extraordinary breadth of work – often mundane, requiring meticulous attention to detail, patience and also fresh perceptions - is not easily achieved. The Commission is fortunate to have committed, enthusiastic and professional members of staff. They have contributed enormously to the substantial achievements of the past year and their efforts deserve particular recognition.

International Work of the Commission

The Australian Human Rights and Equal Opportunity Commission continues to play a significant role in the international arena. The Commission is widely viewed as a national human rights institution that has specialised expertise with which it can support new or emerging institutions. This support can take the form of assisting new institutions to develop complaint-handling procedures, conduct investigations or establish and run inquiries into breaches of human rights. Exchange of technical assistance is an important way that Australia can assist its regional neighbours to develop their capacity to promote and protect human rights, often in very difficult and challenging environments.

Over the past year, the Australian Commission has provided technical assistance on a range of bilateral projects, funded by the Australian Government's international aid and development agency, AusAID. One of the most notable projects, running for the past four years, is the China Human Rights Technical Assistance Program, which forms part of the annual Human Rights Dialogue between Australia and the People's Republic of China. This program emphasises that constructive dialogue and cooperation based on mutual respect is an effective approach for working towards the improved protection of human rights. In addition, the Commission has provided advice and assistance to national institutions and human rights agencies in Indonesia, South Africa, Hong Kong, Uganda and Vietnam.

Since its establishment in 1996, the Australian Commission has hosted the Asia Pacific Forum of National Institutions. Over the past five years the Forum has grown from its original four members to its current total of eight, including Australia, Fiji, India, Indonesia, Nepal, New Zealand, the Philippines and Sri Lanka. While the growth of the Forum reflects the success of its endeavours to strengthen human rights protection and promotion in our region, it also presents significant legal, governance and financial challenges. At the Fifth Annual Meeting, held in New Zealand in August 2000, Forum members gave 'in principle' support to the legal incorporation of the Forum. The transition of the Forum to a more independent structure will, it is hoped, provide a flexible and workable framework to enable greater participation by all member institutions. AusAID, the United Nations Office of the High Commissioner for Human Rights, the New Zealand Government and private donors have provided generous funding to support the activities of the Forum.



The Future

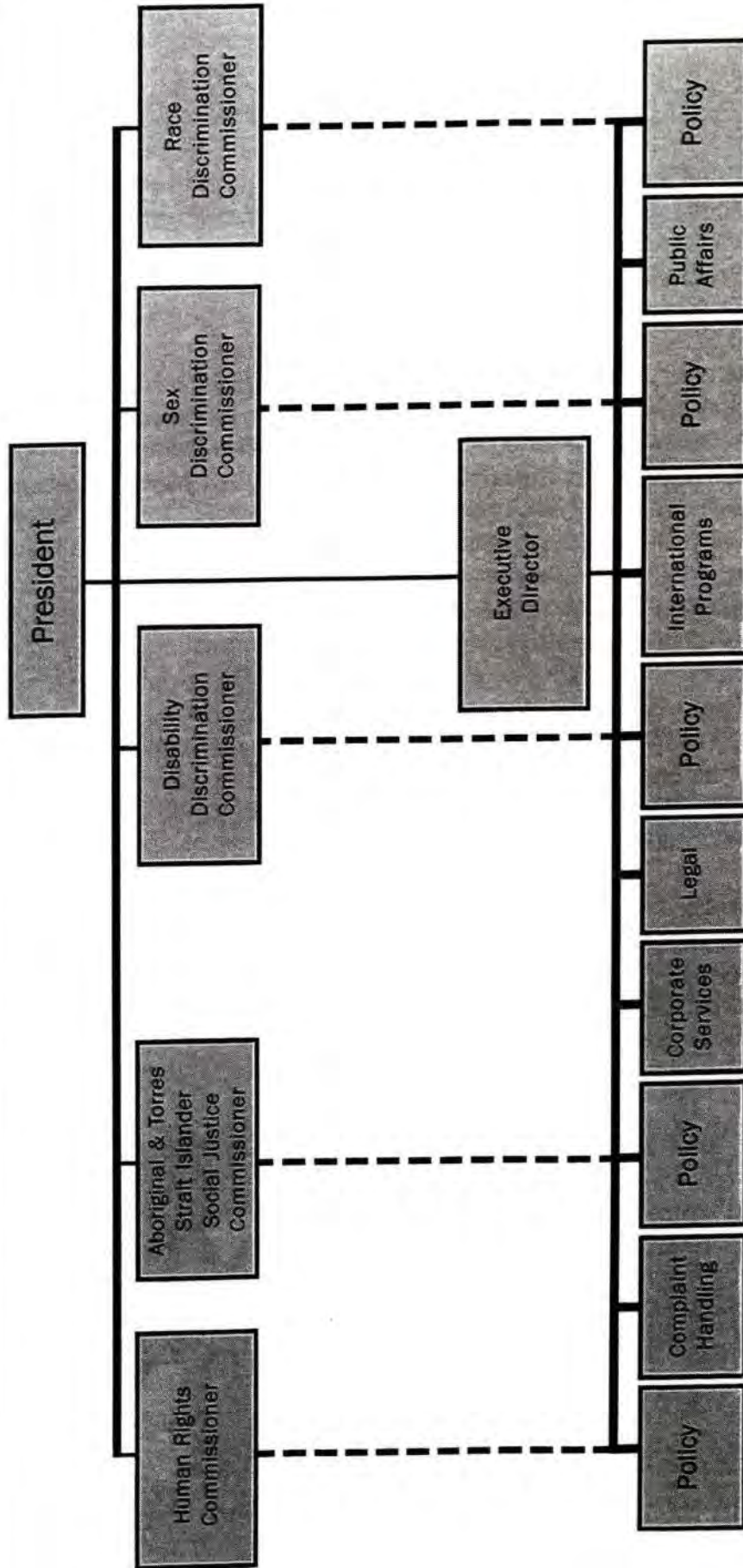
It is properly and widely recognised that the ultimate test of our worth as a democratic nation is to be found in how we treat the most vulnerable and disadvantaged members of our society. By giving flesh and bone to the principles and values that inform our understanding of human rights, we give dignity and respect to each other and therein build a fair, just and inclusive Australia.

This is not an easy task and the challenges that face our country today are profound indeed. Pre-eminent among them is the question of forging a true reconciliation between Indigenous and non-Indigenous Australians and finding lasting solutions to entrenched Indigenous disadvantage. We need to address the manner in which we respond to unlawful arrivals to Australia, establishing processes that are humane and in accordance with our obligations under international human rights treaties. Overcoming discrimination and intolerance and ensuring that each person, regardless of their race, sex, disability, age or religious background, has the opportunity to participate fully in our society is another goal towards which we strive.

We hold a broad and difficult charter. However, the Commission will continue to pursue these aims in a spirit of cooperation with government and non-government organisations, business, community groups and individuals. Such partnerships enhance and strengthen important ties within our community and set the foundations for a fair and inclusive society.

The changes that the organisation has undergone in recent times have placed us in a position that allows us to better focus our energies on addressing and advocating on the important human rights issues that face us here in Australia and in our region. I look forward to working with the Australian community to meet the challenges of the coming year.

Human Rights & Equal Opportunity Commission Organisational Chart



The Human Rights & Equal Opportunity Commission

Vision

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

Mission

To provide leadership on human rights through:

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

To ensure that Australians:

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

As an effective organisation, we are committed to:

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

Structure

The Commission is an national independent statutory body established under the *Human Rights and Equal Opportunity Commission Act 1986*. It has a President and five Commissioners. The five positions are currently held by three persons. Please refer to the organisational chart on page 16 for further information.

President - Professor Alice Tay AM

Professor Alice Tay's five year term as President of the Human Rights and Equal Opportunity Commission commenced on 1 April 1998. She is the author and editor, and co-author and co-editor (with the late Eugene Kamenka and Guenther Doeker-Mach), of 24 books and over 120 articles. Her work has been focused on socialist legal systems and legal culture (including the former Soviet Union, the People's Republic of China and Vietnam); comparative law; legal theory and philosophy; jurisprudence; and human rights. She is fluent in Russian and Chinese and specialises in jurisprudence, legal and social philosophy, comparative, East European and Asian/Pacific legal systems, macro-sociology of law and human rights, and comparative constitutionalism. She was a part-time Commissioner with the Australian Law Reform Commission, a member of the Australian Science and Technology Council, President of the International Association for Philosophy of Law and Social Philosophy and President of the National Office of Overseas Skills Recognition. She has lectured in many countries and was Distinguished Visiting Professor of Law, Humanities and Social Sciences, and Visiting Fellow, in the United States, Canada, the People's Republic of China, Italy, Japan and Germany.

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

Dr Sev Ozdowski took up his appointment as Human Rights Commissioner in December 2000 for a five year term. Dr Ozdowski was also appointed as acting Disability Discrimination Commissioner for a 12 month period. Previously, Dr Ozdowski was Chief Executive of South Australia's Office of Multicultural and International Affairs. Dr Ozdowski has a long-term commitment to human rights and his relationship with the Human Rights Commission dates back to the original Commission of the early 1980s. He is the author of many papers on sociology of law, human rights, immigration and multiculturalism. Born in Poland in 1949, Dr Ozdowski migrated to Australia in 1975. He has held senior positions in the Federal portfolios of the Prime Minister and Cabinet, Attorney-General's and Foreign Affairs and Trade. He has also worked as Secretary of the Human Rights Commission inquiry into the *Migration Act 1958* and for the Joint Parliamentary Committee on Foreign Affairs, Defence and Trade.

Dr Ozdowski has a Master of Laws and Master of Arts in Sociology from Poznan University, Poland, and a PhD in Sociology of Law from the University of New England, Armidale, NSW. He was awarded a Harkness Fellowship in 1984 for post-doctoral work on race relations, international human rights and immigration law and public administration - studies that took him from Harvard University (Cambridge, MA) to Georgetown University (Washington DC) and the University of California (Berkeley, California). The five year term of the previous Human Rights Commissioner, Chris Sidoti ceased on 13 August 2000.

Professor Tay acted as the Disability Discrimination Commissioner from August to December 2000.

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

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

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

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

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

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

Sex Discrimination Commissioner - Ms Susan Halliday

The three year term of Susan Halliday ended on 27 April, 2001. Prior to her appointment as Sex Discrimination Commissioner, Ms Halliday was Assistant Director with the Business Council of Australia where she was responsible for policy development, advocacy, coordination of research and member company employee relations, employment, human resource management and education and training activity.

Previously, Ms Halliday was the Assistant Director with the private sector Council for Equal Opportunity in Employment and also worked for BHP in a range of positions. Over the past decade Ms Halliday has lectured at a number of universities and was originally a secondary school teacher of History and English.

Ms Halliday is currently Chair of the National Centre for Women (Swinburne University) and a board member of Australians Against Child Abuse and the Australian Student Traineeship Foundation.

Ms Halliday was also acting Disability Discrimination Commissioner from 1999 until December 2000.

Professor Tay acted as Sex Discrimination Commissioner until the appointment of the new Commissioner Ms Pru Goward in July 2001.

Deputy Disability Discrimination Commissioner - Mr Graeme Innes AM

Mr Graeme Innes is a lawyer and mediator, and has been an equal opportunity practitioner for twenty years. He commenced as Deputy Disability Discrimination Commissioner in September 1999. In this role he assists with the handling of public enquiries, exemption applications and the development of standards under the Disability Discrimination Act. Mr Innes has worked in this field in NSW and WA and is currently a part-time member of four Tribunals. Mr Innes has been active in the disability field for twenty-five years. He has served on the Committees and Boards of numerous consumer and service-provision organisations. He was Chair of the Disability Advisory Council of Australia for four and a half years. He is currently President of Royal Blind Society of NSW and one of Australia's delegates to the World Blind Union. Mr Innes received an A.M. in the 1995 Australian honours for his contribution to the drafting and enactment of the Commonwealth Disability Discrimination Act.

Legislation

The Commission is responsible for administering the following Acts:

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

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

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

Legislative changes to the Commission

The *Human Rights Legislation Amendment Act No. 1 1999* (Cth) received Royal Assent on 13 October 1999. Its substantive provisions commenced on 13 April 2000. The effect of the major amendments contained in the Act is to:

- transfer the power to hear complaints of unlawful discrimination from the Commission to the Federal Court of Australia or the Federal Magistrates Service;
- transfer complaint handling powers from the Race, Sex, Disability Discrimination and Human Rights Commissioners to the President;
- remove the internal Presidential review function from the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act, and provide that where a complaint of unlawful discrimination is terminated by the President, the complainant will be able to go directly to the Federal Court of Australia or the Federal Magistrates Service;
- remove the function of the President or Commission to grant interim determinations and vest a function to grant interim injunctions in the Federal Court of Australia or the Federal Magistrates Service; and

Human Rights and Equal Opportunity Commission

- ❑ create the role of amicus curiae for all Commissioners in proceedings under the amending legislation that are before the Federal Court of Australia or the Federal Magistrates Service.

Human Rights and Equal Opportunity Commission Act

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

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

Racial Discrimination Act

The *Racial Discrimination Act 1975* gives effect to Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. Its main aims are to:

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

The Act was amended in 1995 to provide protection against racial hatred.

Sex Discrimination Act

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

Its main aims are to:

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

Disability Discrimination Act

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

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

Functions and powers

The Commission's responsibilities fall within four main areas:

- public awareness and education;
- anti-discrimination and human rights complaints;
- human rights compliance; and
- policy and legislative development.

In order to fulfil its obligations, the Commission:

- fosters public discussion, and undertakes and coordinates research and educational programs to promote human rights and eliminate discrimination in relation to all Acts.
- investigates complaints of alleged unlawful discrimination pursuant to the Racial Discrimination Act, the Sex Discrimination Act and the Disability Discrimination Act, and attempts to resolve these matters through conciliation where appropriate. The President may terminate a complaint of alleged unlawful race, sex or disability discrimination if there is no reasonable prospect of settling the complaint by conciliation.

Human Rights and Equal Opportunity Commission

- if a complainant whose complaint has been terminated, wants the complaint heard and determined by the Courts they must lodge an application to the Federal Court of Australia or the Federal Magistrates Service within 28 days of a notice of termination issued by the President.
- inquires into acts or practices that may be contrary to a human right or that may be discriminatory pursuant to the Human Rights and Equal Opportunity Act. If the complaint is unable to be resolved through conciliation the President may report on the case and make particular recommendations. The Report is tabled in Parliament.
- may advise on legislation relating to human rights and monitor its implementation; may review existing and proposed legislation for any inconsistency with human rights or for any discriminatory provision which impairs equality of opportunity or treatment in employment or occupation; may examine any new international instruments relevant to human rights and advise the Federal Government on their consistency with other international treaties or existing Australian law; and may propose laws or suggest actions the Government may take on matters relating to human rights and discrimination.

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

1. refer individual complaints to the President for investigation and conciliation;
2. report to the Government on any matters arising in the course of its functions;
3. establish advisory committees;
4. formulate guidelines to assist in the compliance by organisations and individuals of the requirements of human rights and anti-discrimination legislation and conventions;
5. intervene in court proceedings involving human rights matters;
6. grant exemptions under certain conditions (Sex and Disability Discrimination Acts); and
7. conduct national inquiries into issues of major importance - either on its own initiative or at the request of the Attorney-General.

Specific functions of Commissioners

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

Aboriginal and Torres Strait Islander Social Justice Commissioner

The Aboriginal and Torres Strait Islander Social Justice Commissioner, under the *Human Rights and Equal Opportunity Commission Act 1986*, prepares an annual report on the exercise and enjoyment of human rights of Indigenous people, and undertakes social justice education and promotional activities.

The Commissioner also performs separate reporting functions under the *Native Title Act 1993*. This includes preparing an annual report on the operation of the Act and its effect on the exercise and enjoyment of human rights of Indigenous people. The Commissioner also reports, when requested by the Minister, on any other matter relating to the rights of Indigenous people under this Act.

Sex Discrimination Commissioner

The *Workplace Relations Act 1996* gives the Sex Discrimination Commissioner the power to initiate and refer equal pay cases and other specific matters to the Industrial Relations Commission.

The Minister

The Attorney-General, the Honourable Daryl Williams, AM, QC, MP, is the Minister responsible in Parliament for the Commission. He has a number of powers under the *Human Rights and Equal Opportunity Commission Act 1986*.

The most significant are:

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

Outcomes Structure

The Commission has one outcome:

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

There is one output for the Commission's outcome:

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

Resources for Outcomes

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

	Budget 2000 - 2001 \$'000	Actual Expenses 2000 - 2001 \$'000	Budget 2001 - 2002 \$'000
Total Administered Expenses	-	-	-
Prices of Department Outputs	16,126	13,023	12,503
Output Group 1 - Australians have access to independent human rights complaint handling and public inquiry processes and benefit from human rights education, promotion and monitoring and compliance activities.			
Subtotal Output Group 1	16,126	13,023	12,503
Revenue from Governments (Appropriation) for Departmental Outputs	14,334	10,584	10,730
Revenue from other sources	1,792	2,439	1,773
Total Price of Outputs	16,126	13,023	12,503
Total for Outcome (Total Price of Outputs & Administered Expenses)	16,126	13,023	12,503
Staff (Years) (Number)	2000-2001 123	2000 - 2001 91	2001 - 2002 95

Human Rights Education & Promotion

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

These legislative responsibilities are:

1. to promote an understanding and acceptance of, and compliance with the relevant Act: HREOCA s 11(1)(g); RDA s.20(1) (b) SDA s 48(1) (d) DDA 67(1) (g)
2. to undertake research and education programs for the purpose of promoting the objects of the relevant Act: HREOCA s.11(1) (h) RDA s.20(1)(c) SDA s.48(1) (e) DDA 67(1) (h).

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

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

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

The President of the Commission, Professor Alice Tay, has stated that her philosophy of human rights education is quite simple: "It is not about moralising, telling people what is good for them. It is not about indoctrination, trying to convince others to think as one does. It is grounded in the gathering of knowledge, facts and information, rules and processes about the world around us and how it works. The chief goal of human rights education is that we become more effective members of our community in whatever we are doing. Human rights education broadens our sensibilities and deepens our understanding of the privileges and responsibilities of being human. Its end is the full recognition and acceptance that there are no sub-humans."

All work undertaken by the Commission has a human rights educative base.

Human Rights and Equal Opportunity Commission

This section details the human rights educational programs undertaken on a whole of Commission basis. Specific education programs conducted by individual Commissioners are detailed later in this report.

During 2000-01 the Commission has continued to work on a number of formal education programs aimed at key sectors of the community, particularly school students.

These are:

- Youth Challenge* program for secondary school students and teachers,
- Human Rights Awards
- Internet site materials for individuals, schools, employers and community groups
- Community Information program for peak government non-government and community organisations
- Distribution of hard copy publications about the Commission
- Media engagement, interviews, opinion pieces and press releases.

Youth Challenge - 'Human Rights/ Human Values'

The Youth Challenge program brings together high school students in different regions of Australia for a one-day event which explores how human rights principles and practices impact on social change and upon the students' own lives and the lives of others in the community. The Commission has conducted a series of Youth Challenges since late 1998, commencing with a National Challenge in Sydney for over 100 students from all over Australia as part of the celebrations of the 50th Anniversary of the Universal Declaration of Human Rights.

During 2000-01 the Commission worked with State Equal Opportunity Commissions in South Australia, Western Australia, Northern Territory and the ACT to conduct eight Challenges. The costs associated with the conduct of the Challenges were shared between the state bodies and the Commission. Staff from all Commissions worked very closely in achieving high attendances at the Challenges and in producing a very successful and enjoyable day for all students and teachers.

The Challenges focus on real life issues such as disability discrimination in schools and the respective rights and responsibilities of students, teachers and parents, and the "transition to work" for students related to potential racial and sexual discrimination and harassment that they may experience.

Prior to the event students and teachers receive curriculum-linked information about the topics to be discussed at the Challenge. These papers were developed by the Commission and distributed through *Studies* magazine to all Australian secondary schools.

The Challenges deal with issues in a creative, interactive way and include a video hypothetical; computer-generated decision making programs and the workshopping by students of specific tasks. The students respond through role plays on how they would deal with the hypothetical discrimination/harassment. The report-backs are always highly entertaining and innovative in the ways the students deal with the issues.

Teachers, who play an important role on the day as facilitators, are provided with basic training and materials to assist them in presenting the Challenge when they go back to their school.

An evaluation of each event is conducted. During the year over 800 students and 50 teachers and community representatives attended the eight Youth Challenges. This means that over 1150 students and 100 teachers representing over 240 schools secondary schools have participated in the Youth Challenge since the first national Challenge in 1998.

Independent evaluation of *Studies*¹ magazine show that the human rights materials published and distributed via *Studies* magazine has been very well received. The disability discrimination materials had been used by more than 500,000 students.

The 'transition to work' scenarios, which looked at sex and race discrimination, were used by 88% of respondents with more than 630,000 students. 23% of the students judged the articles as excellent, 51% thought they were very good, and 24% thought they were good.

Evaluations of the Youth Challenge day have shown a substantially increased awareness by students of human rights and discrimination issues. With an average of 98% of participants and 90% of teachers rating the Challenge materials and day as excellent to very good.

The Commission will place the Youth Challenge materials on the Commission website as a teaching resource, and promote their availability widely. The curriculum-linked materials will be in module format and will be supported by video and other materials available at a nominal price for teachers. These materials will be available in October 2001.

1. *Studies* is a privately produced educational resource magazine. It is sent out to all secondary schools throughout Australia three times a year. The Commission produced several articles for placement in three editions of the magazine during 1999-

2000 Human Rights Medal and Awards

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

The 2000 Medal and Awards presentation ceremony was held on 10 December 2000 at Darling Park in Sydney. Special guest was Dr Barney Pitjana, President of South African Human Rights Commission who delivered an inspiring Human Rights Day address to the 200 guests.

The Commission is very grateful for the services of the judging panels who give their time and expertise on an honorary basis. The judges were Andrea Durbach, Faith Bandler, Peter Nugent MP, Ulrike Schuermann, Prashanth Shanmugan, Caroline Frohmader, Michael Curtotti, Greg Thompson, Sue Zelinka, Geraldine Walsh, Debra Jopson, Janine MacDonald, Mick O'Regan, Lew Griffiths, David Busch, John Cleary, Nicholas Cowdrey QC, Stephen Connell and Ruth McColl SC.

Thanks to Ansett and Rio Tinto for sponsoring, respectively, the interstate winners and Dr Pitjana to attend the ceremony.

Human Rights Medal



Human Rights Medal winner Rt Hon Malcolm Fraser AC CH with Sex Discrimination Commissioner Susan Halliday and Rt Hon Gough Whitlam at the 2000 Awards ceremony.

Former Australian Prime Minister the Rt Hon Malcolm Fraser AC CH was awarded the 2000 Human Rights Medal for his contribution to the advancement of human rights in Australia and internationally. The judges said Mr Fraser had provided national leadership in the pursuit of human rights over a long period, including consistent support for reconciliation between Aboriginal and non-Aboriginal Australians and leadership in the fight against racism nationally and internationally.

Highly Commended

Dr Helen McCue was highly commended for her outstanding work with refugees and refugee issues over two decades. She has worked for the World Health Organisation in Egypt, Pakistan, Jordan and Bahrain before returning to Australia in the mid-80s to establish Australia-based support networks for refugees worldwide - setting up APHEDA, an organisation to help re-skill refugees, and WREN (Women Refugees Action Network) to support women and children refugees.

Law Award

The Law Award, sponsored by the Law Council of Australia, went to the Indigenous Women's Program at the NSW Women's Legal Resources Centre. The Indigenous Women's Program is an autonomous program forming part of the Women's Legal Resource Centre. The program provides legal advice, outreach programs, community education and casework particularly in the areas of criminal and family law, child protection and family violence. The program has been involved in writing about Aboriginal women and the law for the *NSW Law Handbook* and the *Indigenous Law Bulletin* and contributing to education about family violence through their training video and comic for young people. Staff members are involved with other committees that are looking at Aboriginal women's access to discrimination complaints processes and researching issues relating to Aboriginal women in prison.

Highly Commended

Paul Richards, a pioneer of Aboriginal Legal Services who was instrumental in range of issues tackled by the service and the creative and innovative ways they used to garner community support - including use of the media and encouraging continuing community debate on issues such as the impact of mandatory sentencing on people with an intellectual disability. The judges said the service tackled difficult issues and sometimes advocated a course of action that ran counter to prevailing community and political attitudes.

Highly Commended

Refugee Council of Australia for policy review, advocacy, education and support for the refugee community in Australia and People with Disabilities (NSW) Inc. for outstanding advocacy on behalf of people with disabilities.

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Television Award

Paul Roberts, Des Kootji Raymond and Archie Roach for *Land of the Little Kings*, a documentary about the Stolen Generation aired on SBS TV in early 2000. Paul Roberts and Des Kootji Raymond are independent filmmakers who have worked in partnership for six years. They have a definite agenda to present contemporary stories that tell the truth and promote human equality.

The *Land of the Little Kings* is a feature-length documentary about stolen generation and state-of-the-nation issues, narrated by Archie Roach. This program was aired on SBS in early 2000 and received critical acclaim. This documentary represents a high point in the collaboration between Roberts and Raymond.

Highly Commended

ABC TV Comedy, *The Games*, for the episode on *Reconciliation* (Series 2, Episode 3).

Radio Award

Gary Bryson and John Cochrane, ABC Radio National, won for their four-part series on the history of race and racism called *Empires of Division*. Judges expressed difficulty in choosing between an experiential entry such as *Bewitched* and *Empires of Division*, which was well researched and covered a huge range of issues.

They decided *Empires of Division* was the winner because of the scope of the issues presented and the breath of research, as well as the potential for a much greater understanding of the causes of racism. The judges congratulated the program producers on the impressive research undertaken and the quality of the presentation. They noted that they did not necessarily agree with some of the analysis of the causes of racism, but found the overall analysis to be impressive and thought provoking. They suggested that the program would be an excellent educative tool for students and for the general public.

Highly Commended

Natalie Kestecher and Steve Tilley, ABC Radio Arts Program, for *Bewitched - Living with Tourette's Syndrome* and Stephen Watkins, ABC Radio National for *Asylum Seekers*.

Print Award

Indigenous Law Bulletin, published by The Indigenous Law Centre, Faculty of Law, University of NSW won the print award for its coverage of Indigenous law issues from mandatory sentencing to traditional hunting and fishing rights. The Indigenous Law Bulletin was created in conjunction with the establishment of the Indigenous Law Centre in 1981 in order to facilitate the promotion and discussion on matters of law and policy relating to Aboriginal Legal Services and Land Councils. The publication has served to promote and overcome discrimination and infringement of human rights and promote harmony between Indigenous and other Australians.

Highly Commended

Greg Bearup, Sydney Morning Herald, for the feature article *Mean Streets*.

Arts Non-Fiction Award

Carolyn Landon and Daryl Tonkin for the book *Jackson's Track: Memoir of a Dreamtime Place*, a story about the life of Daryl Tonkin and his beloved Aboriginal wife Euphemia who, from the 1930s to the present, lived and worked along Jackson's Track in Gippsland in South Eastern Victoria.

The judges were unanimous in awarding the Arts Non-Fiction Award to Daryl Tonkin and Carolyn Landon for *Jackson's Track*. The story of Daryl Tonkin's life at Jackson's Track in the Gippsland region of south-eastern Victoria and his experiences as a white man who defied convention by marrying across race 'lines' and living with an Aboriginal community in the 1930s and 40s. It is an inspiring story of loyalty, honesty, and the human connections that can transcend racial differences.

Highly Commended

John Moriarty for his biographical book *Saltwater Fella*.

Internet Site - <http://www.humanrights.gov.au>

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

The site was moved to a new hosting service and redesigned in February 2001 to further enhance the accessibility and usability of the Commission's web resources for all users. Improvements to the site include:

- General look and feel updated to create a more current and consistent style across the entire site.
- Navigation options and search functionality has been enhanced to provide users with quicker, easier access to the information they are seeking.
- New Online Publications have been created in more usable, accessible and appealing formats.
- Accessibility for people with disabilities has been further enhanced in line with both the National Office of the Information Economy (NOIE) and World Wide Web Consortium (W3C) guidelines. The Disability Rights section of the site is particularly accessible and provides a good example of 'best-practice' in web design for users with a disability.

The Commission's website is maintained to ensure that the most up to date information is posted daily, and all reports, submissions, media releases and other Commission publications are available online. The site also provides specific information pages and publications for schools including *Youth Challenge - a collection of resources for teachers and students*; the *Pregnancy Guidelines* which provide information for employers; and *Information in Other Languages* which provides information for people from non-English speaking backgrounds about the Commission, the complaint handling process and the law. An *Online Complaint form* has also been set up and allows individual's to lodge complaints with the Commission electronically.

The Commission's e-mail based Electronic Mailing List service is also provided for regular communications to all constituency groups including community, and government. Instructions on joining the Commission's Electronic Mailing list service are available at http://www.humanrights.gov.au/mailing_lists/index.html.

There are currently more than 7000 subscribers across fifteen different lists including the *Children and Youth list* (approx 2000 subscribers), the *Disability Rights Update* (approx 1000 subscribers), the *Indigenous Issues list* (approx 600 subscribers), the *Racial Discrimination Issues list* (approx 700 subscribers) and the *Sex Discrimination Issues list* (approx 1000 subscribers).

The Commission's site also provides an online web feedback for which allows users to request help with research and provide feedback on the Commission's online resources. Thousands of messages have been received from, legal, government, community and employer organisations, the media, schools and individuals during the year and are responded to by Commission staff within 5 working days.

During rehosting, an improved Web Statistics system was implemented. This allows the Commission to track how visitors are using the site, and allows us to identify materials that are particularly successful or popular. Usage of the site has increased over the year with approximately *18,766,360 hits on the server during the 2000-01 financial year* (a daily average of over 50,000 hits per day). This translates to approximately *2,268,000 web pages viewed on the site during the 2000-01 financial year*.

A summary of statistical information is provided below:

- The Commission home page - 175, 520 page views
- The Aboriginal and Torres Strait Islander Social Justice section home page - 25, 876 page views
- The Complaints Information section home page - 13, 524 page views
- The Disability Rights section home page - 40, 932 page views
- The Human Rights section home page - 28, 044 page views
- The Racial Discrimination section home page - 28, 480 page views
- The Sex Discrimination section home page - 36, 732 page views
- The Frequently Asked Questions - 11, 564 page views
- The Publications page - 12, 836 page views

Note: All statistics above are based on page views during the 2000-01 financial year.

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Community Information Program

During the reporting year the Public Affairs Section and the Complaint Handling Section of the Commission continued an information program targeting peak community sector organisations, commonwealth agencies, employers and legal and service providers.

Other details of this program conducted by the Complaint Handling Section is contained later in this report.

The Public Affairs Section conducted week long sessions in Queensland, Western Australia and ACT with a range of federal and local government agencies, as well as peak legal disability, women and ethnic groups. Information was provided about human rights and anti-discrimination laws and the role and function of the Human Rights and Equal Opportunity Commission. Over 300 people representing senior and middle management in government legal and community groups attended the presentations.

Evaluations of the presentations show they are very useful in providing information about human rights and anti-discrimination law and practices in Australia.

The presentations are supported by a Complaints Help Page on the Commission web site http://www.humanrights.gov.au/complaint_help/

Distribution of hard copy publications about the Commission

In addition to all Commission publications being made available on the Commission website, during the reporting year, some 99, 514 publications were dispatched in hard copy format.

The most requested publications were brochures about the *Sex Discrimination Act* and the *Guide to Making a Complaint to the Commission*, followed by the updated version of *Face the Facts*.

A list of all new publications can be found at Appendix 2.

Media engagement and press releases

The media is a very valuable tool in the delivery of information to the general public about human rights and equal opportunity. The Commission wherever appropriate engages with all forms of media to emphasise the importance of an independent national human rights institution and to preserve the integrity of human rights and anti-discrimination law within Australia.

Media activity has been intense over the past year with media preparation for the tabling in Federal Parliament of the *Native Title* and *Social Justice* reports 2000; the launch of the *Workplace Pregnancy Guidelines* and International Women's Day activities; launch of open-captioned movies and development of disability action plans for the banking industry; and the launch of *Face the Facts*.

This is in addition to the many reports and other publications that have been produced by the Commission and detailed later in this report.

Individual Commissioners have contributed to public debate on a range of issues including the 'IVF Bill', the Flood report into immigration detention centres and the Commission's report into Curtin immigration detention centre and reform of the UN Treaty system.

Some 80 press releases have been issued by the President and the Commissioners during 2000-01. These can be found on the Commission website at: http://www.humanrights.gov.au/media_releases/index.html.

A selection of speeches and opinion pieces that have been published in major newspapers from the President and individual Commissioners is available for viewing at: <http://www.humanrights.gov.au/speeches/index.html>

Complaint Handling Section

Part 1 - Introduction

The 2000-01 reporting year was a year of consolidation for the Commission's Complaint Handling Section (CHS) following the legislative changes to the complaint handling function in April 2000.

In summary:

- 1263 complaints were received
- 1488 complaints were finalised
- 35% of finalised complaints were conciliated
- 88% of complaints were finalised within 12 months of lodgement
- 10,158 telephone/e-mail/TTY/in-person enquiries were received through the Complaint Information Service
- 633 written enquiries were responded to
- 170 organisations throughout all States and Territories attended information sessions on the complaint handling process.
- Seven specialist investigation and/or conciliation skill training courses were conducted for CHS staff, staff from State and Territory Equal Opportunity Commissions and government and non-government agencies in Australia and overseas.

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

The legislation provides for complaints of discrimination or breaches of human rights to be made to the Commission. Complaints are referred to the President who is responsible for inquiring into the complaint. After some inquiry the President must decide whether to terminate the complaint or attempt to settle the complaint through conciliation.

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

A diagram of the complaint handling process is provided at Appendix 5

The CHS receives complaints from throughout Australia. Most complaints are made directly to the Commission through its office in Sydney. A number of complaints are also referred from State anti-discrimination and equal opportunity agencies. Along with its formal/statutory complaint handling function, the CHS receives a large number of enquiries from people seeking advice and assistance in relation to possible breaches of federal anti-discrimination legislation. These enquiries may be made by telephone, in person, in writing or by e-mail. Enquirers are provided with information about the legislation and the complaint handling process. When appropriate, enquirers are encouraged to resolve matters directly and informally with the people involved in their dispute. When it appears that a formal complaint should be made, enquirers are sent a Complaint Guide and Complaint Form.

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

Key performance indicators and goals

- **Timeliness** – The section's stated performance measure is for 75 percent of complaints to be finalised within twelve months of date of receipt. In 2000-01 the CHS finalised 88 percent of matters within twelve months and the average time from receipt to finalisation of a complaint was seven months. A detailed breakdown of timeliness statistics by jurisdiction is provided in Table 13.
- **Conciliation rate** – The section's stated performance measure is for 30 percent of finalised complaints to be conciliated. In 2000-01 the section exceeded this goal with a 35 percent conciliation rate.

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- Customer satisfaction survey - The section's stated performance measure is for 60 percent of parties to be satisfied with the complaint handling process. The survey was modified for the 2000-01 reporting year to streamline standard questions and include a question that assesses overall satisfaction with service provision. Data for the past year indicates that 86 percent of parties were satisfied with the service they received. Of this 86 percent, 52 percent rated the service they received as 'very good' or 'excellent'. Further details of survey results for this reporting year are provided below.

Customer satisfaction survey

The Complaint Handling Section's customer satisfaction survey has been in operation since December 1997. The survey is used to obtain feedback from complainants and respondents (or their advocates) involved in the complaint handling process. Survey results for the period 1 July 2000 to 30 June 2001 indicate that:

- 78% of complainants and 82% of respondents felt that staff explained things in a way that was easy for them to understand.
- 85% of complainants and 96% of respondents felt that forms and correspondence from the Commission were easy to understand.
- 68% of complainants and 63% of respondents felt that the Commission dealt with the complaint in a timely manner
- 85% of complainants and 95% of respondents described complaint handling staff as unbiased.

Survey results for 2000-01 are generally similar to survey results for the past two years. However, over the past three years there has been a continual increase in ratings in relation to satisfaction with timeliness of the process, satisfaction with Commission forms and correspondence and perceived impartiality of complaint handling staff.

Service charter

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

In the 2000-01 reporting year the Commission received one complaint about its services through this mechanism. It is noted that where parties have concerns about the complaint handling process, they are generally able to resolve their concerns through discussions with the officer handling the complaint.

Access to Services

The Commission's mission statement seeks to promote and facilitate community access to services and functions performed by the Commission. In meeting this goal the Complaint Handling Section undertakes a number of strategies.

- **The Complaints Infoline 1300 656 419** (local call charge) is open Monday - Friday between 9.00 am and 5.00 pm. This service offers enquirers the opportunity to call and discuss allegations of discrimination with a Complaint Information Officer. Over 9,500 enquirers throughout Australia utilised the Complaints Infoline this reporting year. Enquirers can also e-mail complaintsinfo@humanrights.gov.au. 443 e-mail enquiries were received this year. Further information about the operation of the Complaints Information Service is provided later in this section.

- **Complaint Handling webpage**
- http://www.humanrights.gov.au/complaints_information/
This webpage provides the general public and potential users of the service with information about the Commission's complaint handling role and the complaint process. The webpage includes information on how to lodge a complaint, a complaint form, frequently asked questions about complaints and a conciliation register. The conciliation register contains de-identified information about the outcomes of conciliated complaints.

In the past year, three new facilities have been added to the Complaint Handling webpage. The page now includes an on-line complaint form and a new e-mail address (newcomplaints@humanrights.gov.au) which allows complaints to be lodged electronically. Additionally, provision has been made for complaint information to be accessed and downloaded in 11 community languages.

- **Conciliation circuits** - When required, conciliation officers travel throughout Australia to conduct conciliation conferences. This reporting year CHS officers conducted 196 conferences outside the greater Sydney region, including 25 in regional NSW, 78 in Victoria, 25 in Queensland, 35 in South Australia, 7 in Western Australia, 18 in the Australian Capital Territory and 8 in the Northern Territory.

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- **Access working group** - The CHS established its access working group in 1999. The aim of the group is to improve the accessibility of the complaint handling service. Tasks undertaken by the working group in the past year included development of a concise version of the Complaint Guide which has been translated into Arabic, Bosnian, Chinese, Farsi, French, Indonesian, Serbian, Somali, Spanish, Turkish and Vietnamese.

The CHS has also continued its involvement with a project undertaken by the Public Interest Advocacy Centre and the Wirringa Baiya Aboriginal Women's Legal Centre to examine indigenous women's access to discrimination complaint mechanisms in NSW.

- **Community education/State liaison** - the CHS conducted presentations to 170 community and complaint stakeholder groups in cities and regions in all states and territories. These presentations took the form of either informal staff meetings or more formal large group presentations. The presentations provide an overview of the role and functions of the Commission and detailed information on federal anti-discrimination law and the complaint handling process. Presentations for this reporting year included presentations to community legal centres, disability and Aboriginal legal services, university undergraduate programs, law societies and new immigration detention centre staff. Feedback on these presentations indicated that:
 - 86% of participants felt that the presentation assisted them to understand the law administered by the Commission;
 - 82% of participants felt that the presentation assisted them to understand the Commission's complaint handling function;
 - 92% of participants felt that the information was presented in a way that was clear and easy to understand; and
 - 88% of participants felt that the information was presented in an interesting manner.

Arrangements with State agencies

Victoria - The Commission has, since 1 August 1999, had a formal referral arrangement with the Equal Opportunity Commission of Victoria (EOCV) whereby Victorians who elect to lodge a complaint under federal legislation may lodge a complaint through the EOCV Referral Centre. Once the complainant has elected federal jurisdiction the complaint is referred to Sydney for handling. 61 complaints have been referred from the EOCV this reporting year. Victorians can also lodge their complaint directly with the Commission through the Sydney office. A total of 247 complaints have been received from Victoria this year.

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

Tasmania/Western Australia/Australian Capital Territory - Residents of these States have a choice of electing to lodge complaints under State anti-discrimination law or lodging complaints under federal law directly with the Commission in Sydney.

Election of Jurisdiction

As many complainants may choose between Federal and State laws to lodge their complaint the Commission has produced an Information Sheet about this process. It is available on the Commission's website at: http://www.humanrights.gov.au/complaints_information/guides/jurisdiction.html

CHS training and policy

The Commission has two specialised training programs which provide knowledge and skills in statutory investigation and conciliation. All complaint handling staff are required to undertake both courses. In 2000-01 the Commission's course in Statutory Investigation was run for Commission staff. The Commission's Conciliation Training Course was also run for Commission staff, staff from the Office of the Privacy Commissioner and staff from anti-discrimination agencies in New South Wales, Queensland, Western Australia, South Australia and Victoria.

During 2000-01 an additional senior CHS staff member obtained Certificate IV accreditation in Assessment and Workplace Training and three other officers completed components of this accreditation.

In light of the legislative changes in April 2000 the Commission undertook a revision of its Complaint Procedures Manual. The revised manual was published in December 2000.

Complaint Procedures Manual

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In this reporting year the CHS also commenced a research project which will, in part, examine the impact of the *Human Rights Legislative Amendment Act, 1999* on the complaint handling work of the Commission. The research will consider the impact of legislative change on the number of complaints received, the level of legal representation of parties, complaint outcomes and complaint settlement amounts. The research project will also gather information in relation to the Commission's conciliation process and reasons for withdrawal of complaints. In particular, the project will consider parties' experiences of the conciliation process, satisfaction with conciliated outcomes, reasons for settlement and compliance with settlement terms. This research will be finalised in early 2002.

Staff of the CHS also attended various seminars throughout the year on human rights and anti-discrimination law.

Other CHS work

In 2000 the Commission was awarded a tender to provide technical assistance to the South African Commission on Gender Equality. As part of this project the CHS assisted the Commission on Gender Equality with development of a comprehensive Complaints Procedure Manual and provided investigation and conciliation training for Commission staff.

During the past 12 months the section continued to be involved in providing information about the Commission's complaint handling work to visiting delegations from human rights institutions, parliamentary and government institutions and non-government organisations in China, Vietnam, Mongolia and Indonesia. Presentations this year also included a briefing for the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination and Xenophobia. In May 2001, the CHS provided a training placement for an Investigation/Conciliation Officer from the Fiji Human Rights Commission.

In March 2001 a Memorandum of Understanding was developed between the Commission and the NSW Rugby League (NSWRL) which provided for the CHS to assist with conciliation of complaints under the NSWRL's Racial, Religious and Sexual Vilification Code of Conduct. To date the section has assisted with resolution of three complaints under the Code.

Part 2 - Conciliation case studies

Racial Discrimination Act

Under the *Racial Discrimination Act 1975* it is unlawful to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life. The Act also prohibits offensive behaviour based on racial hatred.

In this reporting year the Commission received 267 complaints under the Racial Discrimination Act. The majority of these complaints related to employment and the provision of goods and services. The Commission finalised 405 complaints under this Act and 43 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Racial Discrimination Act are provided in Part III.

Complaint of race discrimination in employment

The complainant stated that she was employed as a Play Worker with a community-based family support service and after five years service was appointed to a Team Leader position in August 1999. The complainant alleged that since this time her employer had treated her less favourably because of her race. In particular, the complainant claimed that she was issued with a performance warning based on unfounded allegations and for behaviour which included speaking Chinese to a Chinese-speaking customer. She further alleged that senior officers refused to verify her appointment as Team Leader when co-workers questioned her leadership. The complainant also alleged that she was victimised for lodging internal complaints and that because her complaints were written in a lower standard of English, they were not taken seriously.

The respondent agreed that the allegations made by other staff members against the complainant were unfounded and that the official performance warning was not justified. The respondent also agreed that the complainant had been appointed Team Leader. The respondent stated that, while the complainant may have been treated less favourably by her co-workers, this was because of 'internal conflicts' rather than the complainant's race.

The complaint was settled by conciliation with the respondent agreeing to issue the complainant with a letter of apology, pay the complainant \$15,000 compensation, reimburse costs incurred by the complainant in pursuing the complaint and publish a tribute to the complainant in the organisation's newsletter.

Allegation of racial discrimination in provision of housing

The complainant, who is Aboriginal, claimed that the manager of the public accommodation complex in which she lived had ignored her complaints that a neighbour racially vilified her. The complainant claimed that this neighbour said such things as "die Abo die", "go home...Abo free zone" "all Abos will die" and "up the whites". The complainant stated that she was forced to leave the housing complex because of this vilification.

The respondent department denied that the complainant had been discriminated against on the basis of her race and stated that the complainant had complained about annoyance and nuisance, not racial vilification. The respondent claimed that it commenced investigation of the complainant's concerns but the complainant left her accommodation before the investigation could be completed.

The matter was resolved by conciliation with the respondent providing the complainant with four weeks bond, two weeks advance rent, a letter of indemnity for electricity and up to \$500 removalist costs, should she require emergency re-housing within the next nine months. The respondent also agreed to backdate the complainant's application for housing from the time she left her accommodation, on the understanding that re-housing would be subject to normal waiting lists.

Alleged racial discrimination and vilification in employment

The complainant was employed as a labourer with an agricultural company. The complainant alleged that during his three months with the company he was treated less favourably and subjected to abuse because of his Aboriginal descent. The complainant alleged that in front of other employees, the boss swore at him, made remarks about his skin colour when a black sheep came into sight, called him 'eight ball' and held him down and tried to write 'eight ball' on his head. The complainant also alleged that he was refused shift rotation while this was granted to non-Aboriginal employees. The complainant claimed that he resigned because of the alleged treatment.

The complaint was resolved by conciliation with the respondent company agreeing to pay the complainant \$1,500 compensation and re-employ him in a different location.

Allegation of racial vilification at football match

The complainant, who was of African descent, claimed that the respondent racially vilified him during a football match calling him a "f***ing nigger", a "black monkey" and saying he would "send (him) back to Africa on a boat".

The respondent denied he made the alleged comments.

The matter was resolved by conciliation with the respondent providing the complainant with a written apology which stated that he "apologises for any wrong doing or distress caused through his verbal attack on the field".

Complaint of race discrimination by Citizen's Club

The complainant claimed that she was speaking to a friend in her first language, which is not English, while waiting for an appointment at a Senior Citizens Club. The complainant alleged that the Secretary of the Club approached her and said "Be quiet, this is an Australian Club and you ought to speak English. This is the Club rule". The complainant complained to her local Member of Parliament about this. The complainant stated that when the local member's staff contacted the club, the Secretary advised that "speaking English only" was a rule in the Club's constitution.

While the Club Secretary initially denied the allegations, she subsequently admitted making the alleged remarks. The President of the Club advised the Commission that there has never been a policy that people must speak English while on the Club's premises.

The complaint was resolved by conciliation with the Secretary of the Club providing a written personal apology to the complainant. The Secretary was also counselled by the Club Committee.

COMPLAINTS MANAGING SERVICE

Allegation of race discrimination and racial vilification in employment

The complainant who is of Indian origin is an employee of a Commonwealth department. The complainant alleged that since commencing employment in 1997 he had been subjected to discriminatory treatment which included colleagues saying "we don't want blacks on this table" and calling him a "black c***". The complainant alleged that on one occasion in 1998 three co-workers placed a canvass bag over his head and pulled him around the room saying "we'll put him back on a boat to India". The complainant also claims that in 1999 he was removed from his ordinary rostered duties because a co-worker refused to work with him on account of his race and his colour. The complainant stated that he complained to management but no appropriate action was taken. The complainant noted that he had been involved in disciplinary proceedings in 1999 arising out of an incident relating to the vilification which resulted in him being demoted and transferred out of his previous work environment.

The respondent department denied that the complainant had been discriminated against on the basis of his race or colour. The respondent stated that in 1999 the complainant had threatened a fellow employee with a knife and a subsequent investigation had led to disciplinary action against the complainant. The department also submitted that they were not vicariously liable for any unlawful conduct as they had taken all reasonable steps to prevent such conduct. The named individual respondents denied they had acted as alleged.

The complaint was resolved by conciliation on the following terms:

- payment of \$10,500 general damages
- payment of the complainant's legal fees
- apologies from the two individual respondents
- promotion of the complainant.

Sex Discrimination Act

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

In this reporting year, the Commission received 339 complaints under the Sex Discrimination Act. The majority of these complaints related to employment. The Commission finalised 359 complaints under this Act and 39 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Sex Discrimination Act are provided in Part III.

Alleged pregnancy discrimination in employment

The complainant was engaged through a private employment agency to perform casual work for the second respondent, a manufacturing company. The complainant claimed that she told both her supervisor and the employment agency that she was pregnant and that she had a doctor's certificate which indicated that she should perform light duties. The complainant alleged that after advising the respondents of her pregnancy she was not offered any further work.

The respondents denied any discrimination against the complainant on the basis of her pregnancy. The manufacturing company claimed that the reason the complainant was not provided with further work was because her attendance had been unreliable. The respondents also claimed that due to a downturn in business, the company was unable to provide the complainant with light duties.

The matter was resolved by conciliation with the respondents providing the complainant with \$8,000 compensation for the stress and humiliation that she claimed to have suffered as a result of the alleged discrimination.

Claim of sexual harassment in provision of goods and services

The complainant alleged that she was sexually harassed by an employee of a large financial institution which she had engaged to provide her with financial advice. The complainant alleged that this employee asked her to go on dates with him and suggested they have a sexual affair. The complainant stated that she declined to enter into such a relationship with this employee and when she learned that this employee had left the company she complained about his behaviour. The complainant alleged that the company ignored her complaint.

The respondent company denied any knowledge of the alleged harassment and denied responsibility for the actions of its former employee.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant \$2,000 in general damages.

Complaint of sex and pregnancy discrimination

The complainant was employed as a sales manager with a large hotel chain. The complainant claimed that she went on six months maternity leave with an option to extend her leave. The complainant stated that when she requested an extension to her leave she was advised that her position would have to be reviewed. The complainant alleged that a month later her position was made redundant. The complainant claimed that her position was subsequently readvertised and filled.

The respondent company stated that there was an agreement that the complainant could extend her maternity leave with appropriate notice. The company claimed that the complainant requested an extension to her maternity leave after the allocated period for such a request had expired. The respondent stated that the complainant's position became redundant after a restructure of the business and that the advertised position was a more senior position.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant \$20,000 in general damages and to review its operating procedures for maternity leave.

Complaint of sexual harassment in employment

The complainant was employed as a personal assistant with a private company. The complainant claimed that a few days after she commenced employment one of the General Managers started telephoning her on numerous occasions to talk about his marriage, ask her personal questions and discuss other matters of a personal nature. The complainant claimed that following a work function a few weeks later, the General Manager grabbed her by the arms and attempted to kiss her. The complainant claimed that after this incident she was too frightened to return to work.

The respondents denied that the General Manager spoke to the complainant about matters of a personal nature or that he behaved inappropriately toward the complainant at the work function. Instead, the respondents claimed that the complainant had too much to drink at the work function and attempted to kiss the General Manager. The respondent stated that the complainant resigned from the company after failing to attend work for several days.

The complaint was resolved by conciliation by the payment of \$10,000 compensation to the complainant.

Allegation of discrimination on the grounds of sex and pregnancy

The complainant worked for a Commonwealth department. She alleged that after she returned from maternity leave she was harassed about breast-feeding and expressing milk at work in that colleagues "mooed" at her when she walked in or out of the office, tipped out the expressed milk and left notes on the milk which said - "good in coffee". The complainant also alleged that a supervisor made comments such as "you ought to be home with your baby" and "a work place is not the place for a mother". The complainant further claimed that after her return from maternity leave her work was overscrutinised and she was denied a promotion because of her sex and pregnancy. The complainant left work on stress leave.

While the respondent department agreed that the complainant experienced significant difficulties with her team leaders, the agency advised that this was because of management problems, not because of the complainant's sex. The respondent agency denied that the complainant was treated less favourably because of her sex or subjected to harassment because of breast-feeding. The respondent also stated that the complainant's poor performance was the reason she was not promoted.

The complaint was resolved through conciliation with the respondent agreeing to pay the complainant \$52,000 compensation for pain and suffering.

Alleged sexual harassment in employment

The complainant worked for a retail company. The complainant claimed that during the first six months of her employment she was sexually harassed by a co-worker in that he persisted in asking her out, bought her presents and flowers and grabbed at her body. The complainant also alleged that this co-worker vandalised her car, repeatedly made inappropriate comments about her body and on one occasion asked her to have sex with him. The complainant stated that she reported these incidents to the company and that the co-worker was dismissed. The complainant claimed that while the company allowed her to transfer to another store, this was essentially a demotion and since the transfer she had been subjected to further sexual remarks from employees and continual references to the previous sexual harassment. The complainant subsequently resigned from her employment.

Human Rights and Equal Opportunity Commission

The respondent company stated that the complaint of sexual harassment was investigated and as a result the co-worker was dismissed and steps were taken to minimise the effects of the harassment. This included the complainant's mutually agreed transfer to another store. The respondent denied that the complainant was demoted or subjected to ongoing sexual harassment.

The complaint was resolved by conciliation with the respondent company agreeing to pay the complainant \$10,000 in compensation.

Disability Discrimination Act

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

In this reporting year, the Commission received 443 complaints under the Disability Discrimination Act. The majority of these complaints related to employment and the provision of goods, services and facilities. The Commission finalised 505 complaints under this Act and 37 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Disability Discrimination Act are provided in Part III.

Complaint of disability discrimination in employment

The complainant had been employed as a temporary Customer Service Officer with a large private company for over two years. The complainant claimed that she was offered permanent appointment, subject to a medical examination. The complainant stated that the medical examination indicated that she had tendonitis. The complainant claimed that she was not aware she had a disability and that it did not affect her work performance. The complainant alleged that the respondent subsequently terminated her employment because of her disability. The complainant advised that an examination by her own doctor indicated that she had 'a slight problem' and would be fit for work if provided with an ergonomic work station and five minute breaks every half an hour.

The respondent stated that the complainant's employment had been terminated because she had not declared that she had tendonitis and had therefore falsified her medical declaration.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant \$10,000 compensation for hurt and humiliation.

Alleged disability and sex discrimination in provision of insurance

The complainant alleged that the respondent discriminated against her on the basis of a disability, Post-Natal Depression (PND) or an imputed disability, general depression, by not providing her with life insurance. The complainant claimed that the respondent had not provided actuarial or statistical data to support its decision not to insure her and also that the information on which it based its decision was unreasonable. The complainant also alleged that the respondent discriminated against her on the ground of her sex as refusal of service for people who have suffered from PND only affects women. The complainant claimed that as the psychological effects of PND are different to general depression, the respondent's practice of assessing PND in the same way as general depression disadvantages women.

The respondent advised that it assesses PND in the same way as general depression and bases its decisions on data contained in underwriting manuals which refer to depression without distinctions in relation to cause or sex.

The complaint was resolved by conciliation. As the complainant was able to provide medical evidence that she had recovered from PND, the respondent agreed to provide the complainant with insurance coverage at standard rates. Additionally, the respondent agreed to write to relevant international underwriting companies to highlight the fact that PND is a specific category of depression with different effects and duration. The respondent also agreed to pay the complainant \$7,500 compensation which included costs incurred by the complainant in pursuing the complainant.

Access to suburban shopping centre

The complainant has a disability which requires her to use a wheelchair. The complainant alleged that the proposed redevelopment of a large suburban shopping complex failed to provide adequate access for people in wheelchairs. Most notably, the complainant claimed that the plans did not provide for lift access to the redeveloped section of the complex.

The complaint was resolved by conciliation with the respondent company agreeing to include lift access in the redeveloped section of the complex. The Commission has been advised that this building work has been completed.

Allegation of discrimination in relation to air travel

The complainant has multiple sclerosis and uses a wheelchair. The complainant claimed that when she inquired about booking an interstate flight with the respondent airline she was informed that she would not be permitted to travel on flights unless she provided a letter from her doctor indicating that she had been prescribed medication to prevent incontinence during the flight. The complainant stated that even though she does not have incontinence as a result of her disability, she provided the airline with the requested information. The complainant claimed that the airline then advised her that she could not travel on the flight unless accompanied by an escort. The complainant stated that she consequently cancelled her booking with the respondent airline and travelled without incident on another airline.

The respondent claimed that the requirement for medical evidence arose due to an administrative error in its booking processes but the requirement that the complainant provide medical evidence regarding her ability to travel was reasonable in the circumstances.

The complaint was resolved with the respondent company agreeing to provide the complainant with a personal apology and pay her \$10,000 compensation for hurt and humiliation.

Allegation of disability discrimination in provision of tourist service

The complainants, who are deaf, stated that when they made a reservation for a half-day tour they advised the respondent company that they required either an Auslan interpreter or a printed copy of the guide's commentary. The respondent company subsequently advised the complainants that a printed copy of the tour could not be provided as each guide has their own commentary and because safety considerations require that participants not take personal items with them on the tour. The complainants participated in the tour but later wrote to the respondent company seeking compensation because an Auslan interpreter had not been provided and the introductory video was not captioned. In response to this direct complaint, the respondent company apologised to the complainants, provided them with a book about the tour and fact sheets in relation to guide training and reimbursed their tour costs. The complainants were not satisfied with this response and lodged a complaint with the Commission.

The complaint was resolved by conciliation with the respondent company agreeing to make the following arrangements for deaf and hearing impaired clients.

- Auslan interpreted tours twice a month
- Trials of a hearing loop
- A booklet for deaf participants
- A printed instruction sheet

The respondent also offered the complainants two complimentary tours and associated interstate airfares to enable them to provide feedback on the new access arrangements.

Complaint of disability discrimination in education

The complainant alleged that the respondent school had discriminated against her son, who has Autistic Spectrum Disorder. The complainant claimed that her son is the subject of constant bullying by other students and that he reacts aggressively to this bullying. The complainant alleged that rather than trying to prevent the bullying, the school had punished her son for his reactions by suspending him and refusing to allow him to return to school.

The school confirmed that the complainant's son had been suspended for a period because of his reactions to the bullying and his classroom behaviour. The school stated that he had been offered two hours of school per day but there were no plans for him to return to school on a fulltime basis.

Through conciliation discussions facilitated by the Commission the school agreed to allow the complainant's son to return to full-time schooling at the commencement of the next term with the support of an intervention plan, additional teacher aide time and individual education program. The respondent also agreed to provide relevant staff with training on Autistic Spectrum Disorder, to review the suspension policy and develop strategies for dealing with bullying within the school.



Human Rights & Equal Opportunity Commission Act

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

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

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

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

If a complaint of alleged discrimination or alleged breach of a human right is neither conciliated nor declined, the President can undertake further inquiry. If the President is satisfied that the subject matter of the complaint constitutes discrimination in employment or is a breach of a human right, the President must report her findings to the Attorney-General for tabling in Parliament. The Commission's Legal Section assists the President in this part of the process. Further details of this process are provided in the Legal Section report on page 83.

In this reporting year, the Commission received 214 complaints under the Human Rights & Equal Opportunity Commission Act. The majority of these complaints related to alleged breaches of the International Covenant on Civil and Political Rights and discrimination in employment. The Commission finalised 219 complaints under this Act and 7 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Human Rights & Equal Opportunity Commission Act are provided in Part 3.

Allegation of discrimination on ground of criminal record

The complainant was employed in a managerial position with a large financial company. The complainant claimed that three weeks after commencing employment he was asked to attend a meeting with human resources staff where he was questioned with regard to pending criminal charges and his employment was terminated. The complainant claimed that at no time during the selection or interview process was he asked to disclose information relating to criminal record. The complainant claimed that while he had been charged with armed robbery, he had not yet been found guilty.

The respondent claimed that because the complainant had not disclosed the charge he was not a person of honest character and therefore could not fulfill the inherent requirements of the position.

The complaint was resolved by conciliation with the respondent company agreeing to pay the complainant the equivalent of one month's salary and provide him with a Certificate of Service.

Complaint of sexual harassment and discrimination on the grounds of sexual preference and disability

The complainant, who is homosexual and has HIV, alleged that he was discriminated against on the basis of his sexual preference and his disability and was also subjected to sexual harassment while employed with a Commonwealth department. The complainant alleged that from when he commenced employment in 1991 to when he commenced long term sick leave in 1998, colleagues and superiors continually made inappropriate sexual comments to him and constantly asked him if he was 'gay'. The complainant stated that he was treated less favourably in relation to medical appointments, was the subject of constant snide remarks about his disability and received harassing telephone calls at his home. He also alleged that he was sent letters of a similar nature and that someone informed his mother that he was dead. An internal investigation into the situation was undertaken by the respondent after the complainant attempted suicide. The complainant alleged that the harassment against him increased after the internal investigation.

The respondent stated that while the internal investigation found that the complainant had been subjected to harassment by three staff members, the complainant was not harassed or discriminated against on the basis of his sexual preference or disability. The department also stated that there was insufficient evidence to support the claim that the complainant had been sexually harassed.

Human Rights and Equal Opportunity Commission

The complaint was resolved by conciliation with the department agreeing to pay the complainant \$15,000 in general damages.

Alleged religious discrimination in employment

The complainant stated that she is Muslim and wears traditional dress. The complainant alleged that when she attended an interview for a position as a general practitioner with the respondent partnership, the managing partner made inappropriate comments about her religious belief and her dress. Specifically, she alleged that the managing partner asked her if she always dressed in the traditional way, asked if her dress was negotiable and told her that she "comes across first as a Muslim and then as a doctor". The complainant felt that her religion may have been a reason why her employment application was not successful.

In his response to the Commission the managing partner apologised to the complainant for any offence caused and detailed the reasons why the practice had decided not to offer employment to the complainant.

After considering the respondent's reply the complainant advised the Commission that she had accepted the respondent's apology and that the matter was resolved.

Allegation of discrimination because of criminal record

The complainant claimed that he applied for a clerical position with a Commonwealth authority and passed the medical and written tests. The complainant stated that in the application process he disclosed to the respondent that he had been convicted for 'break and enter'. The complainant claimed that four months later he was advised that his application was not successful because of his criminal record.

The respondent stated that it appeared that an employee had acted inappropriately by taking the complainant's criminal record into account as the criminal act had happened many years ago and the criminal record was not relevant to the inherent requirements of the position the complainant was applying for.

The complaint was resolved by conciliation with the respondent agreeing to offer the complainant employment.

Complaint on behalf of federal prisoners

The complaint, lodged by a prisoner advocacy group, alleged that a State department was refusing to allow Federal prisoners access to an approved publication which provided information on legal matters. The advocacy group claimed that this was a possible breach of the International Covenant on Civil and Political Rights.

In response to the Commission's letter of inquiry the department advised that its policy had been revised, that prisoners would not be prevented from receiving the publication and that the publication would be placed in prison libraries.

The advocacy group subsequently advised the Commission that the action taken by the department resolved the complaint.

Complaint of discrimination on the ground of trade union activity

The complainant was employed as a truck driver with the respondent company. The complainant alleged that since being involved in trade union activity in late 1999 he had been denied overtime shifts and counselled for attending union meetings. The complainant also alleged that the respondent contacted another company and told them not to give him any additional work. The complainant stated that he resigned because of this harassment.

The respondent company denied that the complainant was harassed or discriminated against because of his trade union activity. The respondent stated that the complainant received a final warning under the company's counselling process as he had refused to comply with lawful employment duties. The respondent stated that this action was not related to the complainant's trade union activity.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant \$3,000 in general damages.



Part 3 - Complaint handling statistics

Preliminary comments

The following statistical data provides information on enquiries handled by the Commission this reporting year, an overview of complaints received and finalised and specific details on complaints received and finalised under each of the Acts administered by the Commission.

It is important to understand, when comparing complaint data between federal and state and territory anti-discrimination agencies, that there are differences in the way such data is counted and collected. For example, some agencies count complaints based on the number of grounds of complaint and/or the number of respondents. In contrast, the Commission counts complaints in terms of the number of complainants per Act. Further, agencies adopt different approaches to reporting on aspects of service delivery. For example, while the Commission measures the timeliness of the complaint process in terms of the time taken from receipt to finalisation of a formal complaint, other agencies report in terms of time taken from allocation for investigation to finalisation or on the age of complaints on hand at the conclusion of the reporting year. Additional information explaining the Commission's approach to statistical reporting is noted in the following tables.

Summary

The overall number of complaints received and finalised this year is similar to the numbers received and finalised by the Sydney office in the previous year.

In the 2000-01 reporting year 35 percent of complaints were lodged under the Disability Discrimination Act, 27 percent under the Sex Discrimination Act, 21 percent under the Racial Discrimination Act and 17 percent under the Human Rights and Equal Opportunity Commission Act. These percentages are consistent with the jurisdictional breakdown of complaints received over the past few years.

The overall number of complaints finalised through conciliation was 35 percent. The conciliation rate is the same as the previous year.

1. It is noted that approximately 74% of complainants returned the intake form in this reporting year.

Information on the geographical location, sex and ethnicity of complainants is provided in Tables 9, 11 and 12 below. Demographic data voluntarily provided by complainants at the commencement of the complaint process¹ provides additional information on complainants. This data indicates that in the last reporting year many complainants (33%) knew about the Commission prior to lodging their complaint and the main source of referral was family/friends and legal centres/private solicitors. A large number of complainants (46%) indicated that their main source of income at the time of the alleged act was from full or part-time employment, while 27 percent of complainants indicated that they were not in the workforce at the time of the alleged act. Approximately 31 percent of complainants advised at the beginning of the complaint process that they were represented.² The main forms of representation were privately funded solicitors (25%) and representation by a friend, family member or support person (24%).

Data collected on respondent categories indicates that in the last reporting year approximately 50 percent of complaints were against private enterprise, 26 percent were against Commonwealth departments/statutory authorities and 9 percent were against State departments/statutory authorities. The next main respondent categories were educational institutions (3%), clubs and incorporated associations (3%) and non-government organisations (3%).

Complaint Information Service

Table 1: Telephone, TTY, E-mail & in-person enquiries received

Enquiry type	Total
Telephone	9580
TTY	2
E-mail	443
In person	133
Total	10,158

2. Representation status may change during the complaint process.

Human Rights and Equal Opportunity Commission

Table 2: Telephone enquiries received by issue

Issue	Total
Race	809
Race - racial hatred	341
Sex - direct	514
Sexual harassment	741
Sex - marital status, family responsibilities, parental status, breast feeding	192
Sex - pregnancy	420
Sexual preference, transgender, homosexuality, lawful sexual activity	127
Disability - impairment	1325
Disability - HIV/AIDS/Hepatitis	103
Disability - workers compensation	26
Disability - mental health	246
Disability - intellectual/learning disability	28
Disability - maltreatment/negligence	35
Disability - physical feature	52
Age - too young	58
Age - too old	207
Age - compulsory retirement	3
Criminal record/conviction	227
Political opinion	18
Religion/religious organisations	123
Employment - personality conflicts/favouritism	307
Employment - union/industrial activity	136
Employment - unfair dismissal/other industrial issues	692
Employment - workplace bullying	503
Human rights - children	63
Human rights - civil, political, economic, social	195
Immigration - detention centres	32
Immigration - visas	130
Prisons/prisoners	32
Police	97

Table continued on following page

Table 2: Telephone enquiries received by issue (cont.)

Issue	Total
Court - family court	143
Court - other law matters	155
Privacy - data protection	167
Neighbourhood disputes	62
Advertising	5
Local government - administration	52
State government - administration	82
Federal government - administration	253
Other	879
Total	9580

Table 3: Telephone enquiries received by state of origin of caller

State of origin	Total	Percentage
New South Wales	3996	42%
Victoria	1127	12%
South Australia	504	5%
Western Australia	381	4%
Queensland	1954	20%
Australian Capital Territory	237	2%
Tasmania	260	3%
Northern Territory	185	2%
Unknown/overseas	936	10%
Total	9580	100%

Human Rights and Equal Opportunity Commission

Table 4: Written enquiries received and finalised

Written enquiries	Total
Received	633
Finalised	619

Table 5: Written enquiries received by issue

Issue	Total
Race	75
Race - racial hatred	32
Sex - direct	13
Sexual harassment	13
Sex - marital status, family responsibilities, parental status, breast feeding	11
Sex - pregnancy	1
Sexual preference, transgender, homosexuality, lawful sexual activity	3
Disability - impairment	51
Disability - HIV/AIDS/Hepatitis	10
Disability - workers compensation	8
Disability - intellectual/learning disability	45
Disability - maltreatment/negligence	7
Disability - physical feature	1
Age - too young	5
Age - too old	14
Age - compulsory retirement	-
Criminal record/conviction	4
Political opinion	3
Religion/religious organisations	13
Employment - personality conflicts/favouritism	14
Employment - union/industrial activity	6
Employment - unfair dismissal/other industrial issues	34
Employment - workplace bullying	11

Table continued over page

Table 5: Written enquiries received by issue (cont.)

Issue	Total
Human rights - children	14
Human rights - civil, political, economic, social	31
Immigration - detention centres	3
Immigration - visas	49
Prisons/prisoners	53
Police	16
Court - family court	24
Court - other law matters	30
Privacy - data protection	1
Neighbourhood disputes	3
Advertising	-
Local government - administration	10
State government - administration	13
Federal government - administration	41
Other	89
Total*	751

* One written enquiry may have multiple issues

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

State of origin	Total	Percentage
New South Wales	246	39%
Victoria	67	11%
South Australia	50	8%
Western Australia	66	10%
Queensland	138	22%
Australian Capital Territory	14	2%
Tasmania	14	2%
Northern Territory	15	2%
Overseas/other	23	4%
Total	633	100%

Human Rights and Equal Opportunity Commission

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

	1999-00	2000-01
Received	1317	1263
Finalised	1752	1488

Table 8: Outcomes of national complaints finalised over the past two years

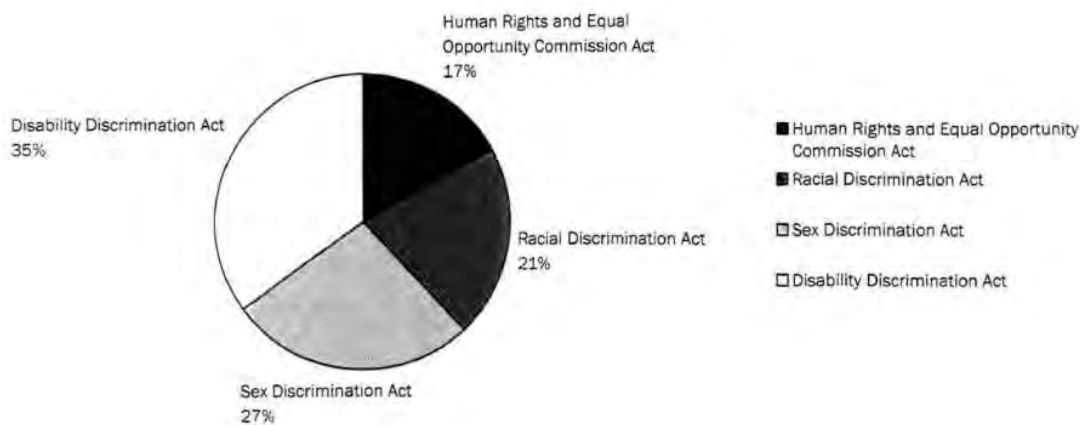
	1999-00	2000-01
Terminated/declined	50%	56%
Conciliated	35%	35%
Withdrawn	14%	8%
Reported (HREOCA only)	1%	1%

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

State of origin	Total	Percentage
New South Wales	501	40%
Victoria	247	20%
South Australia	127	10%
Western Australia	104	8%
Queensland	195	15%
Australian Capital Territory	42	3%
Tasmania	17	1%
Northern Territory	23	2%
Other (overseas)	7	1%
Total	1263	100%

Table 10: Complaints received and finalised by Act

Act	Received	Finalised
Racial Discrimination Act (RDA)	267	405
Sex Discrimination Act (SDA)	339	359
Disability Discrimination Act (DDA)	443	505
Human Rights and Equal Opportunity Commission Act (HREOCA)	214	219
Total	1263	1488

Chart 1**Complaints received by Act****Table 11: Complaints received by category of complainant by Act**

	RDA	SDA	DDA	HREOCA	Total
Individual Male	151	58	264	154	627
Individual female	101	280	164	49	594
Couple or family	11	-	4	3	18
On others behalf	-	-	3	-	3
Organisation	2	-	5	1	8
Community /other group	2	1	3	7	13
Total	267	339	443	214	1263

Human Rights and Equal Opportunity Commission

Table 12: Complaints received by ethnicity of complainant by Act

	RDA	SDA	DDA	HREOCA	Total
Non-English speaking background	154	81	96	96	427
Aboriginal and Torres Strait Islander	60	5	7	3	75
English speaking background	53	253	340	115	761
Total	267	339	443	214	1263

Table 13: Time from receipt to finalisation for complaints finalised during 2000-01

	RDA	SDA	DDA	HREOCA	Total
0-3m	10% (15%)	27%	26%	36%	23% (26%)
3-6m	17% (25%)	24%	27%	27%	23% (26%)
6-9m	18% (28%)	23%	20%	17%	20% (22%)
9-12m	12% (18%)	14%	12%	11%	12% (14%)
> 12m	6% (9%)	11%	10%	7%	9% (9%)
> 18m	2% (3%)	1%	3%	1%	2% (2%)
> 24m	35% (2%)	-	2%	1%	11% (1%)

*Two sets of figures have been provided in relation to complaints under the Racial Discrimination Act and total complaints. The bracketed figure represents the timeliness of the complaint handling process when 140 same subject matter complaints under the Racial Discrimination Act are excluded. These 140 complaints were caught up in an external administrative process and not subject to the usual complaint handling process.

Racial Discrimination Act

Table 14: Racial Discrimination Act - complaints received and finalised

Racial Discrimination Act*	Total
Received	267
Finalised	405

*Includes complaints lodged under the racial hatred provisions.

Table 15: Racial Discrimination Act - complaints received by ground

Racial Discrimination Act	Total	Percentages
Association	8	1.5%
Colour	37	7%
National origin/extraction	41	8%
Ethnic origin	111	21%
Descent	15	3%
Race	158	30%
Victimisation	8	1.5%
Racial hatred	145	28%
Total*	523	100%

* One complaint may have multiple grounds

Human Rights and Equal Opportunity Commission

Table 16: Racial Discrimination Act - complaints received by area

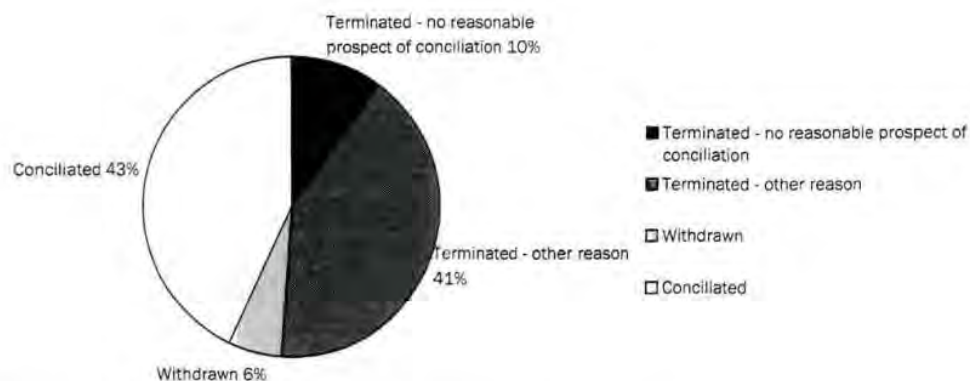
Racial Discrimination Act	Total	Percentage
Rights to equality before the law	11	2%
Access to places and facilities	9	2%
Land, housing, other accommodation	18	4%
Provision of goods and services	127	24%
Right to join trade unions	2	-
Employment	157	30%
Advertisements	-	-
Education	11	2%
Incitement to unlawful acts	2	-
Other - section 9	20	4%
Racial hatred	166	32%
Total*	523	100%

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

Table 17: Racial Discrimination Act - outcomes of finalised complaints

Racial Discrimination Act	Total
Terminated	201
Not unlawful	19
More than 12 months old	10
Trivial, vexatious, frivolous, misconceived, lacking in substance	122
Adequately dealt with already	7
More appropriate remedy available	2
Subject matter of public importance	2
No reasonable prospect of conciliation	39
Withdrawn	24
Withdrawn, does not wish to pursue, advised Commission	20
Withdrawn, does not wish to pursue, settled outside Commission	4
Conciliated	170
Administrative closure*	10
TOTAL	405

*Not an aggrieved party state complaint previously lodged.

Chart 2**Racial Discrimination Act - outcomes of finalised complaints****Table 18: Racial hatred complaints received and finalised**

Racial Discrimination Act	Total
Received	118
Finalised	76

Table 19: Racial hatred complaints received by sub-area

Racial Discrimination Act	Total	Percentage
Media	28	24%
Disputes between neighbours	24	20%
Personal conflict	11	9%
Employment	22	19%
Racist propaganda	4	3.5%
Entertainment	1	1%
Sport	4	3.5%
Public debate	-	-
Other*	24	20%
Total **	118	100%

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

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

Human Rights and Equal Opportunity Commission

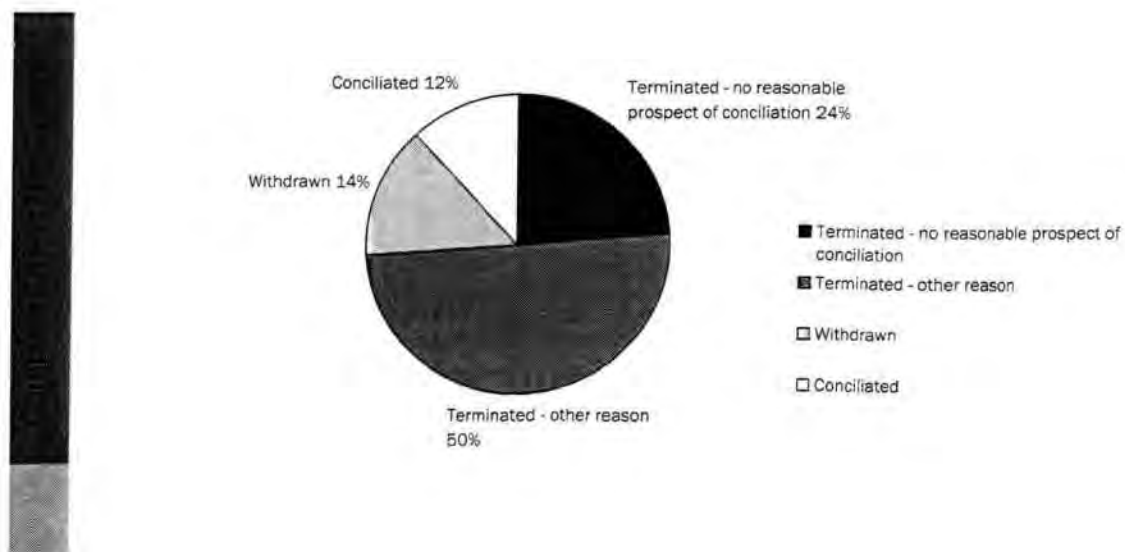
Table 20: Outcomes of finalised racial hatred complaints

Racial Discrimination Act	Total
Terminated	53
Not unlawful	9
More than 12 months old	3
Trivial, vexatious, frivolous, misconceived, lacking in substance	23
Adequately dealt with already	1
More appropriate remedy available	-
Subject matter of public importance	-
No reasonable prospect of conciliation	17
Withdrawn	10
Withdrawn, does not wish to pursue, advised Commission	8
Withdrawn, does not wish to pursue, settled outside Commission	2
Conciliated	9
Administrative closure*	4
TOTAL	76

*Not an aggrieved party, state complaint previously lodged.

Chart 3

Outcomes of finalised racial hatred complaints



Sex Discrimination Act

Table 21: Sex Discrimination Act - complaints received and finalised

Sex Discrimination Act	Total
Received	339
Finalised	359

Table 22: Sex Discrimination Act - complaints received by ground

Sex Discrimination Act	Total	Percentages
Sex discrimination	230	42%
Marital status	46	8%
Pregnancy	86	16%
Sexual harassment	167	30%
Parental status/ family responsibility	14	2%
Victimisation	9	2%
Total *	552	100%

*One complaint may have multiple grounds.

Human Rights and Equal Opportunity Commission

Table 23: Sex Discrimination Act - complaints received by area

Sex Discrimination Act	Total	Percentage
Employment	450	81%
Goods, services and facilities	59	11%
Land	-	-
Accommodation	4	1%
Superannuation, insurance	1	-
Education	2	-
Clubs	5	1%
Administration of federal laws and programs	31	6%
Application forms etc	-	-
Trade unions, accrediting bodies	-	-
Total*	552	100%

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

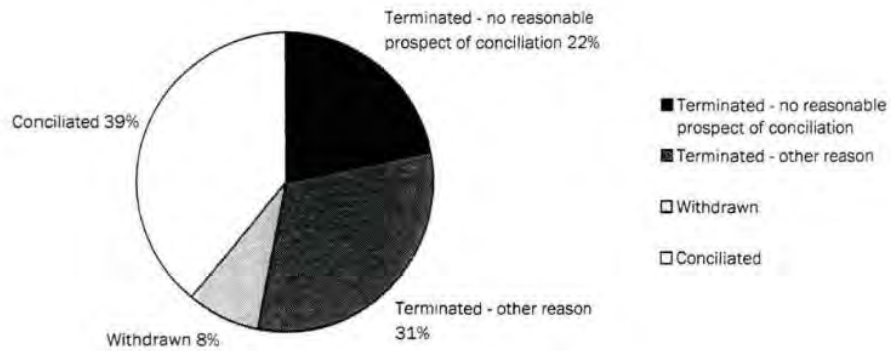
Table 24: Sex Discrimination Act - outcomes of finalised complaints

Sex Discrimination Act	Total
Terminated	177
Not unlawful	25
More than 12 months old	9
Trivial, vexatious, frivolous, misconceived, lacking in substance	64
Adequately dealt with already	5
More appropriately remedy available	1
Subject matter of public importance	-
No reasonable prospect of conciliation	73
Withdrawn	29
Withdrawn, does not wish to pursue, advised Commission	26
Withdrawn, does not wish to pursue, settled outside Commission	3
Conciliated	130
Administrative closure*	23
TOTAL	359

*Not an aggrieved party, state complaint previously lodged.

Chart 4

Sex Discrimination Act - outcomes of finalised complaints



Disability Discrimination Act

Table 25: Disability Discrimination Act - complaints received and finalised

Disability Discrimination Act	Total
Received	443
Finalised	505

Human Rights and Equal Opportunity Commission

Table 26: Nature of complainant's disability

Disability Discrimination Act	Total
Physical disability	170
A mobility aid is used (walking frame or wheelchair)	64
Physical disfigurement	9
Presence in the body of organisms causing disease (HIV/AIDS)	6
Presence in the body of organisms causing disease (other)	16
Psychiatric disability	82
Neurological disability (epilepsy)	40
Intellectual disability	20
Learning disability	24
Sensory disability (hearing impaired)	24
Sensory disability (deaf)	22
Sensory disability (vision impaired)	16
Sensory disability (blind)	14
Work related injury	58
Medical condition (diabetes)	50
Other	36
Total*	651

* One complainant may have multiple disabilities.

Table 27: Disability Discrimination Act - complaints received by ground

Disability Discrimination Act	Total	Percentages
Disability of person(s) aggrieved	739	94%
Associate	31	4%
Disability - person assisted by trained animal	3	-
Disability - use of appliance	2	-
Harassment	9	1%
Victimisation	5	1%
Total*	789	100%

* One complaint may have multiple grounds

Table 28: Disability Discrimination Act - complaints received by area

Disability Discrimination Act	Total	Percentage
Employment	340	43%
Goods, services and facilities	211	27%
Access to premises	56	7%
Land	-	-
Accommodation	31	4%
Incitement to unlawful acts or offences	-	-
Advertisements	-	-
Superannuation, insurance	19	2.5%
Education	65	8%
Clubs, incorporated associations	29	4%
Administration of federal programs	34	4%
Sport	4	0.5%
Application forms, requests for information	-	-
Trade unions, registered organisations	-	-
Total*	789	100%

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

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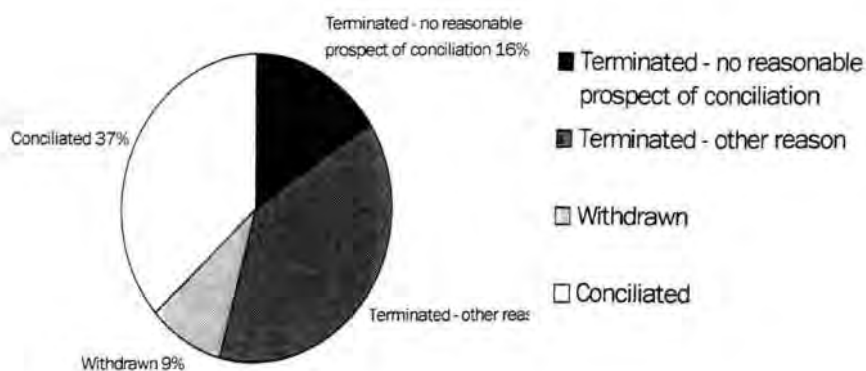
Table 29: Disability Discrimination Act - outcomes of finalised complaints

Disability Discrimination Act	Total
Terminated	259
Not unlawful	27
More than 12 months old	9
Trivial, vexatious, frivolous, misconceived, lacking in substance	110
Adequately dealt with already	15
More appropriate remedy available	23
Subject matter of public importance	1
No reasonable prospect of conciliation	74
Withdrawn	43
Withdrawn, does not wish to pursue, advised	
Commission	41
Withdrawn, does not wish to pursue, settled outside Commission	2
Conciliated	181
Administrative closure*	22
TOTAL	505

*Not an aggrieved party, state complaint previously lodged.

Chart 5

Disability Discrimination Act - outcomes of finalised complaints



Human Rights & Equal Opportunity Commission Act (HREOCA)

Table 30: HREOCA - complaints received and finalised

Human Rights & Equal Opportunity Commission Act	Total
Received	214
Finalised	219

Table 31: HREOCA - complaints received by ground

Human Rights and Equal Opportunity Commission Act	Total	Percentage
Race (ILO 111)	-	-
Colour (ILO 111)	-	-
Sex (ILO 111)	2	1%
Religion (ILO 111)	20	8%
Political opinion (ILO 111)	4	2%
National extraction (ILO 111)	-	-
Social origin (ILO 111)	-	-
Age (ILO 111)	34	14%
Medical record (ILO 111)	-	-
Criminal record (ILO 111)	35	15%
Impairment (including HIV/AIDS status) (ILO 111)	-	-
Marital status (ILO 111)	-	-
Disability (ILO 111)	-	-
Nationality (ILO 111)	-	-
Sexual preference (ILO 111)	6	2%
Trade union activity (ILO 111)	20	8%

Table continued following page

Human Rights and Equal Opportunity Commission

Table 31: HREOCA - complaints received by ground (cont.)

Human Rights and Equal Opportunity Commission Act	Total	Percentage
International Covenant on Civil and Political Rights	81	34%
Declaration on the Rights of the Child	-	-
Declaration on the Rights of Mentally Retarded Persons	-	-
Declaration on the Rights of Disabled Persons	-	-
Convention on the Rights of the Child	21	9%
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	2	1%
Not a ground within jurisdiction	1	-
Not a human right as defined by the Act	14	6%
Total*	240	100%

*One complaint may have multiple grounds.

Table 32: HREOCA - complaints received by area

Human Rights and Equal Opportunity Commission Act	Total	Percentage
Acts or practices of the Commonwealth	96	40%
Employment	120	50%
Not act or practice of the Commonwealth (not employment cases)	24	10%
Total*	240	100%

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

Table 33: HREOCA - non-employment complaints received by sub-area

Human Rights and Equal Opportunity Commission Act	Total	Percentage
Prisons, prisoner	33	18%
Religious institutions	7	4%
Family court matters	4	2%
Other law court matters	3	2%
Immigration	61	34%
Law enforcement agency	4	2%
State agency	3	2%
Other service provider (private sector)	2	2%
Local government	6	3%
Education systems	6	3%
Welfare systems	3	2%
Health system	9	5%
Other	39	21%
Total*	180	100%

*One complaint may have multiple sub-areas.

Human Rights and Equal Opportunity Commission

Table 34: HREOCA - Outcomes of finalised complaints

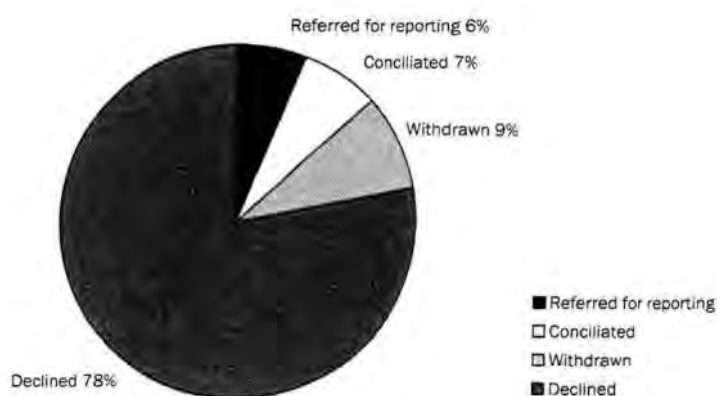
Human Rights & Equal Opportunity Commission Act	Total
Declined	187
Does not constitute discrimination	44
Human rights breach, not inconsistent or contrary to any Human right	47
More than 12 months old	7
Trivial, vexatious, frivolous, misconceived, lacking in substance	38
Adequately dealt with already	15
More appropriate remedy available	17
Withdrawn, does not wish to pursue, advised Commission	2
Withdrawn, does not wish to pursue, settled outside Commission	15
Withdrawn or lost contact	2
Conciliated	16
Referred for reporting*	12
Administrative closure**	4
Total	219

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

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

Chart 6

Human Rights and Equal Opportunity Commission Act - outcomes of finalised complaints



Legal Section

The primary responsibilities of the Legal Section for the 2000-01 financial year were to:

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

Human Rights and Equal Opportunity Commission

- represent the Commission externally in providing information and education on human rights matters; and to
- represent the Commission in international project work.

Hearings and Determinations by the Commission

Public Hearings

As a result of the enactment of the *Human Rights Legislation Amendment Act (No. 1) 1999* (Cth) the jurisdiction of the Commission to conduct public inquiries into complaints was transferred on 13 April 2000 to the Federal Court and Federal Magistrates Service. However, the Commission retained the jurisdiction to complete those public inquiries it had commenced prior to 13 April 2000. During 2000–01, 32 of these matters were finalised. Of those:

- 25 were determined at hearing (16 were substantiated and 9 were dismissed);
- 4 settled; and
- 3 were finalised in other ways including complaints terminated by the Commission at the complainant's own request and complaints adjourned indefinitely by the Commission, for example where a party could not be located.

The following summaries are of two matters that were determined at hearing in 2000-01.

Mingli Wanjurri, Ben Taylor, Robert Bropho, Edna Bropho and Clarrie Issacs v. Southern Cross Broadcasting Ltd and Howard Sattler

Racial Discrimination Act 1975 (Cth)

Commissioner: Graeme Innes

Date of decision: 7 May 2001

The complainants lodged a complaint under the *Racial Discrimination Act 1975* (Cth) ("RDA") against Southern Cross Broadcasting Ltd and Howard Sattler. The complainants alleged that comments made during a segment on the Howard Sattler morning radio talk show on 6PR in Perth were in breach of the racial vilification provisions of the RDA. The segment, broadcast on 3 February 1997, was called "Taxi Talk" and involved Mr Sattler seeking the views of the taxi drivers of Perth.

In the segment there was discussion about protests by Aboriginal people in relation to the redevelopment of the old Swan Brewery site – a sacred site for the Nyungah community. Remarks made during the segment included the following:

“...You know for eighty years while it was brewing grog it didn't worry the Waugyl , as soon as it stopped brewing grog, up pops Waugyl. Waugyl, Waugyl. Shame the first time he popped up the first workman didn't clean him up with a shovel

“remember a few years ago when they were camping there, no it's a so called sacred site, isn't it. Yes. They were urinating, they were defecating and they were fornicating...”

“... Now there's a great little shrub there in the sandhill overlooking the caravan park where I had my first sexual experience. Now that's a sacred site to me do you reckon I could put a claim in there and get a nice little plot of land ...”

The Waugyl is a significant spiritual figure for the Nyungah Community. The Waugyl was involved in the creation of the land and plays a significant role in their culture.

Commissioner Innes found that the discussion degenerated into a denigration of Nyungah people, their religion and culture. He found that the remarks constituted racial vilification in breach of section 18C of the RDA and were not protected by the exemptions contained in section 18D.

Commissioner Innes said, “The actions of Mr Sattler, in allowing these comments to be made, and in supporting them through his participation in the conversation, shows a gross disrespect for the Nyungah people, and an abuse of his position as a radio broadcaster. The role played by Southern Cross Broadcasting (Aus) Ltd, owners of 6PR, in not preventing such a broadcast by better training of staff and through having policies detailing the relevant laws and banning such broadcasts, demonstrates extreme neglect of their responsibilities as a broadcaster”.

Commissioner Innes declared that the respondents should pay each of the complainants \$10,000 for the injury done to them.

Human Rights and Equal Opportunity Commission

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“remember a few years ago when they were camping there, no it's a so called sacred site, isn't it. Yes. They were urinating, they were defecating and they were fornicating....”

“... Now there's a great little shrub there in the sandhill overlooking the caravan park where I had my first sexual experience. Now that's a sacred site to me do you reckon I could put a claim in there and get a nice little plot of land ...”

The Waugyl is a significant spiritual figure for the Nyungah Community. The Waugyl was involved in the creation of the land and plays a significant role in their culture.

Commissioner Innes found that the discussion degenerated into a denigration of Nyungah people, their religion and culture. He found that the remarks constituted racial vilification in breach of section 18C of the RDA and were not protected by the exemptions contained in section 18D.

Commissioner Innes said, “The actions of Mr Sattler, in allowing these comments to be made, and in supporting them through his participation in the conversation, shows a gross disrespect for the Nyungah people, and an abuse of his position as a radio broadcaster. The role played by Southern Cross Broadcasting (Aus) Ltd, owners of 6PR, in not preventing such a broadcast by better training of staff and through having policies detailing the relevant laws and banning such broadcasts, demonstrates extreme neglect of their responsibilities as a broadcaster”.

Commissioner Innes declared that the respondents should pay each of the complainants \$10,000 for the injury done to them.

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Katherine Williams v. Colin Robinson & the Commonwealth of Australia

Sex Discrimination Act 1984 (Cth)

Commissioner John Nader

Date of decision: 13 October 2000

Katherine Williams lodged a complaint under the *Sex Discrimination Act 1984* (Cth) against Colin Robinson and the Commonwealth of Australia (Australian Defence Force). She alleged that she was sexually harassed by Mr Robinson during the time that she was serving in the Royal Australian Air Force (RAAF).

Ms Williams joined the RAAF in 1985. After completing 13 weeks recruitment training she was posted to Wagga Wagga for clerical training, then to Townsville in November 1985. At the inquiry, Ms Williams gave evidence that during her first month at Townsville, when she was nineteen years old, she was assaulted by two men in her single female quarters. Evidence was led that the two assailants were later identified. But only minor disciplinary action was taken against them. Ms Williams was also advised by her superiors that she would never be required to serve at the same base as either of the men again. She received no counselling or any offer of counselling to assist her to recover from this incident.

In relation to the complaints of sexual harassment against Mr Robinson, Ms Williams alleged that the first act of harassment occurred in April 1996. This occurred while Ms Williams worked in a medical centre and her immediate supervisor was Mr Robinson who was then a sergeant with whom she worked daily. Ms Williams gave evidence that she was standing in the orderly room of the medical centre facing the front desk when she saw her then boyfriend enter through the doorway. Ms Williams said to Mr Robinson "There's my boyfriend". Mr Robinson allegedly said "Does this mean he'll get upset if I do this" and then grabbed her with his arms from behind. He wrapped his right leg around her right leg and pressed his body against her. He held her in this way for a couple of seconds before releasing her and laughing.

The second alleged act of sexual harassment occurred in May 1996. Ms Williams went to a patient and while she was bending over, Mr Robinson came from behind her and grabbed her around the waist. He pulled his body into hers and held her there. He said something, which was muffled because she had the stethoscope in her ears, and laughed before releasing her.

Shortly afterwards Ms Williams reported these incidents to a superior officer.

An EEO Officer was appointed to mediate the complaint and as a result of the mediation Mr Robinson provided a written apology to Ms Williams. Later that year Ms Williams was notified that she was to be transferred to another base. However she discovered that one of the perpetrators of the 1985 assault was working on that base and as she felt scared and worried, she decided to leave the RAAF. She was ultimately discharged from the RAAF on 2 January 1997.

Commissioner Nader found that there was no evidence of any formal or independent investigation of Ms Williams' allegations by the RAAF and that the failure to institute a formal investigation, either within or outside the service, was a major factor contributing to the damage suffered by her.

He came to the conclusion that on all of the evidence, the alleged acts of sexual harassment did occur and that the subject matter of her complaints was clearly one of assault and should have been dealt with as such by the RAAF. He found that from the time of her complaint, Ms Williams' superior officers should have taken immediate steps to separate her from any real risk of encountering the perpetrator in the course of her duties. The failure on the part of the RAAF created or permitted circumstances to exist that aggravated and compounded the effect on her.

Commissioner Nader found that Ms Williams' discharge from the RAAF was the end result of a series of events commencing with the 1985 sexual assault. That assault was followed by the apparent failure of the RAAF to properly prosecute the offenders, and the failure of the RAAF to provide any counselling or other support. After the 1996 assaults, the subsequent conduct of superior officers, "by acts in some instances and by omissions in others, forced her to the edge of a breakdown."

Both respondents were held jointly and severally liable to pay the combined amount of \$130,000.

This amount was made up of general damages of \$30,000, which included emotional pain, humiliation, embarrassment and other negative emotions suffered by Ms Williams and for her lost opportunity to fulfil her desire to follow a career in the RAAF; and economic loss of \$100,000 covering the loss of income.

Complaints relating to breaches of human rights or discrimination in employment made under the *Human Rights & Equal Opportunity Commission Act 1986 (Cth)*

Complaints made under the *Human Rights & Equal Opportunity Commission Act 1986 (Cth)* (the HREOCA) relating to breaches of human rights and discrimination in employment were not affected by the *Human Rights Legislation Amendment Act (No. 1) 1999 (Cth)*. The President may report to the Attorney-General where conciliation cannot resolve the matter and an inquiry has satisfied the President there has been a breach of human rights or discrimination in employment. In dealing with these matters, the Legal Section assists the President in the reporting process of the inquiry into these complaints.

Between 1 July 2000 and 30 June 2001, the following reports were tabled in Parliament by the Minister pursuant to this Commission function:

HRC Report No. 10

Report of an inquiry into a complaint of acts or practices inconsistent with or contrary to human rights in an immigration detention centre (May 2000)

This Report details a complaint by a Nigerian national in relation to his treatment during a period of immigration detention in the Perth Immigration Detention Centre (IDC). The treatment of the detainee was found in some respects to be inconsistent with and contrary to human rights.

In particular:

- the placing of the complainant in an observation room without a window and with twenty-four hour fluorescent lighting where he remained for six days;
- the use of handcuffs for eight and a half hours and the use of shackles around the ankles for seven hours while in the observation room; and
- the conditions of detention of the complainant at the Perth IDC over the period of his immigration detention
- were found to constitute a breach of article 10(1) of the International Covenant on Civil and Political Rights.

A number of detailed recommendations were made to prevent a repetition of such treatment.

HRC Report No. 11

Discrimination on the ground of age (August 2000)

This Report details a complaint to the Commission by an employee of the Japan Travel Bureau. The complainant alleged that a reduction in 1994 in the work allocated to her and subsequent decline in income amounted to discrimination on the basis of her age. The complaint was upheld and a recommendation made that the Japan Travel Bureau to;

- i. pay to the complainant \$43,385 being damages for loss of income; and
- ii. that future decisions on the allocation of work to the complainant be made without discrimination on the ground of age.

The Japan Travel Bureau accepted the recommendations in full.

HRC Report No. 12

Report of an inquiry into a complaint of acts or practices inconsistent with or contrary to human rights in an immigration detention centre (November 2000)

This Report involves an inquiry into complaints by two Chinese nationals (Mrs and Mr Quan) in relation to their treatment during a period of immigration detention at the Port Hedland Detention Centre. The President found that their treatment was inconsistent with and contrary to human rights.

In particular, the President found that:

- the failure to inform the complainants of their right to legal advice when taken into immigration detention;
- the handling of the complainants' requests for access to legal advice and for application forms for protection visas; and
- holding the complainants in separation detention breached their human right to be treated humanely and in accordance with human dignity while in detention under article 10(1) of the International Covenant on Civil and Political Rights (ICCPR). The President also found that the complainants' detention was arbitrary within the meaning of article 9 of the ICCPR.

Human Rights and Equal Opportunity Commission

The President recommended that:

- i. in compliance with the ICCPR, detainees should be informed promptly and effectively of their right to apply for a protection visa and to access independent legal advice and assistance;
- ii. in compliance with the ICCPR, once a detainee has requested legal advice and assistance, that advice and assistance and any necessary interpretive services should be provided in a timely and effective fashion that does not delay the determination of the detainee's status or prolong the detention;
- iii. separation detention should be used sparingly for the shortest possible period of time and in compliance with the Standard Minimum Rules and the Body of Principles. Detainees who are in separate detention should be informed of the reasons for and the likely time-frame of their separation; and
- iv. Mr Su be paid the sum of \$20,000 and Mr Quan the sum of \$15,000 by way of compensation for the damages each suffered as a result of the human rights violations to which he was subjected.

HRC Report No. 13

Report of an inquiry into a complaint of acts and practices inconsistent with or contrary to human rights relating to the continuing imprisonment of immigration detainees in prisons after completion of their criminal sentences (March 2001)

This Report concerns an inquiry into complaints by ten Vietnamese nationals. At the time of the inquiry each of the complainants were permanent residents of Australia. They had all been convicted of criminal offences and had served criminal sentences in New South Wales. The Department of Immigration and Multicultural Affairs had served the complainants with deportation orders. Each of the complainants was held in "immigration detention" at the Parramatta Correctional Complex and was awaiting deportation to Vietnam.

At the time of the inquiry the complainants had been held in immigration detention for periods ranging from 13 months to two years. In each case, the Minister of the Department had declined to exercise his discretion to release the complainants from such detention pursuant to section 253(9) of the *Migration Act 1958* (Cth).

The President found that there were acts and practices of the Commonwealth that were inconsistent with and contrary to human rights. The President found that, although the detention of the complainants was lawful, that detention was

arbitrary within the meaning of article 9(1) of the International Covenant on Civil and Political Rights. This was because of the indefinite, indeterminate and unpredictable period for which the complainants had been, and at that time it was supposed that they would continue to be held in detention. This finding was based on the fact that, at that time, the Department was not able to advise of the date on which a Memorandum Of Understanding ("MOU") with Vietnam would be signed (this MOU was to provide the mechanism for the return of the complainants) and, consequently, the date on which the complainants' detention would end.

The President recommended that the complainants be immediately released from detention pending deportation.

In the Department's response to this recommendation the Acting Secretary advised that he had directed "relevant officers to conduct a comprehensive review of the circumstances of each complainant in order to evaluate whether continued detention remains appropriate [but] I cannot give you any assurances that this process will necessarily lead to any releases under section 253(9) of the *Migration Act 1958*". He also affirmed the Department's commitment to the earliest possible resolution of the return arrangements with Vietnam.

On 15 June 2001, the MOU was signed with Vietnam.

External litigation

Applications under the *Administrative Decisions (Judicial Review) Act 1977* (Cth);

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

In accordance with established legal principle, the Commission as decision maker usually submits to the jurisdiction of the Court in these matters, leaving the substantive parties (that is, the complainant and respondent to the complaint that was before the Commission) to present the matter to the Court. In a very small number of matters, submission to the jurisdiction of the Court is not practicable. In these cases the Commission attempted to assist the Court rather than act in a way that would appear contentious or adversarial. The numbers of applications made under the *Administrative Decisions (Judicial Review) Act* for the years 1995–2001 are shown in the table on the following page.

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

Year	95-96	96-97	97-98	98-99	99-00	00-01
Total	9	11	35	19	22	13

Interventions

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

The Racial Discrimination Act 1975 (Cth), s.20(1)(e)

The Sex Discrimination Act 1984 (Cth), s.48(1)(gb)

The Disability Discrimination Act 1992 (Cth), s.67(1)(l)

The Human Rights and Equal Opportunity Commission Act 1986 (Cth) s.11(1)(o) and s.31(j).

The Commission will consider seeking leave to intervene in cases where the human rights or discrimination issues are significant and central to the proceedings, and where these issues are not being addressed by the parties to the proceedings.

The following two summaries are of matters that the Commission was granted leave to intervene in during the 2000-01 period.

State of WA v Ben Ward & Ors on behalf of the Miriuwung and Gajerrong People (No. P59 of 2000)

Attorney-General of the Northern Territory v Ben Ward & Ors on behalf of the Miriuwung and Gajerrong People (No. P62 of 2000)

Cecil Ningarmara & Ors v Attorney-General of the Northern Territory & Ors (No. P63 of 2000)

Ben Ward & Ors on behalf of the Miriuwung and Gajerrong People v State of WA & Ors (No. P67 of 2000)

In March 2001 the Commission sought leave before the High Court of Australia to intervene in the above-mentioned matters. These were appeals heard together before the High Court from 6 to 16 March 2001. They involved applications lodged under the *Native Title Act 1993* (Cth) by a number of native title claimants in respect of land and waters in the north of Western Australia and adjacent land in the Northern Territory. Whilst there were numerous grounds of appeal, the important issues of the conceptualisation and extinguishment of native title were before the Court. The majority of the Full Court of the Federal Court decided that native title constitutes a "bundle of rights" rather than an underlying right to land, and that it is possible for only some of those rights to be extinguished by the creation of inconsistent rights by laws or executive acts and that where this happens, partial extinguishment occurs. In a particular case a "bundle of rights" that was so extensive as to be in the nature of a proprietary interest, may be so reduced by partial extinguishment that the rights which remain no longer have that character.

The Commission was granted leave to intervene by way of written and oral submissions and was represented by senior and junior counsel before the Court. The Legal Section of the Commission acted as instructing solicitors.

The Commission's submissions focused on the relationship between principles of international human rights law and the development of the law relating to native title both pursuant to the *Native Title Act* and under the common law. The Commission submitted that:

- the "bundle of rights" approach to native title should be rejected and the notion of suspension of native title rights accepted because the exposure of native title so readily to extinguishment runs counter to human rights norms in international treaties to which Australia is a party, in particular articles 5(d)(v) and (vii) of the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") (relating to the right of everyone without distinction as to race, to equality before the law including the right to own property alone as well as in association with others and the right to freedom of religion) and article 27 of the International Covenant on Civil and Political Rights (ICCPR) (relating to respect for cultural rights);
- where there are choices in statutory language or ambiguity in common law language, and where there is no binding authority to the contrary, then the Court should as a matter of judicial rule, and not as a matter of taste or preference, find the common law and interpret the statute in accordance with Australia's international obligations;

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- where there are clashes between the enjoyment of aspects of native title and the rights of other title holders, the regime set out in the Native Title Act in many cases provides for the suspension and yielding of native title rights rather than native title being destroyed permanently. This can be seen by the Court to promote the resilience rather than the fragility of native title and to permit a culture to exist in the larger system, both legal and otherwise. It was submitted that this is the correct interpretation of Australia's obligations under article 5(d) of CERD and article 27 of the ICCPR.

The Court has reserved its decision.

Ming Dung Luu v Minister for Immigration and Multicultural Affairs

The Commission also intervened in proceedings in the Federal Court involving a review of a decision of the Minister for Immigration and Multicultural Affairs (the Minister).

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

Mr Luu has been held in a maximum security prison for four years since he was paroled.

Mr Luu sought to have the Minister exercise his discretion under section 253(9) of the *Migration Act 1958* (Cth) to release him or, alternatively, revoke the original deportation order. After Mr Luu commenced Court proceedings in the Federal Court, the Minister determined not to exercise his power to release Mr Luu or revoke the deportation order. Mr Luu sought judicial review, under the *Administrative Decisions (Judicial Review) Act 1977* (Cth), of that decision (and certain other matters).

The Commission was granted leave to intervene (by consent) by way of written and oral submissions. It was represented by counsel and the Legal Section of the Commission acted as instructing solicitors.

The Commission's submissions focussed on the following points regarding the Minister's decision not to exercise his power under section 253(9) of the Migration Act:

- The Commission submitted that the Minister was bound to take into account relevant norms derived from international law in making his decision. The Commission contended that such a requirement flowed from the purposes of the power conferred by section 253(9), which include the prevention of "injustice" to deportees. The Commission argued that international norms play a key part in identifying such injustice. In that regard, the Commission submitted that the Minister should have considered Australia's obligations under articles 9(1), 10 and 26 of the International Covenant on Civil and Political Rights (the ICCPR) for the purposes of the decision. In particular, the Commission submitted that the Minister was bound to consider article 9(1) of the ICCPR (which proscribes arbitrary detention).
- The Commission contended that the Minister failed to consider Australia's obligations under those articles of the ICCPR.
- The Commission further contended that that omission was significant by reason of the fact that the circumstances of Mr Luu's detention involved breaches by Australia of its international obligations under those articles. The Commission submitted that those matters vitiated the validity of the Minister's decision.
- As a further or alternative argument, the Commission contended that the Minister was under an obligation to inform Mr Luu that he proposed to proceed in a manner that would involve a failure to conform to relevant international norms.
- Finally, the Commission submitted that the Minister's decision was vitiated by unreasonableness.

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

Amicus

The Commissioners of the Human Rights and Equal Opportunity Commission have the function of assisting the Federal Court or Federal Magistrates Service as *amicus curiae* in discrimination matters. An *amicus curiae* is a "friend to the court" who assists the court on points of law in a particular case. An Amicus is not a party to the proceedings, does not file pleadings or lead evidence and may not lodge an appeal.

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The Commissioners' *amicus curiae* function can only be exercised with the leave of the Court where the Court is hearing an application alleging unlawful discrimination under Division 2, Part IIB of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). The Commissioner/s may seek leave to appear as amicus where:

1. the Commissioner thinks the orders sought may affect to a significant extent the human rights of persons who are not parties to the proceedings; or
2. the proceedings, in the opinion of the Commissioner, have significant implications for the administration of the relevant Act/s; or
3. the proceedings involve special circumstances such that the Commissioner is satisfied that it would be in the public interest for the Commissioner to assist the Court as amicus.

The Legal Section assists the Commissioners in the carrying out of this function.

The Sex Discrimination Commissioner sought the leave of the Federal Court to appear as *amicus curiae* in a case involving indirect sex discrimination. The applicant in this case alleged that a large corporation had a policy prohibiting part-time work. She asserted that this policy disadvantaged women because they were more likely to need to work part-time than men as women still have primary responsibility for caring for children in our society. This matter settled prior to the Court determining the Commissioner's application to appear as amicus.

International Project Work

As reported in previous annual reports, the Commission has been working on a technical cooperation project with the South African Commission on Gender Equality (CGE). The Legal Section has been working on one aspect of this project which relates to legal intervention. The aim of this part of the project is to improve the capability of the CGE to participate effectively in relevant litigation in South Africa concerning gender related issues. Two staff members of the legal section attended at the offices of the CGE in Johannesburg from 11 to 15 June 2001. They carried out consultations with staff and Commissioners of the CGE and external NGOs and legal agencies, drafted guidelines for assessing appropriate matters for intervention by the CGE, and developed a procedural strategy for conducting interventions. It is proposed that further work in relation to this activity will be carried out in late 2001, including a training workshop for staff and Commissioners of the CGE on the basis of the previous work completed in June.

National Conference

In November 2000 the Commission's Legal Section in partnership with the NSW Anti-Discrimination Board, hosted the annual National Legal Officers' Conference. The Conference was held in the Commission's offices in Sydney and was attended by representatives from each of the state and territory anti discrimination agencies.

The Conference was opened with a panel discussion concerning the issues of privacy and discrimination issues in relation to genetic testing. This panel was chaired by Malcolm Crompton, the federal Privacy Commissioner, and the speakers included Chris Puplick, President of the NSW Anti-Discrimination Board, Dr Kristine Barlow-Stewart, a genetics counsellor and researcher, and David Mason, Director of the Commission's Disability Discrimination Unit. Other Conference presentations and papers dealt with a number of issues including recent developments in anti-discrimination and human rights law in Australia and overseas and the relationship between industrial relations law and anti-discrimination law.

Other Activities

Over the 2000-01 period, staff members of the Legal Section also undertook a range of external activities. These included the following:

- Presenting a seminar at the Sole Practitioners Group of the NSW Law Society concerning the Sex Discrimination Act with a particular focus on the difference between direct and indirect discrimination, the operation of exemptions and employers' obligations to avoid sexual harassment in the workplace.
- Providing human rights training to newly appointed Federal Magistrates.
- Speaking at a "Pro Bono and the Law Conference" hosted by the Federal Attorney-General.
- Making a presentation on the Sex Discrimination Commissioner's Pregnancy Discrimination Report to a seminar jointly run by Australian Lawyers for Human Rights and Young Lawyers (NSW).
- Speaking at the Sydney meeting of Zonta International on women and international law developments in Australia.
- Speaking at a seminar for legal practitioners organised by the University of Western Sydney and the College of Law on equal opportunity and sexual harassment issues.
- Speaking at the University of Sydney Careers Day.

Aboriginal & Torres Strait Islander Social Justice



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

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

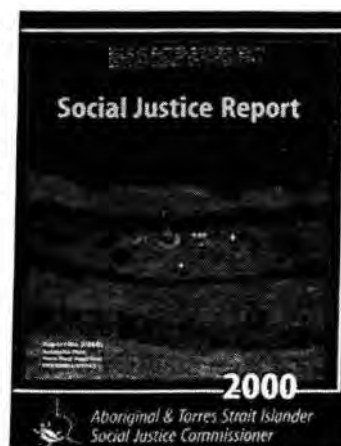
Monitoring and Reporting

Social Justice Report 2000

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

The 2000 Social Justice Report is the second by Dr Jonas. It was tabled in both houses of the federal Parliament on 28 March 2001. The theme of the report is reconciliation and human rights.

The report commences by addressing the issue of why human rights are relevant to the reconciliation process (Chapter 2). The report claims that the broader Australian community lacks an understanding of how the basic human rights principles of non-discrimination and equality before the law relate to the reconciliation process. The view that 'everybody should be treated the same' overlooks the simple fact that throughout Australian history Indigenous people never have been (p19).



Aboriginal and Torres Strait Islander Social Justice

The report argues that the current approach of 'practical reconciliation' does not recognize these factors. The report suggests that an alternative, human rights, approach would:

- Acknowledge that Indigenous disadvantage is historically-derived and remedial measures are needed to give Indigenous people equal opportunity;
- Empower Indigenous people by ensuring they take part in decisions affecting them;
- Use human rights principles as benchmarks to assess the adequacy and appropriateness of the government's response; and
- Prioritise resources to satisfy basic human rights standards.

The report considers the 'social cost' of 'managing' (rather than overcoming) Indigenous disadvantage and argues that this will escalate unless an extensive and long-term commitment is made to redressing disadvantage.

Chapter 3 then examines Australia's current performance in relation to Indigenous human rights. It focuses on the dialogue between the Australian government and the Committee on the Elimination of Racial Discrimination (CERD) in March 2000 concerning Australia's compliance with our obligations under the United Nations racial discrimination convention. It considered a range of issues that must be addressed for reconciliation to be meaningful.

The report reproduces extensive excerpts from the dialogue to explain why the Committee raised particular issues, to examine the adequacy of the Government's responses, and the appropriateness of the conclusions and concerns expressed by the Committee. The chapter also exposes a number of myths surrounding the operation of the UN human rights treaty system and Australia's international obligations.

The report expresses concern at the following issues:

- **Australia's obligations to protect cultural diversity:**
The government demonstrated to CERD a poor understanding of its obligations to ensure equality before the law, including by taking 'protective measures' to protect the cultures of Indigenous peoples;
- **Inadequate protection of human rights in Australian law:**
The federal government breaches its international obligations when it refuses to use its powers to ensure that state and territory laws comply with our human rights obligations – such as with the refusal to overturn mandatory sentencing laws;

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- ❑ **Inadequate protection in Australian law against racial discrimination:**
Despite the existence of the *Racial Discrimination Act 1975*, the federal government may still introduce racially discriminatory laws – such as the native title amendments. The Constitution also lacks an entrenched guarantee against racial discrimination;
- ❑ **Extent of Indigenous disadvantage:**
The Committee confirmed that the extent of Indigenous disadvantage raises serious concerns about Australia's compliance with the requirement to provide equality before the law and to treat people in a non-discriminatory manner. It expressed concern at 'the extent of the dramatic inequalities that are still being experienced by these population groups when they represent no more than 2% of the population of a highly developed, industrialised state'. Australia also has an obligation to adopt special measures to overcome this disadvantage – as a matter of human rights compliance;
- ❑ **Indigenous over-representation in criminal justice systems:**
The report highlights the necessity to adopt measures to address socio-economic marginalisation and to develop appropriate diversionary options;
- ❑ **Mandatory sentencing:**
The report highlights a series of concerns about mandatory sentencing, including its racially discriminatory impact. It notes the 'deeply unsatisfactory' explanations provided by the government on this issue; and
- ❑ **Reconciliation and 'Bringing them home':**
The report highlights the need for a consensual approach to reconciliation – negotiated with Indigenous peoples; and the importance of responding appropriately to the Bringing them home report.

Chapter 4 then sets out what measures must be taken to achieve meaningful reconciliation that respects human rights. The report argues that it is critical to ensure greater government accountability for Indigenous policies, and accordingly that the government must:

- ❑ Make an unqualified national commitment to redressing Indigenous disadvantage;
- ❑ Facilitate the collection of data for decision making, reporting and monitoring progress;

- Set benchmarks – negotiated with Indigenous peoples, state and territory governments and service delivery organizations, with clear timeframes for achieving longer term and short term goals;
- Provide national leadership to facilitate inter-governmental cooperation; and
- Ensure the full participation of Indigenous peoples in the design and delivery of services.

Having noted that the current level of protection of human rights in Australia is inadequate, particularly as it relates to Indigenous people, the report recommends:

- A constitutional Bill of Rights – this is identified as the preferable, longer term objective that would bind all levels of government;
- A prohibition of racial discrimination in the Constitution – this is identified as an immediate priority, which would bind all levels of government and ‘place the commitment of government to (the principle of non-discrimination on the basis of race) at the highest possible level, and guarantee that such commitment could never be put aside for more expedient political purposes’; and
- A legislated Bill of Rights – which would guarantee compliance by the states and territories with human rights obligations, and provide moral authority for successive federal governments to act consistently with human rights obligations. People would have time to become more comfortable with a Bill of Rights before a referendum to constitutionally enshrine it.

To improve Australia’s objective accountability for human rights at an international level the report also recommends that:

- Australia ratify all individual communication mechanisms under United Nations human rights treaties, including under the Convention on the Elimination of All Forms of Discrimination Against Women;
- The government respond more appropriately to the conclusions of treaty committees; and
- The government increase the priority with which it processes periodic reports under human rights treaties.

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The report also calls for the negotiation of agreements or treaties with Indigenous peoples to redress historical injustices in tandem with a framework for protecting rights in the future. The report recommends a two stage process for agreement making:

The first stage is the introduction of framework agreements legislation, which recognizes the need to negotiate with Indigenous peoples about a range of matters and sets out protocols and a negotiation framework within which negotiations will take place. It should provide legislative force to agreements with Indigenous organizations on a local, regional and national level...

It recommends the adoption of the Social Justice Package principles as the basis of negotiations. Having introduced framework legislation, and provided appropriate resources for agreement processes, the second stage would be a commitment to work towards constitutional entrenchment of agreements by:

amending the Commonwealth Constitution along similar lines to the current section 105A to provide the Commonwealth with the power to make agreements with Indigenous peoples. Section 105A of the Constitution provides that the Commonwealth may make agreements with the States with respect to the public debts of the States. It further provides that the federal Parliament has power to legislate any matter contained in the agreement; that such agreements can be varied or rescinded by the parties; and that agreements, and any variations, are to bind all levels of government.

Chapter 5 of the report then examines the importance of providing reparation for the victims of forcible removal policies to reconciliation. The report reviews international human rights principles that suggest that measures aimed at rehabilitation and atonement are appropriate and necessary responses to gross violations of human rights.

The Report then examines the response of the federal government to Bringing them home. It criticises the Government's rejection of a formal national apology, its refusal to consider monetary forms of compensation, and its insistence on legal liability as a prerequisite to compensation.

The report considers recent international experience in responding to violations of human rights and concludes that the refusal to apologise, the failure to develop comprehensive reparations programs and reliance on litigation as an appropriate redress mechanism are contrary to a world-wide trend.

An executive summary, the full report and press release can be downloaded from the Commission's website at http://www.humanrights.gov.au/social_justice/index.html.



Native Title Report 2000

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

The Native Title Report 2000 is the second by Dr Jonas, and was tabled in both houses of the Federal Parliament on 28 March 2001.

The 2000 Native Title Report finds that the Australian law of native title, both the common law and statute, provides insufficient protection to the relationship that the Indigenous peoples of Australia have with their traditional land and sea country. In Australia, non-Indigenous interests will always prevail over Indigenous interests in the same area. While this discriminatory treatment of Indigenous peoples is of concern what is even more worrying are developments in the case law that find that even where minor clashes occur between Indigenous and non-Indigenous rights, native title will be extinguished forever in order to give non-Indigenous interests full enjoyment of their title. Both the common law and the legislation governing native title permit this extreme discrimination to occur.

The Report's criticism of the Native Title Act and its interpretation in the courts is based on international human rights norms contained in various treaties to which Australia is a signatory. Three human rights committees that oversee the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights respectively have, within the reporting period, criticised Australia's failure to provide protection to Indigenous relationships to their traditional lands in accordance with its treaty obligations. Chapter One of the Report analyses the international dialogue that has taken place in relation to native title through the Committee process. The meaning of equality and self-determination that has emerged out of this dialogue is discussed.

In chapter 2, the Native Title Report analyses the way in which the construction of native title as a bundle of rights by the majority of the Court in the *Miriwung Gajerrong* case renders Indigenous rights vulnerable to discriminatory extinguishment. Under this approach the erection of a fence on pastoral leasehold land is considered inconsistent with the exercise of any native title rights and will extinguish native title forever. A more resilient construction is offered in a depiction of native title as a right to traditional land. The deep spiritual relationship between Indigenous people and their land allows native title to survive the grant of many Indigenous interests even though native title rights cannot be exercised for a period of time. In this way Indigenous and non-Indigenous people are able to co-exist on the same land.

Chapter 3 compares the recognition that both the common law and the Native Title Act give to traditional relationships to sea country, with the recognition that is given to traditional relationships to land. The decision of the Full Federal Court in the *Croker Island* case is analysed in the Report as an example of how the legal system imposes severe limitations on the recognition of traditional fishing rights and the spiritual connections that exist between the Indigenous native title groups and the sea. The level of protection provided is inadequate to ensure the survival of Indigenous culture and Indigenous marine economy.

Also discussed, in chapter 4, is the failure of the Native Title Act and the common law to give protection to Aboriginal heritage. While the recognition of native title offered an opportunity to reframe the protection of Indigenous heritage within the broader framework of a human right to enjoy one's culture, governments have squandered this opportunity. The amendments to the Native Title Act take heritage out of the native title framework of rights and relegate it to inadequate targeted legislation that conceives of Aboriginal heritage as a relic of a dying civilisation. The recommendations of the Evatt Report to reform Aboriginal heritage legislation so as to provide better protection to Aboriginal culture have been largely ignored in the proposed amendments to the Aboriginal Heritage Act.

The Report, in chapter 5, expresses deep concern at the reduction of procedural rights under the amended Native Title Act. The few opportunities that native title holders have under the Act to advise governments, mining companies and developers of the nature of their traditional links with the land and the adverse impact that might result from specific developments have been interpreted to have little value in the decision-making process. Neither government nor private decision-makers are compelled to take Indigenous concerns into account. Moreover where Aboriginal peoples' procedural rights are completely ignored actions and decisions that adversely affect native title rights are valid nonetheless. The report concludes that procedural rights under the Native Title Act provide only nominal protection to native title holders.

An executive summary, the full report and press release can be downloaded from the Commission's website at http://www.humanrights.gov.au/social_justice/index.html.

Promoting awareness and discussion of human rights issues

The Social Justice Commissioner is required under section 46C(1)(b) of the *Human Rights and Equal Opportunity Commission Act 1986* to promote discussion and awareness of human rights in relation to Aboriginal persons and Torres Strait Islanders.

Face the Facts

Dr Jonas released an updated, revised version of *Face the facts – Some questions and answers about Immigration, Refugees and Indigenous Affairs* on 21 March 2001.

The publication is available on the Commission's website at: http://www.humanrights.gov.au/racial_discrimination/face_facts/index.html or in hard copy from the Commission.

The publication contains updated material on commonly asked questions about Indigenous affairs and native title. For further information on *Face the Facts* see the report on race discrimination (chapter 7).

Reconciliation

Under section 46C(4)(c) of the *Human Rights and Equal Opportunity Commission Act 1986*, the Social Justice Commissioner must have regard to the objectives of the *Council for Aboriginal Reconciliation Act 1991* in the performance of his functions. The Social Justice Commissioner has sought to promote an awareness of human rights issues facing Aborigines and Torres Strait Islanders by participating in the processes of the Council for Aboriginal Reconciliation.

Dr Jonas has provided regular briefings to the Council's Secretariat on human rights issues, as well as participating in the Council's Document's Reference Committee. This Committee allowed Dr Jonas to attend full council meetings and to make contributions to the debate on the draft documents of reconciliation and ahead of the Council's Final Report to Parliament in December 2000.

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Since the release of the Council for Aboriginal Reconciliation's four national strategies and final report to Parliament, Dr Jonas has examined how the Council's recommendations can be implemented in the course of the performance of the Social Justice Commissioner's functions. In the Social Justice Report 2000, Dr Jonas commits to reporting on the implementation of the Council's recommendations in the Social Justice Report each year.

National Reparations Conference

During the financial year, the Commission entered a partnership with the Aboriginal and Torres Strait Islander Commission and the Public Interest Advocacy Centre to run a national conference on reparations for the stolen generations. The conference, *Moving forward – achieving reparations for the stolen generations* will take place on 15-16 August 2001 at the University of New South Wales. The purpose of the conference is to develop a model for providing reparations for the stolen generations. The conference features a range of national and international speakers including representatives of the stolen generations, government and non-government parties, the churches, Reconciliation Australia, as well as the Aboriginal Healing Foundation (Canada), Law Commission of Canada, Waitangi Tribunal, and a former South African Truth and Reconciliation Commissioner. The secretariat for the conference is located at the Commission, who are also providing managerial and budgetary oversight of the conference. Conference details and outcomes can be viewed online at www.humanrights.gov.au/movingforward.

International Activities

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

In accordance with these functions, Dr Jonas has participated in a range of international dialogues on human rights during the financial year. In particular, Commissioner Jonas:

- Attended the United Nations in Geneva to observe the Human Rights Committee in their consideration of Australia's 3rd and 4th periodic reports under the International Covenant on Civil and Political Rights, and to participate in the Working Group on Indigenous Populations, in July 2000;

- Attended the United Nations in Geneva to observe the Committee on Economic, Social and Cultural Rights in their consideration of Australia's 3rd periodic report under the International Covenant on Economic, Social and Cultural Rights in August 2000; and
- Participated in international preparations for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (for further details of this involvement see the report on race discrimination).

Dr Jonas made submissions to both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on behalf of the Human Rights and Equal Opportunity Commission. These submissions were based on material previously provided to the government. The Commission's submissions to both committees can be downloaded from the Commission's website at http://www.humanrights.gov.au/social_justice/submissions/

Human Rights Committee (July 2000)

Dr Jonas made a written submission to the Human Rights Committee in relation to Australia's 3rd and 4th periodic reports in July 2000. The submission highlighted issues of Indigenous heritage; disadvantage (in health, housing, education, and employment); deaths in custody and over-representation in criminal justice processes; mandatory sentencing laws; native title and the implementation of Bringing them home. Commissioner Jonas also addressed the Committee in an informal briefing on 19 July 2000 in which he discussed concerns about the detention of asylum seekers; mandatory sentencing; Bringing them home and deaths in custody. In concluding his comments, Dr Jonas noted:

In respect of the great majority of our concerns raised with you today Indigenous Australians are at great relative and absolute disadvantage in Australian society. Australia is a very wealthy country and when only two per cent of its population suffer in this way some fundamental issues of equality and rights must be raised.

Second, this situation is not new – it is profound, it is deep and it is enduring. We must also ask, therefore, why things not only remain distressingly bad, but on many measurements actually get worse. And, I am sad to report, until a genuine human rights approach is adopted towards Australia's Indigenous people – until Australia accepts and implements its fundamental Covenant obligations - many of our most basic human rights will continue to be denied.

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The Human Rights Committee provided its concluding observations on 28 July 2000.¹ The Committee welcomed the establishment of the Aboriginal and Torres Strait Islander Social Justice Commissioner position within the Commission and positive developments in the recognition of traditional rights to land in Mabo and the original *Native Title Act 1993*. The Committee expressed the following concerns relating to Indigenous issues.

- The insufficient action taken to assure Indigenous peoples their right to self-determination. The Committee urged that 'The State party should take the necessary steps in order to secure for the Indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources.
- The Native Title Amendments of 1998, which 'in some respects limits the rights of Indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use'. The Committee urged that the 'State party take further steps in order to secure the rights of its Indigenous population under article 27 of the Covenant. The high level of the exclusion and poverty facing Indigenous persons is indicative of the urgent nature of these concerns. In particular, the Committee recommends that the necessary steps should be taken to restore and protect the titles and interests of Indigenous persons in their native lands, including by considering amending anew the Native Title Act, taking into account these concerns.'
- The inadequate protection of Indigenous heritage, and urged that 'in the finalization of the pending Bill intended to replace the *Aboriginal and Torres Strait Islander Heritage Protection Act (1984)*, the State party should give sufficient weight to the above values'.
- The continuing effects of forcible removal policies. The Committee urged that 'the State party intensify these efforts so that the victims themselves and their families will consider that they have been afforded a proper remedy. (articles 2, 17 and 24)'
- The absence of entrenched protections of rights, such as a Bill of Rights; and legislative attempts to limit the effectiveness of rights such as through the *Administrative Decisions (Effect of International Instruments) Bill*;
- The failure to ensure compliance of the states and territories with Australia's human rights obligations. The Committee noted that 'political arrangements between the Commonwealth Government and the governments of states or territories may not condone restrictions on Covenant rights that are not permitted under the Covenant'.

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UN Doc: CCPR/CO/69/AUS.

- Legislation regarding mandatory imprisonment in Western Australia and the Northern Territory, 'which leads in many cases to imposition of punishments that are disproportionate to the seriousness of the crimes committed and would seem to be inconsistent with the strategies adopted by the State party to reduce the over-representation of Indigenous persons in the criminal justice system' and which raises serious issues of compliance with various articles in the Covenant. The Committee urged the government to 'reassess the legislation regarding mandatory imprisonment so as to ensure that all Covenant rights are respected'.

Working Group on Indigenous Populations (July 2000)

Following the Human Rights Committee's consideration of Australia, Dr Jonas remained in Geneva to participate in the 18th session of the Working Group on Indigenous Populations from 24-28 July 2000. Dr Jonas made an intervention in the working group on the theme of Indigenous children and youth, as well as chairing a workshop on Indigenous people and juvenile justice.

Committee on Economic, Social and Cultural Rights (August 2000)

Dr Jonas attended the United Nations in Geneva to observe the Committee on Economic Social and Cultural Rights' consideration of Australia in their consideration of Australia's third periodic report under the International Covenant on Economic Social and Cultural Rights.

Dr Jonas made a submission to the Committee on behalf of the Human Rights and Equal Opportunity Commission highlighting a range of matters concerning Indigenous people. The submission addressed the issues of native title, heritage protection, mandatory sentencing, deaths in custody, Indigenous disadvantage (including health, mortality rates, education, and domestic violence).

The Committee on Economic, Social and Cultural Rights provided concluding observations on 1 September 2000, noting as positive the allocation of 2.3 billion dollars to Indigenous programmes while at the same time expressing deep concern that despite the efforts and achievements, the Indigenous people of Australia continue to be at a comparative disadvantage in the enjoyment of economic, social and cultural rights particularly in the field of employment, housing, health and education. The Committee also noted with regret that the amendments of the 1993 Native Title Act had 'affected the reconciliation process between the State party and the Indigenous populations who view these amendments as regressive'.

World Conference Against Racism

During 2001, in his capacity as acting Race Discrimination Commissioner, Dr Jonas also participated in various preparatory meetings for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance at both the national and international level. Dr Jonas was the opening speaker at the ATSIC Regional meeting of Indigenous Peoples of Australia, New Zealand, Hawaii, Canada and the United States of America in Sydney in February 2001. A full report on these meetings is contained in the report on race discrimination (chapter 7).

Visit of the United Nations Special Rapporteur on Contemporary Forms of Racism and Racial Discrimination

The Special Rapporteur, Professor Maurice Glèlè-Ahanhanzo conducted a country-visit to Australia from 22 April to 10 May 2001 in order to ascertain Australia's record on contemporary forms of racism. Dr Jonas provided briefing materials to the Rapporteur and met with him on two occasions, alongside the Human Rights Commissioner Dr Ozdowski. The Rapporteur also opened the Commission's National Summit on Racism and Civil Society in Canberra on 8 May 2001. The Rapporteur will report to the General Assembly of the United Nations on his visit in approximately March 2002.

Research and educational programs

Under section 46C(1) the Social Justice Commissioner is required to undertake research and educational programs for the purposes of promoting respect for, and enjoyment and exercise of, human rights by Aboriginal persons and Torres Strait Islanders.

National Community Education Program - Tracking your rights

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

Tracking Your Rights was launched in January 1998. The implementation of the program relies heavily on coordination with federal agencies and with the states and territories, and a number of initiatives are currently in place to promote the program.

The Commonwealth Public Service and Merit Protection Commission (PSMPC) conducted several *Tracking Your Rights* training programs during the financial year. The South Australian Equal Opportunity Commission (SAEOC) have continued to promote the program in South Australia, including through the running of pilot programs in Port Augusta and providing course training to the Department of Human Services.

The Anti-Discrimination Commission, Queensland (ADCQ) entered into a partnership arrangement with the Commission for the updating of the Queensland component of the *Tracking Your Rights* manual. The Queensland manual was researched and written by the ADCQ with funding provided by the Commission, ADCQ and the Queensland government. The ADCQ launched the manual in Aboriginal communities across Queensland in September 2000, distributing 500 copies and providing training. The Commission has placed the updated manual on its website to ensure greater accessibility to the material at: http://www.humanrights.gov.au/social_justice/tracking/index.html.

National Indigenous Legal Studies Curriculum

The National Indigenous Legal Studies Curriculum was developed in 1996 to increase the level of human rights and legal education and training available to Aborigines and Torres Strait Islander peoples, particularly those working as Aboriginal Field Officers in legal services. As at 30 June 2000, there are seven registered training organisations licensed to use the curriculum.

The curriculum must be re-accredited by mid-2002. During the financial year, the Australian National Training Authority agreed to contract the Business Services Advisory Board to evaluate the curriculum against training competencies in order to ascertain the scope of the re-accreditation task.

Examining enactments for compliance with human rights principles

Under section 46C(4) of the *Human Rights and Equal Opportunity Commission Act 1986*, the Social Justice Commissioner may examine and report on enactments and proposed enactments to ascertain whether or not they recognise and protect the human rights of Aboriginal persons and Torres Strait Islanders.

The Social Justice Commissioner has sought to fulfill this role through submissions to parliamentary inquiries, as well as by providing briefings on the work of the Commission to various parliamentary committees.

Senate motion regarding mandatory sentencing

On 13 April 2000 the Senate passed a motion requesting that the Commission inquire into all aspects of:

- i. the agreement between the Northern Territory government and the Commonwealth regarding the Territory's mandatory sentencing regime;
- ii. the consistency of mandatory sentencing regimes with Australia's international human rights obligations; and
- iii. Western Australia's mandatory sentencing regime.

The Senate requested that the Commission report on (i) within 4 weeks; and (ii) and (iii) within 12 months.

The Commission responded to part (i) of the Senate's request by letter dated 3 May 2000. The Commission expressed disappointment that under the deal between the Northern Territory and Commonwealth governments, mandatory detention laws are retained. The Commission commended the raising of the age of majority from 17 to 18 years, and encouraged Queensland and Victoria to follow suit. The Commission also supported announcements for greater use of diversionary programs, the funding of an Indigenous interpreter service and attempts to improve coordination in service delivery.

However, the Commission also noted that the success or appropriateness of these initiatives would depend on the detail of the agreement. The Commission encouraged the two governments to ensure that the diversionary programs introduced complied with international standards as well as recommendations previously made by the Commission in the *Bringing them home* and *Seen and Heard* reports.

In relation to parts (ii) and (iii) of the motion, the Commission indicated that the Social Justice Commissioner intends to undertake the following project over the next twelve months:

- assess the continued impact of mandatory sentencing laws in the Northern Territory and Western Australia on Indigenous Australians;
- assess the impact on Indigenous Australians of the additional discretion placed in the Northern Territory Police; and

- develop a methodology against which to assess the appropriateness and success of diversionary schemes in the Northern Territory and Western Australia, and assess these schemes on this basis.

Dr Jonas commenced examining these issues during the financial year and will report the outcomes of his research in the Social Justice Report 2001.

Senate Legal and Constitutional References Committee - Inquiry into the stolen generation

The Commission made a submission to this inquiry on 8 June 2000 and appeared before the Committee on 12 July 2000. The submission considered the adequacy and effectiveness of the federal government's response to the recommendations of *Bringing them home*.

The submission identifies three principles for evaluating the adequacy of the government's response:

- national coordination and leadership;
- addressing forcible removal issues within a human rights framework; and
- ensuring the 'effective participation' of Indigenous people in decisions that affect them.

The submission concludes that:

The Commission is of the view that the Commonwealth government's response to date has been inadequate and inappropriate. The Commission particularly notes that the government's submission to this inquiry constitutes a fresh response to many of the recommendations of *Bringing them home*, which rejects several recommendations of report on the basis of flawed arguments and poor reasoning.

The Commission is of the view that the government has not provided any sound arguments for failing to implement the recommendations of the report. The Commission reiterates that the recommendations constitute the minimum acceptable policy response to the separation of Aboriginal and Torres Strait Islander children from their families.

Human Rights and Equal Opportunity Commission

The first section of the submission provides comment on the government's response to particular recommendations of the *Bringing them home report*. The second section examines the government's submission to the Senate inquiry and rejects the reasoning of the government in relation to issues of compensation, reparation and the violation of human rights. It also corrects misrepresentations by the government of the methodology of the *Bringing them home report*. The final section provides international examples of governmental responses to gross violations of human rights, which demonstrate that the Australian government is out of step with international practice in responding to violations of human rights.

The submission is available in full on the Commission's website. An updated version of the submission was also included as Chapter 5 of the Social Justice Report 2000.

Intervention in court proceedings

Section 11(1)(o) of the Human Rights and Equal Opportunity Act provides that the Commission may seek leave to intervene in court proceedings (see page 92 of Legal Section Report for discussion on Intervention).

On 6 March 2001 the Aboriginal and Torres Strait Islander Social Justice Commissioner was granted leave by the High Court to intervene in the case of *Western Australia v Ward*. The decision to intervene had several bases including the significance of the case in the development of the common law's approach to the nature of native title; the power of the Crown to extinguish native title; the meaning of the statutory definition of native title in the context of the *Native Title Act 1993* and the extent to which the courts should take account of international human rights law in developing new jurisprudence. It was considered that a human rights approach to the issues raised in the case could assist in the survival of Indigenous laws and customs in Australia.

At the hearing the Commission argued that native title should not be construed as a bundle of rights that could be severally or jointly extinguished by the creation of any inconsistent interest. Rather it should be construed as a resilient relationship between Indigenous people and their land. This relationship was capable of surviving even if particular rights could not be exercised due to their inconsistency with non-Indigenous interests in the same land.

The High Court has reserved its decision in the case.

Speeches

Attached is a selection of speeches, seminars and presentations made by Dr Jonas in the reporting period. Selected papers are available on the Commission's website at: <http://www.humanrights.gov.au/speeches/>.

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| 4 July 00 | Launch, The Aboriginal Hunter Gateway Website at the Yamuloong Group Initiatives Pty Ltd, Newcastle. |
| 19 - 21 July 00 | Workshop on Indigenous Children and Youth, United Nations Working Group on Indigenous Populations, Theme Two - Juvenile Justice, Palais des Nations, Geneva. |
| 13 October 00 | The University of Newcastle - Laws, Societies and Cultures Research Group Conference: 'Treaties and Constitutions Representing Indigenous Peoples in the Pacific' on 'Unfinished Business - The Recognition of Aboriginal and Torres Strait Islander Rights', Newcastle. |
| 19 October 00 | HREOC Youth Challenge, Darwin. |
| 25 October 00 | Centre for Aboriginal Programs - Lunch Meeting, University of Western Australia. |
| 25 October 00 | Sir Wallace Kyle Oration 'Reconciliation: Whose Rights, Whose Responsibilities?' University of Western Australia. |
| 29 October 00 | Community Aid Abroad and Oxfam Australia launch of the Oxfam International Investigative Mission into the Rights of Indigenous Australians, Sydney. |
| 30 October 00 | Indigenous Studies Unit, Koori Centre, University of Sydney on Indigenous Australians and Human Rights, Sydney. |
| 1 November 00 | The Yarramundi Lecture, University of Western Sydney on 'Reconciliation and the Recognition of Aboriginal and Torres Strait Islander Rights', Richmond. |
| 4 November 00 | Public hearing on a proposal for a Hunter People's Inquiry into a Treaty between Indigenous and non-Indigenous Australians, Newcastle. |
| 8 November 00 | Centre for Aboriginal Economic Policy Research (CAEPR) Conference "The Indigenous Welfare Economy and the CDEP Scheme: Autonomy, Dependence, Self-Determination and Mutual Obligation on Welfare Reform and Social Justice", Canberra. |

Human Rights and Equal Opportunity Commission

- 21-23 November 00 Indonesian National Commission on Human Rights KOMNAS HAM on "Transitional Justice and Racial and Religious Discrimination", Surabaya, Indonesia.
- 27 November 00 HREOC and Australian Human Rights Centre (UNSW) "Prisoners as Citizens" Workshop entitled "Citizens Inside", Sydney.
- 30 November 00 HREOC, Anti-Discrimination Boards and Equal Opportunity Commissions Legal Officers Seminar, Sydney.
- 11 December 00 University of Technology Sydney, Equity, Social Justice and Human Rights Awards, Sydney.
- 17 February 01 Sydney Leadership Program Day on Aboriginal Issues, Sydney.
- 20 February 01 Dr Jonas addressed the opening session at the Conference of Indigenous Peoples and Racism, A Regional Meeting for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Sydney.
- 21 February 01 Panel discussion and workshop session at the Conference of Indigenous People of Australia, New Zealand, Canada and the United States - Indigenous Peoples and Racism, Sydney on the theme of prevention of racism.
- 30 March 01 Launch, Exhibition of weavings by the women of Central Australia (Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council) titled Manguri Weaving at Araluen Cultural Centre, Alice Springs.
- 19 June 01 Dr Jonas addressed the Sydney office of the Native Title Tribunal on the Social Justice and Native Title Reports, Sydney.



Dr Sev Ozdowski OAM
Acting Disability Discrimination
Commissioner and Human Rights
Commissioner.

Disability Rights

Acting Disability Discrimination Commissioner and Human Rights Commissioner, Dr Sev Ozdowski OAM

In his work to date Dr Ozdowski has given emphasis to:

- Increased communications through face to face consultation with disability communities and industry bodies and enhanced print material to complement the Commission's well established email and web based communications in the disability area
- Increasing public awareness of the achievements being made (and the further achievements which are possible) by the community, industry, government and the Commission using the Disability Discrimination Act to improve access, opportunity and participation for Australians with disabilities
- Seeking more effective means for increasing equality of opportunity for people with disabilities in employment and education - to complement the substantial progress being made in accessibility in areas such as buildings, public transport, and communications issues such as captioning and web accessibility
- Giving additional attention to Indigenous people with disabilities, in particular children, and to disability issues and related discrimination affecting older Australians.

Deputy Disability Discrimination Commissioner

Mr Graeme Innes AM continued to serve on a part time basis throughout 2000-01 as Deputy Disability Discrimination Commissioner. In this role he assists with the handling of public enquiries, exemption applications and the development of standards under the Disability Discrimination Act.

Education and Promotion/Compliance

Dr Ozdowski and staff have increased the Commission's program of consultation with disability organisations and relevant industry bodies to ensure that these organisations are aware of possibilities for constructive use of the legislation and to discuss suggestions for further Commission projects.

Internet usage continues to help increase efficiency and effectiveness of the Commission's disability rights work. Public use of the disability rights area of the Commission's web site continues to increase rapidly with over 1000 page hits per day being received on the Commission's disability rights web pages.

Research and policy

Access to electronic commerce

Following its report in June 2000 on *access to electronic commerce and other new service and information technology by people with disabilities and older Australians*, the Commission has been assisting government and industry bodies to develop initiatives in this area, including through an Accessible E-commerce Forum sponsored by the Commission and the Australian Bankers Association. A major response to the report was the presentation to the Commission of an industry action plan by the Australian Bankers Association in April 2001. This plan provides for development of industry accessibility standards on automatic teller machines, EFTPOS and voice response services and for implementation of best practice accessibility in internet banking.

The Commission's report recommended that governments should be more active in providing superseded computer equipment for use by people with disabilities and older people. At a ceremony hosted by Dr Ozdowski in May 2001 the Attorney-General provided a lead by donating 50 computers to disability and representatives of older persons' organisations.

Public transport: Accessible taxis

A public inquiry on aspects of wheelchair accessible taxi services was approved by the Commission on 2 May with a closing date for submissions of 3 July 2001.

Sterilisation

A report to the Commission on developments since the release of the 1997 report on *The Sterilisation of Girls and Young Women in Australia* was made publicly available in April 2001. The report was commissioned as a joint project between the Disability Discrimination Commissioner and Sex Discrimination Commissioner. A number of follow up actions are being discussed with relevant parties including the Attorney-General and the Minister for Health.

Public inquiries into complaints

In 1999 the then acting Disability Discrimination Commissioner began applying public inquiry processes to the investigation of complaints in appropriate cases, including use of the internet for distribution of notices of inquiry and receiving and publishing submissions. This approach has been applied where the subject matter :

- requires consideration of interests of, and information from, persons or organisations beyond the immediate parties to a complaint for the purpose of identifying appropriate options for resolution of the matter by the parties or decisions by the Commission;
- involves inquiry into issues of public or social policy rather than principally concerning allegations regarding individual behaviour; and
- can be investigated openly without unreasonable disclosure of personal information or breach of other duties of confidentiality.

Application of this approach in appropriate cases also has potential benefits in promotion of awareness of and compliance with the legislation.

The President decided on assuming responsibility for complaint handling in April 2000 to continue this approach on a trial basis. Results in the limited number of matters where this approach has been applied to date have been encouraging.

Captioned movies

The captioned movies initiative arising from a public complaint undertaken by the Commission into complaints in this area was launched at a reception on 9 April 2001 by Dr Ozdowski with industry and community representatives. Positive press and television publicity was received.

The Attorney-General sent a message of support in which he said: "This agreement to show captioned movies followed a complaint under the Disability Discrimination Act lodged by a man who was deaf and who could not enjoy movies with his family. The Commission, recognising that the complaint raised broad policy issues, dealt with the complaint as a public inquiry, allowing input from other areas of the movie industry and the disability field. I applaud this innovative use of the legislation to achieve positive partnerships working towards systemic change." A committee has been established which will be responsible for overseeing the implementation of the proposal developed by industry and an initial program for showing open captioned films in a number of cinemas throughout Australia is already available. Commission staff will continue to provide advice to the committee and a review of developments will be undertaken in April 2002.

Closed captioning: broadcast television

In 1999 the then acting Disability Discrimination Commissioner commenced a public inquiry into complaints regarding limited provision of captioning for deaf and hearing impaired viewers on broadcast television. Submissions in this process were made publicly available through the internet for the information of interested parties and to assist the Department of Information Technology, Communications and the Arts in preparation of captioning standards under the Broadcasting Services Act, which commenced from 1 January 2001 and require captioning of news, current affairs and prime time broadcasting. The Commission is continuing discussions with industry and consumer representatives with a view to setting an agreed timetable for further expansion of captioning.

Telecommunications

Interference from digital mobile phones can be so severe that some people who use hearing aids are unable to use them and can therefore be denied access to mobile phone services. In September 1999 the Commission, in consultation with relevant parties, announced a public inquiry into the issue, prompted by a representative complaint made under the Disability Discrimination Act on behalf of people who use hearing aids or cochlear implants.

This inquiry was successfully concluded on 6 April 2001 with the announcement by each of Telstra, Optus and Vodafone of schemes to provide remedies.

Guidelines

Guidelines and advisory notes are available on a number of issues under the Disability Discrimination Act through the Commission's internet site and on request. The Commission has indicated it will take these guidelines and notes into account in complaint handling and in decisions on exemption applications.

They are

- Advisory Note on public transport;
- Insurance and Superannuation Guidelines;
- Advisory Notes on Access to Premises; and
- World Wide Web Access (updated May 1999 to take into account the latest recommendation from the World Wide Web Consortium).

The Commission also maintains Frequently Asked Questions materials on a number of areas covered by the Disability Discrimination Act. These materials draw on responses to individual enquiries as well as the Commission's complaint handling experience, participation in policy processes and relevant court and tribunal decisions. In particular, extensive Frequently Asked Questions materials are available regarding employment.

Exemptions

Under section 55 of the Disability Discrimination Act the Commission has power to grant temporary exemption from provisions of the Act which make discrimination unlawful. The Commission's policy on exemption applications is obtainable on the Commission's Internet site or on request.

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

Applications decided

No new applications for exemption were received in the period 1 July 2000 to 30 June 2001. The following decisions were made on applications previously received:

Regional Airlines Association

The Regional Airlines Association of Australia (RAAA) applied in 1999 for an exemption for five years regarding access to small aircraft by persons using wheelchairs and similar mobility aids. After taking submissions in response to a notice of inquiry, the Commission decided in August 2000 to refuse this application on the basis that the application and the process of public discussion had not identified appropriate conditions such that an exemption would advance the objects of the legislation.

Kendell Airlines

One of the members of the RAAA, Kendell Airlines, submitted its own application in April 2000 for an exemption regarding access to small aircraft by persons using wheelchairs and similar mobility aids. This application was supported by material additional to that in the RAAA application, including an action plan. An exemption was granted in August 2000 for a period of five years regarding

- lack of access to aircraft seats for people requiring wheelchair access, where this is prevented by limited aisle width
- lack of access to aircraft or seats for passengers requiring lifting, where this cannot be performed consistently with the requirements of applicable occupational health and safety laws due to space constraints of the particular aircraft.
- requirements for a passenger to be accompanied by an assistant for passengers unable to understand instructions or to exit unassisted in an emergency.

This exemption (available on the Commission's web site or in other forms by request) is subject to a number of conditions agreed to by Kendell in response to issues raised in public submissions and intended to promote improved access over time for people with disabilities using regional air services.

Applications awaiting decision

Cattle Camp Motel

An application regarding accessibility of proposed demountable units at a rural Queensland motel, affected by flood height requirements remains on hold pending a response by the applicant to a number of issues raised in submissions.

Review of decisions

Persons whose interests are affected by a decision on an exemption application may seek to have the Commission's decision reviewed by the Administrative Appeals Tribunal.

Melbourne trams exemption

An application for review of the Commission's decision made in March 1999 regarding physical access to Melbourne trams was made by a number of parties but was withdrawn in April 2001. In this context it is relevant to note that, consistent with the timetable set in the Commission's exemption decision, accessible trams are expected to begin to enter service in Melbourne in September 2001 and that considerable preparatory work on infrastructure has been performed.

Olympic Roads and Transport Authority

In June 2000 the Commission granted an exemption, on application from the Olympic Roads and Transport Authority (ORTA), to protect bus operators and other parties concerned from liability which might otherwise arise from the temporary transfer of accessible buses from other services to Olympic and Paralympic related services. The exemption was granted because in the Commission's view the objects of the DDA are best served if operators who acquire accessible buses are free to determine on which services to deploy those buses, rather than this being determined by the Commission or other discrimination authorities.

After an application to the Administrative Appeals Tribunal for review of this decision the exemption was varied by consent of the parties to include conditions to protect existing regular users of accessible vehicles. Nothing in this process has invalidated the Commission's original reasons for the decision.

Action Plans under the Disability Discrimination Act

As at 30 June 2001, 211 plans were registered with the Commission (increased from 170 as at June 2000), comprising 24 business enterprises, 20 non-government organisations, 30 Commonwealth government, 28 State government and 76 local government organisations, and 33 education providers. The register of Action Plans, and those plans provided electronically to the Commission (150 of the total), are available through the Commission's internet site. This assists other organisations interested in developing their own plans and individuals interested in assessing the effectiveness and implementation of an organisation's Action Plan.

Human Rights and Equal Opportunity Commission

In January 2001 Dr Ozdowski wrote to organisations which had submitted action plans, asking them to report if possible on implementation and evaluation of their plans. Revised plans or implementation reports have been submitted steadily in response through 2001.

Legislative reform and assessment

Disability Standards

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

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

The Commission has a function under the Disability Discrimination Act to advise the Attorney-General regarding the making of standards. To date the Commission has performed this function by practical participation in standards development processes rather than by way of formal reporting.

Access to Premises

Like other interested parties the Commission recognises that the main avenue for progress in improving accessibility of buildings is the process of revision of the Building Code of Australia by the Australian Building Codes Board towards a level suitable for recognition as complying with the Disability Discrimination Act, including through endorsement as a Disability Standard under the Act. The Commission continues to assist the Board to this end through its membership of the Board's Building Access Policy Committee. Progress in this process has improved during 2000-01 and it is anticipated that a draft standard, harmonising the requirements of the DDA and an upgraded Building Code, may be ready for adoption by June 2002.

Education

A taskforce of the Ministerial Council on Employment, Education, Training and Youth Affairs is consulting on draft standards on education. The Commission is not included in the membership of this taskforce but is providing advice to participants on request.

Employment

Previous annual reports have detailed extensive co-operative work by the Commission, business, industry and community groups towards the development of employment standards but have also noted a lack of consensus for proceeding with regulatory standards. Dr Ozdowski has commenced discussions with relevant parties towards identifying means of making better use of the work already done in this area.

Public transport

The Commission has been assisting the Attorney-General's Department and the Department of Transport towards finalising revised draft standards on accessible public transport for adoption, which is hoped to occur in the Spring 2001 session of Parliament, following Cabinet approval in October 2000.

Human Rights



Dr Sev Ozdowski OAM
Human Rights Commissioner.
Acting Disability Discrimination
Commissioner

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

Dr Ozdowski has made public education on human rights a priority for his term. Other priority areas are the elderly in our ageing society and children. Dr Ozdowski is working to progress the Commission's 2000 recommendations for alleviating age discrimination, as set out in the report *Age matters: a report on age discrimination*.

Chris Sidoti's term as Human Rights Commissioner ended on 13 August 2000

Education and promotion

National Human Rights Dialogue

Research on public attitudes to human rights suggests that, on one hand, Australians are committed to human rights ideals. They are comfortable with the general notion of rights and freedoms and share a core national value of basic justice and fairness expressed in the "fair go" ideal.

On the other hand, a number of trends appear to be emerging that indicate a marked shift in perceptions of human rights achievements during the course of the 1990s. In a survey undertaken by ANU's Social Science Data Archive in 1991 almost two-thirds (64%) of respondents said that Australia is yet to achieve equal rights for all. By decade's end almost as many (60%) felt that, at least for migrants and women, equal opportunity had been achieved.

There is also a disturbing lack of knowledge about key human rights laws and procedures. Contrary to the fact that international human rights treaties need to be ratified and incorporated into domestic legislation by the Australian Parliament before they can operate as domestic law, many people believe that human rights are imposed upon Australia – in violation of Australian sovereignty – by the United Nations, which in turn is portrayed as an unaccountable world government. There is a continuing perception that human rights serve only special interest groups at the expense of the majority and in violation of the cherished ideal of equality. Many Australians remain unsure about the extent to which their own rights are protected.

To address these issues, Dr Ozdowski has established the National Human Rights Dialogue which aims to provide leadership, information and opportunities for debate, especially about topical human rights issues and about how to strengthen the machinery for the protection of human rights in Australia. The Commissioner believes that winning the hearts and minds of all Australians is necessary for further advancement of human rights protection in Australia.

Dr Ozdowski's National Human Rights Dialogue has three principal objectives:

1. To increase public awareness of human rights and fundamental freedoms and the role of the Human Rights and Equal Opportunity Commission.
2. To stimulate public debate about human rights issues in Australia including the effectiveness of existing Australian human rights protections and the need for a bill of rights.
3. To build a network of interested people and organisations promoting human rights in Australia.

An honorary advisory group has been appointed constituted by:

- Mr Gerald Frape, Director, Dialogue Media Pty Ltd
- Professor Andrew Jakubowicz, Professor of Sociology, University of Technology Sydney
- Ms Josie Lacey, Federation of Ethnic Communities Councils of Australia
- Mr Peter Murphy, NOW We the People
- Mr Peter O'Brien, Australians for Native Title and Reconciliation
- Mr Chris Sidoti, Visiting Professor, University of Western Sydney

The advice of this group, supplemented by information and analysis provided by Mr Mark Nolan from the ANU, has been invaluable.

Human Rights and Equal Opportunity Commission

To date Dr Ozdowski has addressed a number of meetings, met with many federal, State and Territory MPs and peak non-government organisation leaders and participated in consultation meetings in Alice Springs, Broome, Perth, Tuggerah Lakes and elsewhere. The National Human Rights Dialogue website is regularly updated:http://www.humanrights.gov.au/human_rights/human_rights_dialogue/index.html

Immigration detention centres

The Human Rights Commissioner continues to monitor conditions at immigration detention centres and the treatment of detainees. In the past year the following centres have been inspected:

- Maribyrnong Immigration Detention Centre, Melbourne, 18 July 2000 and 22 March 2001.
- Villawood Immigration Detention Centre, Sydney, 23 August 2000.
- Perth Immigration Detention Centre, 4 September 2000 and 29 June 2001.
- Woomera Immigration Reception and Processing Centre, SA, 28 February 2001.
- Curtin Immigration Reception and Processing Centre, near Derby in WA, 29 July 2000 and 25 and 26 June 2001.
- Port Hedland Immigration Reception and Processing Centre, WA, 28 June 2001.

Following each inspection the conditions and treatment are evaluated by reference to the Commission's *Immigration Detention Guidelines* (March 2000) which collate international minimum standards on detention. Comments and suggestions are communicated to the immigration detention authorities.

A report on Commissioner Sidoti's visit to the Curtin Immigration Reception and Processing Centre on 29 July 2000 has been published on the Commission's website. Dr Ozdowski will report on his 2001 inspections next year.

Prisoners as Citizens

A project entitled 'Prisoners as Citizens' aims to raise public awareness of and discussion about prisoners' human rights. It has two components. The first was a workshop convened in Sydney on 27 November 2000 with more than 120 participants. The workshop was addressed by two keynote speakers: Dr William Jonas AM, the Aboriginal and Torres Strait Islander Social Justice Commissioner, and Baroness Vivien Stern from the International Centre for Prison Studies at King's College London who travelled to Australia as a guest of the Commission.

A panel on existing avenues for redressing prisoners' grievances and their limitations followed with presentations from Ms Karen Fletcher, Queensland Prisoners' Legal Service, Mr Lindsay Le Compte, NSW Inspector-General of Corrective Services, Mr Greg Andrews, NSW Assistant Ombudsman, Ms Maggie Smythe, NSW Anti-Discrimination Board, and Mr John Pace, Australian Human Rights Centre. The Hon. Elizabeth Evatt, then a member of the UN Human Rights Committee, provided a paper dealing with the International Covenant on Civil and Political Rights but was regrettably unable to attend the workshop due to her international commitments.

Participants then moved into one of five working groups dealing with:

- Strategies to encourage the formal adoption of the Standard Guidelines for Corrections in Australia.
- Strategies for ensuring minority prisoners can enjoy their entitlements
- Building prisoners' knowledge and capacities to assert their rights.
- The implementation of the Standard Minimum Rules for the Treatment of Prisoners with respect to the responsibilities, qualifications and training of prison personnel.
- Benchmarking prison services including health care.

The second component of the project involves the publication of a book of contributions on prisoners' rights. More than 50 submissions were received from serving prisoners, who were invited to write by means of a pamphlet sent to all jurisdictions for distribution in every prison. The Commission records its appreciation to each Australian correctional authority for assisting us in making the project known to prisoners. The book is due for publication late in 2001.

Children's participation - Action Exchange

The *Convention on the Rights of the Child* provides that every child is capable of forming his or her own views and has the right to express them freely in all matters affecting the child. *Action Exchange* aims to promote children's participation through an interactive webpage on the 'Lawstuff' website of the National Children's and Youth Law Centre. It features models of child and youth participation in collective actions in children's interests. Among them are seven entries to a national competition promoting the site: www.lawstuff.org.au. The Commission records its appreciation to the National Children's and Youth Law Centre for its creative participation in this project and for hosting the Action Exchange site. We are also grateful to the 13 projects which entered the competition and congratulate them all on their efforts. The winners were:

Human Rights and Equal Opportunity Commission

- Youth Radio Show, 4ZzZ (Brisbane)
- 'Turn it Up' youth radio at South Sydney Youth Services
- City of Swan Youth Advisory Council (Perth)
- VicSTARs (a reconciliation group in Victoria)
- Reach Out! Youth Advisory Board (on-line)
- Port Augusta Anti-Bullying Council (SA)
- Princes Hill Secondary College Student Action Team (Victoria).

Three regional water authorities have combined in a partnership with Mallee Family Care to establish a fund 'to ensure that the absence of money does not stand in the way of a youngster's ability to achieve their maximum potential'. Although only launched in mid-June 2001, Chances for Children has already granted assistance to a number of young people from the region who commenced tertiary studies during the year.

Rural health initiatives

During the Commission's 1998-99 *Bush Talks* consultations, inadequate, inaccessible and diminishing health services emerged as the principal human rights concern. In response the Commission decided to promote local health initiatives addressing local health service gaps. The Healthy Rural Communities website highlights innovative community health projects in remote and rural areas of Australia: http://www.humanrights.gov.au/human_rights/rural_health/index.html.

Featured on the site are:

- Community Health Adolescent Murraylands Peer Support (CHAMPS) (South Australia)
- Coming Home - a workshop on Rural Careers in Health for Year 10 students (NSW)
- Desert Acrobats (Western Australia)
- Nyirrpi Grandmothers' Women's Health Program (Northern Territory)
- Sage Hill Carers' Service (Victoria)
- Yeoval Multi-Purpose Health Centre (NSW).

The website also describes the human right to health and provides links to government and other health funding sources.

Balancing freedom of religion and freedom from religious discrimination

During the year the Commission engaged in extensive national consultations on employers' responsibility to avoid discrimination on the ground of religion in relation to employment and the rights of religious institutions to select certain staff on the basis of their religious affiliations, at least in part. The resulting information paper entitled *The Human Rights and Equal Opportunity Commission Act 1986 (Cth): its application to religious freedom and the right to non-discrimination in employment* has been published at http://www.humanrights.gov.au/human_rights/religion/index.html

Research and policy

National Inquiry into Rural and Remote Education

The *National Inquiry into Rural and Remote Education* conducted by Commissioner Sidoti concluded during the year with the production and distribution of three publications. This followed the tabling of its report, *Recommendations*, on 28 June 2000. The report made 73 recommendations for action by the Commonwealth, State and Territory education providers, non-government education providers and others. The government has yet to respond to the recommendations.

In July 2000 the Commission published *School Communities* detailing models for community participation in schools. *Education Access*, which sets out case studies of children with restricted or no access to a school or adequate curriculum, was launched in August. A short CD, *Student Voices*, was produced for schools which had participated in the inquiry. It features the views and experiences of some of the students who gave evidence to the inquiry.

These publications have been widely distributed to inquiry witnesses, schools in rural and remote areas, public libraries in country areas and State and federal MPs in rural electorates. They are now out of print but can be downloaded from the Commission's website: http://www.humanrights.gov.au/human_rights/rural_education/index.html .

UN General Assembly Special Session on Children

The UN General Assembly will convene a special session in New York in September 2001 to review progress in the decade since the 1990 World Summit for Children and to determine new goals and initiatives.

Dr Ozdowski participated in the third preparatory conference held in June 2001

Human Rights and Equal Opportunity Commission

and intends to attend the Special Session. In preparation for his participation he will consult with Australian children's and youth organisations with the assistance of Children's Commissioners at the State level, where they exist, and others.

Information about the Special Session and the Commissioner's activities can be found on the Commission's website at http://www.humanrights.gov.au/human_rights/child_special_session/index.html

Legislative reform and assessment

Age discrimination inquiry

The report of the Commission's inquiry into age discrimination, *Age Matters*, was tabled in the Parliament on 28 June 2000 and officially launched at a function hosted by the Council on the Ageing Australia in Melbourne on 18 July 2000. The report makes recommendations for Commonwealth compliance with the Discrimination (Employment and Occupation) Convention (ILO 111) and also with the non-discrimination and equality before the law provisions of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CROC). Among a range of proposals is the recommendation that protection against age discrimination needs to be strengthened with legislation at the federal level.

Norfolk Island electoral reforms

In March 2001 Dr Ozdowski made a submission to the Joint Standing Committee on the National Capital and External Territories inquiry into Norfolk Island Electoral Matters. The submission outlined the human rights issues relevant to reform of the franchise under the *International Covenant on Civil and Political Rights*. The Committee has yet to report on its inquiry.

Serious and organised crime investigation

In May 2001 Dr Ozdowski made a submission to the Senate Legal and Constitutional Legislation Committee inquiry into the *Measures to Combat Serious and Organised Crime Bill 2001*. Dr Ozdowski drew particular attention into the inadequate measures proposed to ensure that people with hearing impairments or intellectual disabilities understand the caution informing them of the right to remain silent during police questioning. The Inquiry's June 2001 report includes the recommendation that "the Government, in reconsidering the drafting of the proposed amendments, take account of the submission of the Human Rights and Disability Discrimination Commissioner, particularly as it relates to the manner of giving the caution" (page 43).

Speeches

Attached is a selection of speeches, seminars and presentations made by the Human Rights Commissioners in the reporting period. Selected papers are available on the Commission's website at: <http://www.humanrights.gov.au/speeches/>

Commissioner Chris Sidoti – 1 July-13 August 2000

- 3 July 00 "Education: rural children's right" – AADES/SPERA International Conference, Cairns.
- 16 July 00 "Expectations of rural and remote students" - National Council of Independent Schools' Associations 2000 National Conference, Barossa Valley.
- 27 July 00 "School communities: working together to secure our children's future" – Notre Dame University, Broome.
- 3 August 00 "Access to education: a human right for every child" - 29th Annual Federal Isolated Children's Parents' Association Conference, Griffith.

Dr Sev Ozdowski – 8 December 2000 - 30 June 2001

- 29 March 01 "Human Rights and Multiculturalism" - Multiculturalism in a New Millennium Policy Forum, Brisbane.
- 19 June 01 "Human Rights in Contemporary Australia" - Centre for Intercultural Studies and Multicultural Education, University of Adelaide.
- 20 June 01 "What are human rights?" – Rotary Club of Adelaide.
- 23 June 01 "The Human Rights Commission and its role in supporting the principles of the UN system" - 2001 National Conference of the United Nations Association of Australia (UNAA), Canberra.

Race Discrimination



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

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

Education and Promotion

World Conference Against Racism

The United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) will be held in Durban, South Africa from 31 August to 7 September 2001.

The WCAR has been the focus for the major activities of the Race Discrimination Unit over the last year. Acting Race Discrimination Commissioner Dr Jonas determined that the WCAR provided a unique opportunity for the Commission to engage in direct dialogue with Australian civil society. The aim is to undertake a robust and honest assessment of, and identify action oriented strategies to address, racism in Australia today.

In developing the plan for the Human Rights and Equal Opportunity Commission's involvement and input to the WCAR Dr Jonas noted:

"we are firmly of the view that international activities such as the World Conference, and indeed the entire human rights system, can only be meaningful if they are related to the day to day experiences of people, wherever and whoever they may be."

In recognition of Dr Jonas's commitment the Commission has undertaken a multifaceted approach to its preparations for the World Conference Against Racism and this has included both regionally and internationally based initiatives.

Dr Jonas will compile a final report based on the findings and outcomes of the preparatory activities. This report will be presented to the Commonwealth Government and to delegates at the WCAR and other relevant forums. The WCAR and the final report will then inform the Racial Discrimination Unit activities over the next year with the aim of implementing concrete strategies to combat racism in Australia. The first of these will be a National Conference on Racism in Australia in early 2002. The conference will provide a forum for reporting back on the outcomes of the WCAR and the civil society consultations with the aim of working towards a national plan of action against racism.

Civil Society Consultations

National Youth Forum on Racism

The first national activity organised by the Human Rights & Equal Opportunity Commission in the lead up to the World Conference Against Racism was a National Youth and Racism Forum held in Canberra on 7 May. Creating a specific space for young people to exchange views was considered crucial to the consultation process. Too often young people are given only a marginal space, yet it is they who hold the key to a future world free of racism and intolerance.

The aim of bringing together a group of young people from all states, representing a number of different organizations, was to stimulate discussion on racism and provide a forum in which participants could share common experiences of racism and related intolerance. Representatives from a broad range of communities attended the forum, as well as representatives from State peak youth organisations, the United Nations Youth Organisation, Community Aid Abroad and ATSIIC.

The forum was a success producing a valuable discussion paper, outlining a number of issues relating to racism and youth. It also put young people in contact with each other and as a result a number of Youth Forums have been organised by the participants in their respective states.

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National Summit on Racism

In preparation for the World Conference Against Racism, the Human Rights and Equal Opportunity Commission, with funding assistance from the High Commissioner for Human Rights, organised *Racism and civil society: A national summit on racism*, on 8 and 9 May 2001. The Summit brought together a broad range of civil society, including Indigenous community and peak NGO leaders, academics, legal practitioners, human rights activists and representatives from business, religion, arts, sports and media. Several delegates from the previous day's Youth Forum remained to participate in the summit. Over two days the summit, through animated, enthusiastic and at times challenging working groups, developed a number of strategies and recommendations for the Commission to take to the WCAR.

Professor Maurice Glèlè-Ahanhanzo, the UN Special Rapporteur on Contemporary forms of racism, officially opened the Summit. Professor Glèlè-Ahanhanzo addressed the themes of the WCAR which focussed on identifying action oriented strategies. President Tay chaired and introduced the opening session of the Summit and Dr Jonas made a detailed presentation setting the scene for the WCAR and the role of the Commission's dialogue with civil society. The Summit was also addressed by a range of speakers who covered areas as diverse as racism in sport, the media, employment and the education system. Leading academics presented papers which highlighted that the commonly held view that rural Australia holds more racist attitudes than the city is not true. They also canvassed the new forms and languages of contemporary racism.

Regional consultations covering every State and Territory of Australia

Once again these consultations were in part made possible through the financial assistance provided by the UN High Commissioner for Human Rights. Throughout June and July 2001, the Commission conducted 15 consultations with civil society across all States and territories, in the following locations:

City	State
Perth, Broome and Kalgoorlie	Western Australia
Darwin and Alice Springs	Northern Territory
Melbourne and Sale	Victoria
Adelaide	South Australia
Hobart	Tasmania
Cairns and Brisbane	Queensland
Parramatta, Orange and Newcastle	New South Wales
Canberra	Australian Capital Territory

The Commission directly invited community organisations and individuals across the country to attend the forums. In a number of the centres advertisements were placed in the local newspapers and radio interviews were conducted prior to the consultations to encourage the general public to attend. The Commission received support from State government agencies and local community organisations in the preparation and promotion of the consultations. The average attendance at the consultation workshops was 40 people. With the largest consultation taking place in Melbourne where over 100 people attended. The attendees at the consultations represented a cross section of society, including Indigenous peoples, representatives of culturally and linguistically diverse background communities as well as individual members of the wider community and representatives from local, State and Commonwealth government agencies.

The consultations were conducted over a full day. The participants covered the five major themes of the WCAR and through two workshop sessions one entitled Sources, causes and victims of racism and the other entitled Prevention and remedies to combat racism. Then each consultation had a plenary session to develop recommendations and strategies.

The outcomes of each consultation and the Commission's national report on the consultations are available at the Commission's web site:

<http://www.humanrights.gov.au/worldconference>

Focus groups with specific women's communities

Culturally and Linguistically Diverse Women's Focus Groups

In June and July 2001 the Commission's Sex Discrimination Unit in collaboration with the Race Discrimination Unit conducted a series of consultations with women from culturally and linguistically diverse communities in Sydney. The Immigrant Women's Speakout Association of NSW was engaged by the Commission to organise the consultations and ensure the participation of women from various communities. Meetings were held with workers from organisations working with refugee and newly arrived migrant women. Additional meetings were held with women from Sydney's Muslim and Vietnamese communities. These meetings were organised in recognition of the ongoing problems of discrimination against racially disadvantaged women. A report of these consultations will form part of the Commission's final report.

Indigenous Women's Focus groups

In July 2001 it is planned that to further the Commission's inquiries into the impact of the intersection of race and gender, officers from the Aboriginal and Torres Strait Islander Social Justice Unit and the Sex Discrimination Unit would conduct focus groups with Indigenous women. Commission staff will travel to areas in western New South Wales to gather information that would assist in better understanding the experiences and issues Indigenous Australian women living in rural and remote communities face on a daily basis. Once again the findings of these consultations will form part of the Commission's final WCAR report.

Other community specific consultations

Indigenous

While a broad community consultation was organised in Melbourne, the Equal Opportunity Commission, Victoria, on behalf of the Commission, conducted a community consultation with Melbourne's Indigenous community, after Indigenous representatives made requests for a separate meeting.

Youth

In April 2001 the Commission contributed funding and organisational assistance to the Youth and Racism Forum held in Adelaide, organised by the peak youth body in South Australia. A senior representative of the Commission also addressed the forum on the WCAR and racism in Australia.

As a result of this forum and the National Youth Forum held in Canberra on 7 May, the participants from Western Australia and New South Wales have organised, with the assistance of the Commission, similar state based forums.

Other community discussion initiatives

Preparation, commissioning and publishing of specific discussion papers on issues related to racism. These were aimed to facilitate informed discussion and debate and also to critically assess the current status of racism in Australia.

The Commission developed a discussion paper entitled, *Combating racism in Australia* and also produced *Gender and Race intersectionality*. Both of these papers and other relevant papers and outcomes of all the consultation processes have been posted on our WCAR website.

The *Combating Racism in Australia* discussion paper was distributed to every member of State and Commonwealth parliaments with a covering letter from Dr Jonas informing them of the consultation process that the Commission was undertaking, inviting them to provide comments on the discussion paper and to pass on the information to their constituents.

Development of a specific WCAR site within the Commission's website.

In recognition of the growing importance of the internet as a means of providing access to community input the Commission established a WCAR specific site on its general website. The WCAR site included relevant background documents, reports and links to UN and NGO sites dealing with the WCAR. To facilitate discussion and feedback a moderated bulleting board was established and publicised widely through NGO networks and through our consultation meetings. People were encouraged to make submissions and send us further comments after each of the consultations.

During the period from 7 May 2001, when the site went live, over 11,800 page views were recorded on the WCAR site.

Approximately 40 submissions to the bulletin board have been received and posted on the web site. These submissions and comments will inform the final report.

Nationally based meetings

The Non Government (NGO) Forum held a meeting on 17 November 2000 where they discussed their role in relation to WCAR participation and preparation. The Commission addressed the meeting about its preparations for the WCAR and the engagement it aimed to achieve with NGO's.

The Commission co-sponsored a meeting on 30 November 2000 on Women and Race. Dr Jonas and the Sex Discrimination Commissioner, Ms Susan Halliday addressed the meeting. The meeting aimed to ensure that there would be specific and effective input to the Commission's WCAR preparations on the issues of gender and racism.

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An ATSIC Regional meeting of Indigenous Peoples of Australia, New Zealand, Hawaii, Canada and the United States of America was held in Sydney in February 2001 in preparation for the WCAR. Dr Jonas presented the opening address to the Conference and participated in the deliberations of the Conference. The outcomes of the Conference provided an important Indigenous perspective to Australia's contribution to the WCAR and have informed the preparations of the Commission.

The Commission participated on 23 February, in Sydney, in the Race and Gender Forum organised by Association of Non English-Speaking Background Women of Australia (ANESBWA) and Women's Rights Action Network Australia (WRANA). The Forum brought together Indigenous, immigrant and refugee women to exchange experiences of racism and the intersection of racism and gender. This is one of the key themes of the WCAR.

International activities

The Race Discrimination Unit assisted the Asia Pacific Forum to develop a paper on the role of National Human Rights Institutions (NHRIs). Dr Jonas on 8 August 2000 attended the 5th Annual Meeting of the Asia Pacific Forum in Rotorua, New Zealand and delivered a speech addressing the role of national human rights institutions in relation to the WCAR, the Commission's work in preparation for the Conference and the need for NHRIs in the region to adopt a common set of recommendations to the Conference Secretariat.

Dr Jonas attended a national conference on Racism in South Africa from 30 August-2 September 2000 hosted by the South African Human Rights Commission. The Conference was the South African National meeting in preparation for the World Conference against Racism to be held in South Africa at the same time next year.

As part of the WCAR preparations the UN arranged a number of regional workshops of member States and the Commission was represented at the Asian Regional Workshop which was held in Tehran in February 2001. The Commission presented an oral report to the Workshop outlining its position on the WCAR and issues in regard to the Draft Declaration and the Draft Programme of Action.

Dr Jonas attended the meeting of the Open-ended Inter-sessional Working Group of the WCAR in Geneva from 6-9 March 2001. The meeting considered the draft declaration and programme of action for the WCAR prepared by the High Commissioner for Human Rights, at the request of States parties. A Commission position paper on the then current draft was developed while in Geneva. The paper reflected the position of the regional Indigenous peoples conference in Sydney and the Asia-Pacific Forum paper on National Human Rights Institutions.

While in Geneva Dr Jonas also met with a range of organisations and individuals about the WCAR. These included Penal Reform International, and staff of the High Commissioner's office. The meeting with the Office of the High Commissioner for Human Rights was in the main to discuss the Commission's application for funding for national activities for the WCAR. Subsequently the UN Office of the High Commissioner for Human Rights granted the Commission \$26,000 (US) which proved essential to the Commission being able to undertake its Australian civil society consultations.

Further meetings were also held in London and Ottawa about the WCAR. In particular, Dr Jonas met with the Runnymede Trust which was undertaking community consultations in Britain in preparation for the WCAR; The Canadian government Secretariat for the WCAR and the Canadian Human Rights Commission.

From 21 May to 8 June Dr Jonas attended the 2nd meeting of the Preparatory Committee of the WCAR in Geneva. This meeting dealt with continued discussion on the WCAR Draft Declaration and the Draft Programme of Action. After the completion of the meeting it was decided to hold a 3rd Preparatory Committee meeting from 31 July to 10 August and Dr Jonas would attend part of the meeting.

Research and policy

Face the Facts



The Race Discrimination Unit and the Aboriginal and Islander Social Justice Unit completed the updating and editing of the revised version of the *Face the Facts - Some questions and answers about Immigration, Refugees and Indigenous Affairs*. Dr Jonas launched the publication 21 March 2001, the report is available on the Commission's website at http://www.humanrights.gov.au/racial_discrimination/face_facts/index.html or in hard copy from the Commission.

As Dr Jonas states in his introduction to Face the Facts:

"This booklet is not only a resource for those who want to know more about Indigenous Australians, immigration and refugees. It also serves as a reminder to all of us that when we discuss these matters, we have a responsibility to inform ourselves of the facts and speak on the basis of reason and not unfounded myths"

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Dr Jonas wrote to all state Directors' General of Education, seeking their assistance with distribution in secondary schools. To date we have received positive responses and have distributed over 10,000 copies to schools and the wider community. Given the strong demand to date it is anticipated that we will have distributed well in excess of 30,000 copies by the end of 2001.

Race for Business

During the year the Race Discrimination Unit has continued to promote and develop strategies to refine the Race for Business train the trainers package.

On 26 October 2000 Dr Jonas addressed a large gathering of business, media, trainer and community representatives at a meeting in Adelaide convened by the South Australian Multicultural Ethnic Affairs Commission (SAMEAC) and hosted by Business SA. Dr Jonas canvassed the importance of the Race for Business package as a means of assisting the business sector in developing workplaces free of racial discrimination through practical and achievable guidelines.

As part of the ongoing refinement of Race for Business, meetings were held throughout major capital cities with potential strategic partners among trainers and peak bodies such as Industry Training Advisory Boards, TAFEs, business and individual managers within the public and private sectors. As part of this process the Race Discrimination Unit organised a workshop, which was conducted by the Executive Director of Health and Community Sector Industry Training Advisory Board in November 2000 with experienced cross-cultural trainers. The aim was to identify if the Race for Business package could be customised according to the Australian National Training Authority's (ANTA) train the trainer criteria or if a new cross-cultural competency criteria needed to be devised. The outcomes of the workshop have assisted the Race Discrimination Unit in clarifying the required updating and refining of the package.

Rugby League - Racial and Religious Vilification Policy

Dr Jonas was approached by the NSW Rugby League (NSWRL) requesting assistance in a review of their Racial and Religious Vilification policy, which the Race Discrimination Unit helped draft in 1997.

The President of the Human Rights and Equal Opportunity Commission and the Operational Manager of the NSWRL signed a Memorandum of Understanding in early 2001. The Memorandum outlines procedures for the referral to the Commission's Complaint Handling Section of complaints under the League's Racial and Religious Vilification Code of Conduct.

Water

The Race Discrimination Unit has taken the comprehensive review of the 1994 Water Report, which was completed by Dr Bruce Walker of the Centre for Appropriate Technology and edited into a public report entitled Review of the Water Report. Part of the process for preparing the final public document included a visit by Dr Jonas to Alice Springs to hold meetings with the consultant and visit one of the Aboriginal case study communities - the Mpweringe-Arnapipe community, about 75kms north of Alice Springs.

The review documents significant advances that have been achieved since 1994. However, long-term assurances of funding, for new capital works and on going maintenance and sustainability, need to be addressed by and between the Commonwealth, State and Territory governments.

Alcohol

Special Measures Certificates

Following on from the 1995 Alcohol Report the Race Discrimination Commissioner continues to be approached by local Indigenous communities requesting restrictions on the sale of distribution of alcohol to their community members.

During September 2000 the Commissioner received an application from the Wiluna Aboriginal Community in Western Australia requesting renewal of the 'Special Measures Certificate' that has been in force in recent years. The Race Discrimination Unit worked with the relevant parties to agree on the issuing of a new certificate, which is valid until 31 August 2001. The special measure certificates are issued under s8 of the *Racial Discrimination Act 1975* after the Aboriginal communities and other relevant parties have negotiated agreements locally.

Dry Zones

Over recent years the Commissioner has had to address issues relating to the introduction of alcohol dry zones by local Councils, which have adverse impacts on Indigenous communities. One such case, which has been of concern to communities for over five years, was the proposal by the Adelaide City Council to introduce a dry zone in the Adelaide central business district. This would have had an adverse impact on the Kurna Aboriginal people who frequent the Victoria Square precinct in Adelaide. Letters on this matter to Adelaide Council, state government ministers and officials were previously sent by former Race Discrimination and Aboriginal and Islander Social Justice Commissioners.

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The case came to prominence once more when the Adelaide City Council was to consider the introduction of the dry zone proposal at its September 2000 meeting.

Dr Jonas made representations to the Lord Mayor of Adelaide, Adelaide City Councillors, the Chief of Police, the Liquor Licensing Commissioner, and the Minister for Aboriginal Affairs and the South Australian Premier.

After Dr Jonas's representations the Council deliberations lead to the development of a detailed Plan of Action, which involves broad consultation with all stakeholders and consideration of a range of options to deal with alcohol and drug dependency.

The State Government and Adelaide City Council have since decided to introduce a blanket dry zone for the Adelaide Central Business District for a 12 month trial period. Dr Jonas will continue to monitor this issue.

Other activities

City of Dandenong

Representatives of the City of Dandenong council and community organisations in Melbourne approached the Racial Discrimination Unit about racial vilification in their local area.

On September 29 2000, Dr Jonas visited the area's refugee, immigrant and Indigenous communities. He visited a number of religious organizations, including the Orthodox, Muslim, Hindu, Buddhist and Christian organizations and met several community leaders. A specific meeting was held with members of the Serbian community to update on developments relating to the racist violence on that community in the past several months. Dr Jonas also visited the Bunerong Co-operative of the local Indigenous community.

Dr Jonas and gave a keynote address at a civic reception held in his honour where he discussed issues of racial vilification and how to work towards a community which is more inclusive and accepting of difference.

Media reporting

The Race Discrimination Unit was approached by representatives of the Vietnamese community in Adelaide in regard to their concerns with the reporting of issues relating to Vietnamese youth in the Adelaide Advertiser.

Dr Jonas agreed to follow up on the matter and in July 2000 agreed to facilitate a meeting between the Editor of the Adelaide Advertiser, representatives of the Vietnamese Community of South Australia and the Multicultural Communities Council of South Australia. At the meeting the parties came to an in principle agreement that community representatives and the editorial staff of the newspaper would develop closer working relationships. The aim is to improve the media reporting of issues relating to culturally and linguistically diverse communities.

Housing

Dr Jonas met with the national Board of Directors of the Real Estate Institute of Australia (REIA), together with the State elected presidents and the Chief Executive Officers of the state Institutes, on 3 July in Adelaide.

Dr Jonas delivered a speech outlining the application of the Racial Discrimination Act to the real estate industry and the complaints and reported experiences of racial discrimination in real estate. This included highlighting some of cases from the *'New Country, New Stories'* report prepared by the Race Discrimination Unit in September 1999.

The speech specifically addressed the need for the industry to develop national professional standards, similar to those in operation in other countries, to prevent racial discrimination in the provision of housing and ensure compliance with the Act.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Race Discrimination Unit prepared a submission to the UN Committee on Economic, Social and Cultural Rights by way of background to its consideration of Australia's report under ICESCR later this year. The submission dealt with the two-year waiting period for social security benefits, which applies to all newly arrived migrants. In his submission Dr Jonas canvassed the two year waiting period requirement in relation to ICESCR article 2 (Full realisation of rights under the ICESCR) and article 9 (Right to social security and social insurance).

Human Rights and Equal Opportunity Commission

Speeches

Attached is a selection of speeches, seminars and presentations made by Dr Jonas in the reporting period. Selected papers are available on the Commission's website at: <http://www.humanrights.gov.au/speeches/>.

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|-----------------|--|
| 3 July 00 | Dr Jonas presented a paper to the Board of the Real Estate Institute of Australia, state Real Estate Institute Presidents and CEOs. |
| 8 August 00 | Dr Jonas presented a paper to the Asia Pacific Forum in New Zealand. |
| 29 September 00 | Dr Jonas presented a keynote address to the Councillors and Community at a Civic reception in his honour at Dandenong Council Victoria. |
| 26 October 00 | Dr Jonas delivered a speech at a Race for Business Forum organised by the SA Multicultural and Ethnic Affairs Commission, Adelaide. |
| 6 November 00 | Dr Jonas delivered a speech at the Cyberhate: Bigotry and Prejudice on the Internet conference, Sydney. |
| 9 November 00 | Dr Jonas launched an RDU publication, <i>On the Sidelines</i> , Perth. |
| 10 November 00 | Dr Jonas delivered a speech at the FECCA Conference on "Human Rights in Multicultural Australia - Retrospect and Prospect", Perth. |
| 10 November 00 | Dr Jonas delivered a speech at the Western Australians for Racial Equality Annual General Meeting, Perth. |
| 30 November 00 | Dr Jonas addressed the HREOC Women and Race Forum on the World Conference on Racism, Sydney |
| 20 February 01 | Dr Jonas addressed the opening session at the Conference of Indigenous Peoples and Racism, A Regional Meeting for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Sydney. |
| 21 February 01 | Panel discussion and workshop session at the Conference of Indigenous People of Australia, New Zealand, Canada and the United States - Indigenous Peoples and Racism, Sydney on the theme of prevention of racism. |

- 7 May 01 Dr Jonas delivered a speech to the National Youth Forum on Racism
- 8 May 01 Dr Jonas delivered a speech to the National Summit on Racism
- 13 June 01 Addressed HREOC staff and representatives from NGOs regarding the status of the preparatory Committee deliberations for the WCAR.
- June 01 Dr Jonas delivered a speech to a number of regional consultations for the WCAR.





Sex Discrimination Commissioner,
Susan Halliday

Sex Discrimination

Sex Discrimination Commissioner, Susan Halliday

The term of the Sex Discrimination Commissioner, Susan Halliday, expired on 26 April 2001 and the federal Attorney - General, the Hon. Daryl Williams, AM, QC, MP announced the appointment of Ms Pru Goward as Sex Discrimination Commissioner for a five-year term on 29 June 2001. Ms Goward commenced her appointment on 30 July 2001. In the interim, the President acted as Sex Discrimination Commissioner.

The Sex Discrimination Commissioner, on behalf of the Commission, may seek leave of courts to intervene in cases that raise issues relating to discrimination under the Sex Discrimination Act. In the last reporting year, the Commission sought and was granted leave to appear and make submissions in the case brought by the ACTU in the Australian Industrial Relations Commission seeking to extend parental leave entitlements for casual workers.

The Commissioner has a broad educational role to highlight the rights of individuals, as well as the responsibility of all members of the community to respect the rights of others and to work cooperatively in developing a fair and cohesive society.

Education and promotion

Commissioner Halliday continued her strong educative focus in the last year of her term, working regularly with school students as well as organisations in the private, non-government and community sectors. The Commissioner conducted extensive community education campaigns utilising a range of media.

Harsh Realities 2

Harsh Realities 2 was launched in Adelaide at the South Australian Equal Opportunity Commission on 8 November 2000. The set of 17 case studies represent conciliated complaints of alleged unlawful discrimination lodged under the Sex Discrimination Act and cover sexual harassment, pregnancy discrimination and sex discrimination in employment, education and the provision of goods and services.

The launch generated local radio and print media coverage, and was attended by over 40 representatives of employers, State Government, schools and non-government organisations. South Australian Equal Opportunity Commissioner Linda Matthews and her staff were very generous with their support of the *Harsh Realities 2* project.

Woman of the World package



A package aimed at a general audience, particularly young women, providing information about the international human rights framework for women and the importance of human rights for women was launched on International Women's Day 8 March 2001. Entitled *Woman of the World: Know your international human rights and how to use them*, it comprises 13 information sheets about the CEDAW, its history, development and implementation domestically. It deals with the Sex Discrimination Act and the Optional Protocol to CEDAW and includes resources and contact information for people wishing to promote, secure and protect women's rights. The package also contains a poster. Feedback on the package has been highly positive.

Advertising postcards

Two postcards were commissioned from Avant Card to promote awareness about the importance of advertising that dignifies, rather than devalues, women. The two postcards focus on outdoor advertising, and followed recent concerns about the lack of respect and sensitivity, and general sexism, displayed in outdoor advertising media. The first card was co-sponsored by the Office of the Status of Women and was launched on 7 March 2001, the day before International Women's Day, in order to feed into the celebrations for that day. The second card was co-sponsored by the Australian Advertising Federation and was launched by Commissioner Halliday on 23 April 2001. Feedback from users of the cards through Avant Card has been generally positive.

Research and policy

National Inquiry into Pregnancy and Work

On 26 August 1998 the federal Attorney-General the Hon. Daryl Williams AM QC MP requested the Commission to undertake a National Inquiry into issues relating to pregnancy and workplace discrimination.

Launched in 1999, *Pregnant and Productive: It's a right not a privilege to work while pregnant* made 46 recommendations to Government.

The Government made a formal response to the 46 recommendations on 1 November 2000. The Government accepted 23 of the 46 recommendations. Importantly, the Government proposed to amend the Sex Discrimination Act to:

- clarify that particular interview questions and pregnancy testing are prohibited as part of the recruitment process; and
- include breastfeeding as a ground of discrimination.

In response to Recommendation 13, the Government, through the Department of Employment, Workplace Relations and Small Business and the Office of the Employment Advocate, is drafting a pamphlet to be distributed to all workplace participants concerning their rights and responsibilities in relation to pregnancy and potential pregnancy in the workplace.

In addition, in direct response to recommendation 16, the Office of the Employment Advocate has commissioned an employee survey to elicit information on the progress of Australian Workplace Agreements in contributing to the prevention and elimination of discrimination in the workplace in relation to pregnancy and potential pregnancy.

In response to Recommendation 12, the Government has agreed that the Minister for Employment, Workplace Relations and Small Business consider the position of pregnant and potentially pregnant employees in any future workplace relations reform to ensure that such employees are not exposed to the possibility of direct and indirect discrimination.

However the Government failed to agree to a number of important recommendations. In particular, the Government refused to consider:

- sponsoring economic modelling for paid maternity leave;
- empowering the Commission to publish enforceable standards in relation to pregnancy and potential pregnancy;

- amending the Sex Discrimination Act to ensure coverage of unpaid workers, and
- removing the exemption in the Sex Discrimination Act for educational institutions established for religious purposes in relation to pregnancy and potential pregnancy.

The Pregnancy Guidelines

The terms of reference for the Pregnancy Inquiry required the Commission to produce a set of educative guidelines to assist all workplace participants and particularly employers and managers to better understand their obligations and adhere to the existing legislative framework. The need for educative Guidelines clearly emerged as one of the priorities in the Pregnant and Productive Report.



Commissioner Halliday launched the *Pregnancy Guidelines* nationwide in April 2001. The Guidelines set out principles to avoid discrimination at each stage of the employment relationship – recruitment, during employment, taking leave and dismissal and retrenchment. Case studies and examples set out how employers can avoid discrimination, as well as explaining other obligations contained in industrial relations and occupational health and safety laws.

The *Pregnancy Guidelines* also contain information on developing and implementing workplace policies that can assist in ensuring employers comply with their obligations as well as improving productivity and efficiency.

Sex Discrimination in the Banking and Finance Industry

The Sex Discrimination Unit continued to support Ms Sara Charlesworth in her research of the influence of the industrial and anti-discrimination legislative frameworks, as well as non-legislative factors on the treatment of sex discrimination in the banking and finance industries.

Migrant and refugee women

As part of the Commission's preparations for the United Nations Third World Conference Against Racism, Racial Discrimination and Xenophobia and Related Intolerance, to be held in Durban, South Africa in August – September 2001, the Sex Discrimination Unit organised a series of focus groups with immigrant and refugee women and community workers. The focus groups were organised in consultation with Immigrant Women's Speakout and were held in June – July 2001.

The aim of the focus groups was to provide the Commission with information about the experiences of the women concerned as well as recommendations for action to be taken by government, both generally and specifically in the context of the World Conference. The meetings assisted the Commission to understand better the range of experiences of women who suffer disadvantage and discrimination on the basis of race in Australia.

The Sex Discrimination Unit also prepared an issues paper on the intersection between race and gender that informed the focus groups and the Commission consultations generally.

Submissions

Comments to the Education Inquiry

On 7 September 2000, the Sex Discrimination Unit contributed a submission on behalf of the Commission to the House of Representatives Standing Committee on Employment, Education and Workplace Relations' Inquiry into the Education of Boys.

Labour Hire Inquiry

The Sex Discrimination Unit contributed on behalf of the Commission a substantial submission to the NSW Government Task Force set up to inquire into the Labour Hire Industry. The submission raised issues around the Sex Discrimination Act and indirect discrimination, and the difficulty of identifying or categorising contemporary employment relationships in order to allow for a remedy to be pursued under this Act. The submission was made on 14 September 2000.

Senate Inquiry into the proposed amendment to the Sex Discrimination Act regarding IVF services

On 1 November 2000, the Senate referred the *Sex Discrimination Amendment Bill (No. 1) 2000* to the Legal and Constitutional Legislation Committee for inquiry and report. There were no specific terms of reference for the inquiry.

The submission was prepared by the Sex Discrimination Unit and the Legal Section on behalf of the Commission. In November 2000, Commissioner Halliday appeared before the Legal and Constitutional Legislation Committee to present the Commission's opposition to the Bill. On 19 February 2001, the Sex Discrimination Commissioner made a supplementary submission in response to the 13 February oral evidence of the Attorney General's Department.

The Senate Committee released its findings on 27 February 2001. The Inquiry into the Provisions of the *Sex Discrimination Amendment Bill 2000* Report found that the Federal Government's plan to exclude women from assisted reproductive technology (ART) based on their marital status would be contravening not only the UN's Convention on the Elimination of Discrimination Against Women (CEDAW) but also the *Sex Discrimination Act 1984*.

The majority Report stated that:

- the Bill is completely ineffective in implementing the government's stated intention to ensure the best interests of the child (paragraph 5.6);
- the Bill will amend the Sex Discrimination Act so as to conflict with the very treaty that the Act is intended to implement (paragraph 5.8);
- the Bill is contrary both to the spirit and the letter of the Sex Discrimination Act (paragraph 5.10);
- no compelling case had been made that the rights of children will be advanced by the passing of the amendments, but the rights of some women will be diminished (paragraph 5.14).

The report does not make any recommendation that the Bill not be passed. Rather, it leaves this matter to the Senate to decide. The detailed dissenting reports of Labor Senators Hogg and Collins, Independent Senator Harradine and Government Senators Coonan and Mason provide strong support for the Bill.

Human Rights and Equal Opportunity Commission

The Government states that the Bill is designed to ensure that the States and Territories, which have responsibility for the provision of health and medical care and treatment, should be able to legislate to restrict ART procedures to women who are married or living in de facto relationships. Despite the reservations expressed in the majority Report, the Government responded to the Report by stating that it intended to proceed with the Bill.

ACTU test case - parental leave to long-term casuals

As part of a strategy aimed at promoting work and family balance, and with a view to implementing recommendation 25 of the report *Pregnant and productive: it's a right not a privilege to work while pregnant*, the ACTU applied to the Australian Industrial Relations Commission (AIRC) seeking to extend parental leave to long-term casual workers.

The Commission sought and was granted leave to intervene on 15 February 2001. The Commission's written submissions in support of the ACTU's application were filed on 3 April 2001.

In summary the submissions:

- support the extension of parental leave to long term casual employees;
- provide evidence of an increase in casual employment and that casual work is predominantly performed by women;
- draw the AIRC's attention to its obligations to help prevent and eliminate discrimination;
- set out evidence provided to the National Inquiry into Pregnancy and Work and complaints made to Commission that show that casual employees are often dismissed or subjected to other detriment on announcing their pregnancy;
- alert the AIRC to the potential for indirect discrimination to arise from denying casual employees access to parental leave entitlements.

The AIRC decided to grant parental leave entitlements to casual employees covered by federal awards in its decision of 31 May 2001.

Amicus matter: Harrison v Santos

Under amendments to the *Human Rights and Equal Opportunity Commission Act 1986*, Commissioners now have the function of assisting the Federal Court or Federal Magistrates Court as *amicus curiae*, 'a friend of the court.' Commissioner Halliday first sought to exercise this function in the case of *Harrison v Santos Ltd*, for which the Commissioner provided an affidavit in support of the application to intervene as *amicus curiae*. The matter was subsequently settled.

Consultation and Speeches

Consultations

The Commissioner and staff of the Sex Discrimination Unit conducted over 80 consultations during the financial year, with international human rights and government officials, major employers and employer groups and women's organisations.

Human Rights and Equal Opportunity Commission

Speeches

Attached is a selection of speeches, seminars and presentations made by Commissioner Halliday in the reporting period. Selected papers are available on the Commission's website at: <http://www.humanrights.gov.au/speeches/>.

16 August, 00	National Status of Women Council, Melbourne, 16th Anniversary Proclamation of <i>Sex Discrimination Act 1984</i>
18 August, 00	Women at Work Conference, Gold Coast, Sexual Harassment in the Workplace
23 August, 00	Macquarie University, Sydney, Lecture to Bachelor of Business Administration students
29 August, 00	Youth Challenge, Canberra, Human Rights
29 August, 00	Victorian Women Dentists Association, Melbourne, Gender Differentials: women as leaders
30 August, 00	Australian Human Resources Institute, Melbourne, What's sex got to do with it? Work, Life and Relationships.
5 September, 00	Sydney University student rally, In support of CEDAW and signing the Optional Protocol
29 September, 00	Association of Women Educators' National Conference, Cairns, Marking time or marching on?
11 October, 00	Frankston Luncheon Club
12 October, 00	Australian Services Union Women's Conference, Melbourne
17 October, 00	Women's Network Australia Breakfast, Brisbane, Complexity, Clout and Change: Women in the New Millennium
27 October, 00	IBM Diversity Council briefing, Sydney
1 November, 00	Strategic Public Leaders Summit, via video conference to Perth, Good Governance in Practice
1 November, 00	Business & Professional Women Dinner speech, Melbourne
4 November, 00	IR Society of Queensland Annual Convention, Gold Coast
8 November, 00	Launch of Harsh Realities 2, Adelaide
15 November, 00	Institute of Public Administration 'Wine, Women and Song' function, Adelaide

17 November, 00	World Blind Union 2nd World Blind Women's Forum, Melbourne, Women with Disabilities; Doubly Disadvantaged
20 November, 00	Launch of Monash University Work/Life Strategy, Melbourne
28 November, 00	VCTA Comview Conference, Melbourne, IVF and the Law
28 November, 00	Sorry is not OK Conference, Melbourne, Workplace Violence
30 November, 00	Women and Racism Forum, Sydney, A discussion on the UN World Conference Against Racism
6 December, 00	Disability Companion Card Launch
10 December, 00	HREOC Human Rights Awards 2000 MC
8 February, 01	Women Wise Up Conference, Using the UN to Advance the Rights of Women
15 February, 01	University Of NSW, An Unfavourable Climate – Current Issues for Equity and Women
17 February, 01	Zonta Seminar, Into the 21st Century: Jumped or Pushed?
22 February, 01	IIR Conference, Identifying the current trends in workplace discrimination
7 March, 01	UNIFEM Breakfast
7 March, 01	AEU Annual International Women's Day Dinner, Director SDU
8 March, 01	Launch 'No Sweat Shop' Label Director SDU
8 March, 01	Launch CEDAW Kit: Woman of the World" Director SDU
22 March, 01	IPAA National Conference Rights Position, "On The World Stage: A Report Card on Australia's Human
23 March, 01	AUSYOUTH Conference "Our Future Now—Empowering young people through youth development"
02-23 April, 01	Pregnancy Guidelines Launch in all capital cities
24 April, 01	Launch of Sterilisation Paper HREOC

International Activities

In 2000-01, as in past years, the Commission participated in some bilateral international program activities, generally as part of the Australian Government's development cooperation program developed by the Australian Agency for International Development (AusAID).

The Commission's international program role arises due to the expertise the Commission has developed in pursuit of its domestic mandate. The Commission also holds the belief that the strengthening of human rights protection and development everywhere only ensures the enhancement of human rights activities and awareness anywhere, including Australia. In some cases regional countries wish to access this expertise in pursuit of their own human rights objectives, while in other cases the Australian Government wishes to use the expertise in pursuit of its development cooperation objectives. To respond to all requests for program activities could potentially distract the Commission from its primary, domestic mandate. It therefore participates only when a number of pre-requisites are satisfied, including that all of the Commission's costs are met, that the program is clearly capable of achieving its goals and that it does not detract in any way from the Commission's domestic work.

The Commission's most substantial international program involvement is with the Human Rights Technical Cooperation Program (HRTC), which is an integral part of the annual Dialogue on Human Rights with China. HRTC undertakes each year a series of activities intended to assist China to promote and protect human rights. In 2000-01 the program included providing scholarships for Chinese officials to study human rights in Australia, conducting seminars and workshops in China on human rights subjects, providing training to Chinese judges, prosecutors, police and legal aid lawyers and assisting with the introduction of measures to protect women from family violence and to protect the rights of prisoners.

The program has an immediate impact on the formulation of administrative procedures. In the longer term the program aims to have an impact through increasing the level of knowledge of human rights concepts, with a resultant impact on the formulation of Chinese policies and practices. The program therefore seeks to work with the Chinese authorities to demonstrate the value of institutionalising the regard for human rights and to then work with those authorities to formulate and implement practical strategies to realise that value.

The Commission is also working with the Indonesian National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia, commonly known as Komnas HAM). This program is intended to strengthen the capacity of Komnas HAM to fulfil its broad mandate. This is accomplished both through specific capacity building activities and by directly assisting Komnas HAM to disseminate an understanding of human rights principles amongst Indonesia officials and the general population.

In 2000-01 a series of activities ranging from training in the handling of complaints and the conduct of national inquiries through to assistance with the National Human Rights Seminar were conducted. The Commission is currently developing an activity aimed at strengthening the capacity of Komnas HAM to investigate and to participate in the prosecution of gross violations of human rights.

Similarly, the Commission is assisting the South African Commission on Gender Equality to build its capacity to develop general policies, to handle complaints and to conduct effective legal intervention.

In 2000-01 the Commission has also worked with Vietnamese authorities in a modest program of cooperation aimed at developing policies directed at the protection of human rights in that country.

The Commission has worked with other countries on a small scale, generally in the technical areas of human rights protection. For instance officials of the Commission have worked with the Government of Uganda to develop its capacity to conduct national human rights inquiries and with the Government of Indonesia to develop its capacity to implement ILO Convention 111 (guaranteeing equality in employment).

International Visitors to the Commission

During the reporting period the Commission was pleased to receive a number of delegations from countries including Korea, Mongolia, Uganda, China, Indonesia, Vietnam and Japan. The President, the Executive Director and senior staff made presentations to the delegations about the Commission, its structure, work and legislation. The delegations comprised of senior officials from government or the bureaucracy as well as some judicial representation. All delegation members were provided with a set of materials about the Commission and its role at both a domestic and international level.

Asia Pacific Forum of National Human Rights Institutions

The Commission's 1996-97 Annual Report discussed the establishment of the Asia-Pacific Forum of National Human Rights Institutions (the Forum) on 10 July 1996 and previous annual reports have provided information on the role and functions of the Forum Secretariat.

Briefly, the Forum is a regional organisation comprised of national human rights institutions that comply with the minimum standards contained in the United Nations General Assembly endorsed 'Principles Relating to the Status of National Human Rights Institutions' (more commonly known as the *Paris Principles* - see General Assembly resolution 48/134 of 20 December 1998, annex). There are currently eight national human rights institutions in the region that are members of the Forum: the Human Rights Commissions from Australia, Fiji, India, Indonesia, Nepal, New Zealand, the Philippines and Sri Lanka. The recently established Commissions in Mongolia and Thailand are anticipated to become the ninth and tenth members of the Forum at its Sixth Annual Meeting in September 2001.

The work of the Forum can be categorised under three broad areas:

- i. Strengthening the capacity of individual Forum members to enable them to undertake more effectively their national mandates.
- ii. Assisting governments to establish their own national institutions in compliance with the minimum criteria contained in the Paris Principles.
- iii. Promoting regional cooperation on human rights issues.

From its inception, the Australian Human Rights and Equal Opportunity Commission has hosted the Secretariat of the Forum. The Australian Government, through the Minister for Foreign Affairs and Trade, the Hon. Alexander Downer MP, and the Australian Agency for International Development (AusAID) has provided both political and financial support for the Forum. Additional funding is provided by a range of donors on a project-by-project basis.

During 2000-01 the Secretariat's operations focused on four main areas of activity

- i. the development and delivery of technical assistance and cooperation projects
- ii. information dissemination
- iii. administrative support for the Forum and its activities, and
- iv. transforming the legal and managerial structure of the Forum to become an independent entity.

The main projects undertaken throughout the reporting year have included the following:

Human Rights Commission of Nepal Needs Assessment Mission

In July 2000 the Director of the Forum Secretariat participated in a joint mission with the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Development Program to Nepal. The purpose of the mission was to work with the recently established Human Rights Commission of Nepal to develop a program of technical cooperation and to encourage donor coordination in the provision of assistance to the Commission. The mission was successful in developing a comprehensive technical assistance framework. A second visit in September 2000 by two international consultants, again representing the Forum and the United Nations, undertook further work on the details of the comprehensive program of assistance. The program is currently being implemented by a range of international donors.

Fifth Annual Meeting of the Asia-Pacific Forum of National Human Rights Institutions

In August 2000 the Forum held its Fifth Annual Meeting in New Zealand. The meeting was organised by the Forum Secretariat in collaboration with the host institution, the New Zealand Human Rights Commission. It was co-sponsored by the OHCHR and financially supported by OHCHR, the New Zealand Government, through its Ministry of Foreign Affairs and Trade, and the Australian Government, through AusAID. The meeting was attended by over 130 delegates representing all Forum members, 20 regional governments and non-governmental organizations from 24 countries. The main decisions of the meeting included:

- The admission of the Human Rights Commission of Nepal as the 8th member of the Forum
- 'In principle' approval for the transition of the Forum to an independent organisation with a new legal and managerial structure
- Agreement on Secretariat recommendations on a range of issues including the World Conference on Racism, the implementation of economic, social and cultural rights, child soldiers, guidelines on internally displaced people, the promotion of women's rights, regional responses to crises affecting the work of national institutions and the appointment of the region's representatives on the International Coordinating Committee of National Institutions.

Human Rights and Equal Opportunity Commission

In addition to the above, the inaugural meeting of the Forum's Advisory Council of Jurists was held in conjunction with the Annual Meeting. The Council considered two issues – the death penalty and child pornography and the Internet – and provided Forum members with their conclusions on both issues.

Regional Systems of Human Rights Protection in Asia

In October 2000 the Director of the Forum Secretariat participated in a seminar on 'Regional Systems of Human Rights Protection in Asia', held in Strasbourg, France. The seminar was organised and funded by the Friedrich Naumann Stiftung, a major German donor, under the auspices of the Secretary General of the Council of Europe.

The objective of the seminar was to advocate for the development of a regional government-to-government human rights mechanism for the Asian region. The seminar was attended by approximately 40 invited participants from South Asian and South-East Asian countries. Representatives from the European, Inter-American and African regional human rights mechanisms were also in attendance.

Second Annual Meeting of Inter-American National Institutions

In November 2000 at the invitation of the organisers, the Executive Director of the Commission and the Director of the Forum Secretariat, attended the Second Annual Meeting of Inter-American National Institutions, held in Mexico City, Mexico. The purpose of the meeting was to discuss two issues – (i) the possible formation of a regional network of American national institutions based on the successful model of the Forum and (ii) the role of American national institutions in the forthcoming World Conference Against Racism.

The meeting resolved to establish an inter-American network of national institutions established in compliance with the minimum standards contained in the Paris Principles. The Mexican Commission agreed to act as the interim host institution for the Secretariat of the network.

Ninth United Nations workshop on human rights arrangements in the Asia Pacific region

In February 2001 the Forum Secretariat was invited to attend and participate in the 9th United Nations Asia Pacific Workshop on Regional Co-operation for the Promotion and Protection of Human Rights, which was held in Bangkok, Thailand. The workshop was attended by representatives from over 35 countries, international experts, United Nations agencies and non-government

organisations. A major component of the meeting was an examination of two Forum activities – the regional workshop on the rights of women held in Fiji in May 2000 and the 5th annual meeting of the Forum. A representative from the Forum Secretariat gave a formal presentation on both of these issues. At the conclusion of the meeting regional governments agreed on a framework document for the provision of technical assistance to encourage and promote regional human rights arrangements. The framework document explicitly recognises the role of Forum and provides funds for the establishment and strengthening of national institutions.

Regional Preparatory Meeting for Asia for the World Conference Against Racism

In February 2001 the Forum participated in an inter-governmental regional preparatory meeting for Asia for the United Nations World Conference Against Racism, which was held in Tehran, Iran. The Forum was represented at the meeting by an officer of the Australian Human Rights and Equal Opportunity Commission.

Commonwealth Best Practice Principles for National Institutions

In March 2001 the Director of the Forum Secretariat was invited by the Commonwealth Secretariat to participate in an Expert Group to develop 'Best Practice Principles for National Institutions in the Commonwealth'. Representatives from a select range of Commonwealth national institutions and the United Nations were in attendance.

57th session of the United Nations Commission on Human Rights

In April 2001, the Director of the Forum Secretariat participated in the 57th session of the United Nations Commission on Human Rights, the pre-eminent international human rights forum. Items of business of particular importance to the work of the Forum were resolutions relating to national human rights institutions and regional human rights arrangements in the Asia Pacific. A formal statement was presented to the United Nations Commission on the work of the Forum, the role of national institutions in United Nations meetings and the importance of the Paris Principles. In addition, meetings were held with representatives of the United Nations, including the High Commissioner for Human Rights, Mrs Mary Robinson, concerning United Nations activities in relation to national institutions.

United Nations Regional Workshop on Globalisation

In May 2001 the Forum was invited to attend and make a formal presentation to a United Nations Regional Workshop on Globalisation which was held in Malaysia. The Forum was represented at the meeting by an officer from the New Zealand Human Rights Commission and a representative of the Secretariat.

Video Documentary

The Forum is making a video documentary on the role and functions of national institutions in the Asia Pacific region. During the year a film crew undertook filming in Fiji, Indonesia and India. Issues examined included the role of national institutions in promoting women's rights, combating human rights violations in Aceh and eliminating child labour. It is anticipated that the documentary will be completed in the second half of 2001.

Transition Process

At the 5th annual meeting of the Forum held in New Zealand in 2000, Forum members provided in principle support for the Forum to proceed to incorporation as an independent entity. Since that meeting a working group of the Forum, comprised of representatives of the host institution (the Australian Human Rights and Equal Opportunity Commission), the OHCHR, the Forum Secretariat and the Regional Coordinator of the Forum (the New Zealand Human Rights Commission), have been meeting on a regular basis to work through the various organisational, administrative and financial issues required to enable the smooth transition of the Forum to a new legal structure.

The deliberations of the working group have been guided by the Paris Principles; the vision and mission of the Forum; and to a commitment to ensure the full participation of all Forum members. Matters discussed have included the future structure of an independent Forum, ensuring the Forum has adequate funds to operate effectively, and, the future constitutional basis of the Forum. During the reporting period the working group developed a strategic plan, a fundraising plan, a business plan and a draft constitution. This process has been generously supported by AusAID. Forum members will consider the transition process at the 6th annual meeting of the Forum which will be held in September 2001.

Appendix 1

International Instruments observed under legislation administered by the Human Rights and Equal Opportunity Commission

Human Rights and Equal Opportunity Commission Act

The *International Covenant on Civil and Political Rights* deals with many human rights and includes the right without discrimination to:

- freedom from torture or cruel and inhumane punishment
- equality before the law
- humane treatment if deprived of liberty
- freedom of thought, conscience and religion
- peaceful assembly
- a vote and election by equal suffrage
- marriage and family

The *Declaration of the Rights of the Child* provides that every child has the right to:

- a name and nationality
- adequate nutrition, housing and medical services
- education
- special treatment, education and care if the child has a disability
- adequate care, affection and security
- protection from neglect, cruelty and exploitation

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The *Declaration on the Rights of Disabled Persons* provides that people with disabilities have the right to:

- respect and dignity
- assistance to enable them to become as self-reliant as possible
- education, training and work
- family and social life
- protection from discriminatory treatment

The *Declaration on the Rights of Mentally Retarded Persons* provides that people with a mental disability have the right to:

- proper medical care and therapy
- protection from exploitation, abuse and degrading treatment
- a decent standard of living
- education, training and work
- due process of law
- review of procedures which may deny them these rights

The *International Labour Organisation Convention 111* deals with discrimination in employment and occupation. Australian adherence to this Convention provides that all people have the right to equal treatment in employment and occupation without discrimination on the basis of:

- race
- colour
- sex
- religion
- political opinion
- national 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)

The *Convention on the Rights of the Child* confirms that children are entitled to the full range of human rights recognised in international law (subject to limitations relating to their capacity to exercise these rights and to the responsibilities of families). The Convention also recognises a range of rights relating to the special needs of children. It seeks to ensure that the protection of these rights in law and practice is improved.

The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* became part of the definition of human rights for the purposes of the Human Rights and Equal Opportunity Act on 24 February 1994. The Declaration recognises the right to freedom of religion. The only limitations to this right are those prescribed by law and which are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.

Racial Discrimination Act

The *International Convention on the Elimination of All Forms of Racial Discrimination* aims at the elimination of all forms of racial discrimination in order to promote understanding between races and provide freedom from racial segregation. It is entered into force for Australia by the Commonwealth *Racial Discrimination Act 1975* in which it is scheduled.

Sex Discrimination Act

The *Convention on the Elimination of All Forms of Discrimination Against Women* and certain aspects of the *International Labour (ILO) Convention 156* are multilateral agreements adopted under the auspices of the General Assembly of the United Nations in 1979. The Conventions recognise the civil, political, economic, social and cultural rights of women. The Commonwealth *Sex Discrimination Act 1984* implemented the Convention into Australian Law.

Appendix 2

New Publications June 2000 to July 2001

General HREOC Publications

HREOC Complaints Brochure – updated version

HREOC Annual Report – 2000/2001

HREOC Complaints Brochure – updated version (June 2001)

HREOC Complaints Brochure – in Arabic, Bosnian, Chinese, Farsi, French, Indonesian, Serbian, Somali, Spanish, Turkish, Vietnamese

Legal Section

HRC Report No. 9 – Discrimination on the ground of trade union activity (2000)

HRC Report No. 10 – Report of an inquiry into a complaint of acts or practices inconsistent with or contrary to human rights in an Immigration Detention Centre (2000)

HRC Report No. 11 – Discrimination on the ground of age (2000)

HRC Report No. 12 – Report of an inquiry into a complain of acts or practices inconsistent with or contrary to human rights in an immigration detention centre (2000)

HRC Report No. 13 – Report of an Inquiry into a Complaint Acts or Practices inconsistent with or contrary to human rights (2001)

Human Rights Unit

Age Matters Report – report about the need for federal age discrimination legislation and related action.

Not Round Here – anti-homophobia training manual for service providers

Race Discrimination Unit

On The Sidelines - report highlighting discrimination issues facing non-English speakers with disabilities.

Face The Facts - questions and answers about immigration, refugees and Indigenous affairs.

Sex Discrimination Unit

Pregnancy Guidelines - clarify issues surrounding pregnancy and work

CEDAW Pack - information to assist women in Australia to understand human rights locally and globally.

SDU Poster - advertising *CEDAW Pack* (see above)

SDU Advertising Postcard - advertising *CEDAW Pack* (see above)

Respect Postcard - black with red handwritten 'Respect'

Social Justice Unit

SJU Annual Report 2000

Native Title Report 2000

Appendix 3

Addresses of Human Rights and Equal Opportunity Commission and State and Territory Commissions

Human Rights and Equal Opportunity Commission

Level 8, Piccadilly Tower
133 Castlereagh Street
Sydney NSW 2000

GPO Box 5218
Sydney NSW 1042

Telephone: (02) 9284 9600
General enquiries and publications: 1300 369 711
Complaints Infoline: 1300 656 419
TTY: 1800 620 241
Facsimile: (02) 9284 9611

Website: <http://www.humanrights.gov.au>
E-mail: paffairs@humanrights.gov.au



State and Territory Commissions

Australian Capital Territory Human Rights Office

Level 4, 4 Mort Street
CANBERRA ACT 2600

GPO Box 158
CANBERRA ACT 2601

Telephone: (02) 6207 0576
TTY: (02) 6207 0525
Facsimile: (02) 6207 0587

New South Wales Anti-Discrimination Board

Level 17, 201 Elizabeth Street
SYDNEY NSW 2000

PO Box A2122
SYDNEY SOUTH NSW 1235

Telephone: (02) 9268 5555
Toll free: 1800 670 812 (within NSW only)
TTY: (02) 9268 5522
Facsimile: (02) 9268 5500

Website: <http://www.lawlink.nsw.gov.au/adb>

Northern Territory Anti-Discrimination Commission

7th floor, 9-11 Cavenagh Street
DARWIN NT 0800

Locked Mail Bag 22
GPO DARWIN NT 0801

Telephone: (08) 8999 1444
TTY: (08) 8999 1466
Toll free: 1800 813 846
Facsimile: (08) 8981 3812

Website: <http://www.nt.gov.au/ad/>



Human Rights and Equal Opportunity Commission

**Queensland
Anti-Discrimination Commission**

Level 1, 189 Coronation Drive
MILTON QLD 4064

PO Box 2122
MILTON QLD 4064

Telephone: (07) 3247 0900
Toll free: 1300 130 670
TTY: 1300 130 680
Facsimile: (07) 3247 0960
Website: <http://www.adcq.qld.gov.au>
E-mail: adcq@justice.qld.gov.au

**South Australia
Equal Opportunity Commission**

2nd floor, 45 Pirie Street
ADELAIDE SA 5000

GPO Box 464
ADELAIDE SA 5001

Telephone: (08) 8207 1977
Toll free: 1800 188 163
TTY: (08) 8207 1911
Facsimile: (08) 8207 2090

Website: <http://www.eoc.sa.gov.au>
E-mail: eoc@agd.sa.gov.au

**Tasmania
Office of the Anti-Discrimination Commissioner**

5th floor, Executive Building,
15 Murray Street
HOBART TAS 7000

GPO Box 197
HOBART TAS 7001

Telephone: (03) 6234 3599
Facsimile: (03) 6233 5333
Freecall: 1800 001 222



Victoria
Equal Opportunity Commission

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Appendix 4

Freedom of Information

The Freedom of Information Act gives the general public legal access to government documents.

Freedom of Information Statistics

During 2000-01, the Commission received the following 19 requests for access to documents under the Freedom of Information Act:

- 17 access requests to documents relating to complaints; and
- 2 related to administrative matters

A total of 27 applications were processed, including the resolution of applications from 1999-2000.

Categories of documents

Documents held by the Commission relate to:

- administration matters, including personnel, recruitment, accounts, purchasing, registers, registry, library records and indices;
- complaint handling matters, including the investigation, clarification and resolution of complaints;
- legal matters, including legal documents, opinion, advice and representations;
- research matters, including research papers in relation to complaints, existing or proposed legislative practices, public education, national inquiries and other relevant issues;
- policy matters, including minutes of Commission meetings, administrative and operational guidelines;
- operational matters, including files on formal inquiries; and
- reference materials, including press clippings, survey and research materials, documents relating to conferences, seminars and those contained in the library.

Freedom of Information procedures

Initial inquiries about access to Commission documents should be directed to the Freedom of Information Officer by either telephoning (02) 9284 9600 or by writing to:

Freedom of Information Officer
Human Rights and Equal Opportunity Commission
GPO Box 5218
Sydney, NSW 1042

Procedures for dealing with Freedom of Information requests are detailed in section 15 of the Freedom of Information Act. A valid request must:

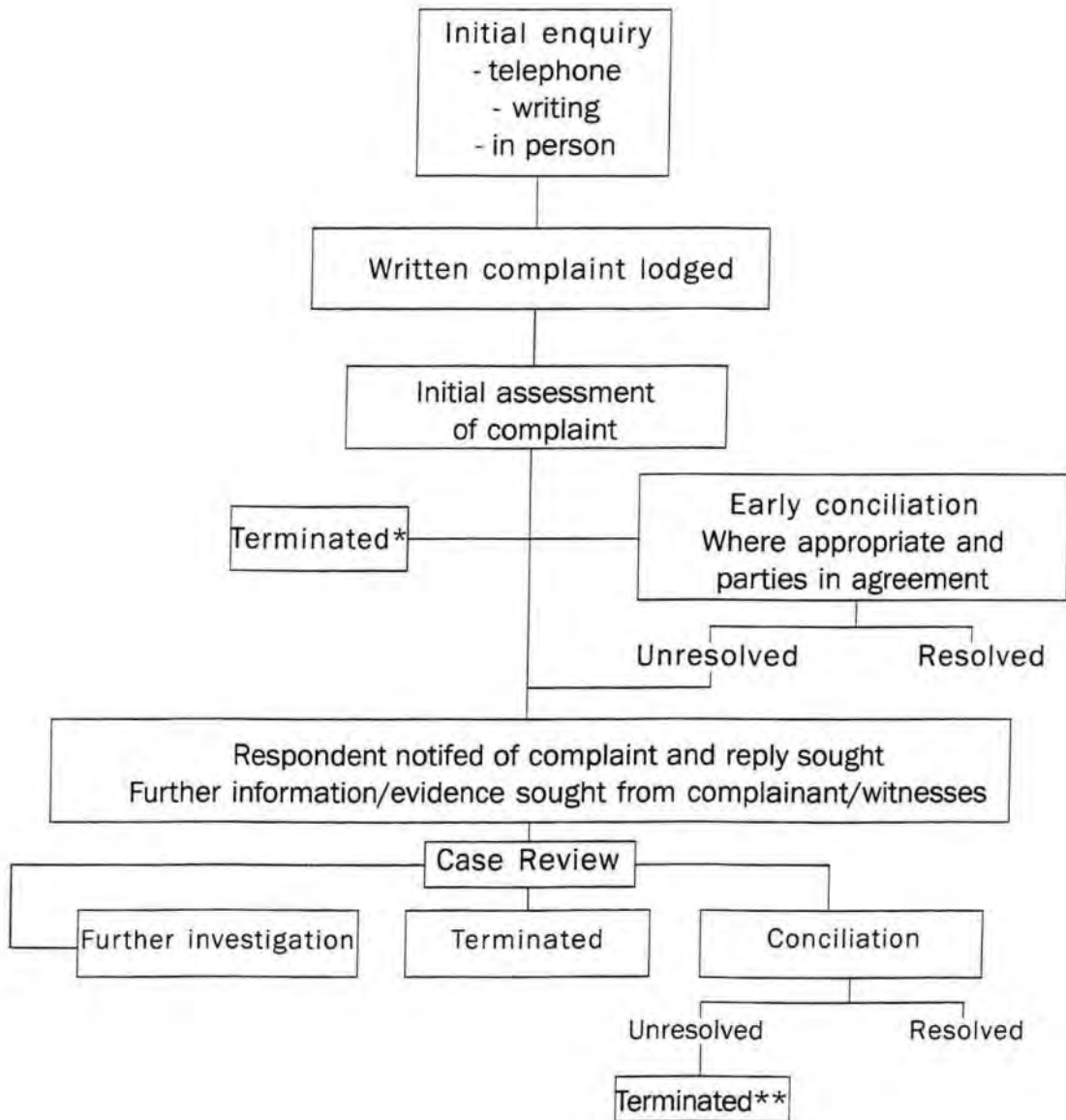
- Be in writing;
- Be accompanied by a payment of \$30 application fee;
- Include the name and address of the person requesting the information;
- Specify the documents to be accessed; and
- Be processed within 30 days of receipt.

HREOC Consultancy Services 2000 - 01

During 2000 - 01 the Commission used a range of consultancy services where there was, for example, a need for rapid access to latest technology and experience in its application; limitations on executive time; lack of in-house resources; the need for independent study; or a need for a change agent or facilitator. There were 8 consultants under engagement during the financial year and total payments of \$439,780.00 were made to consultants. A full listing of the names and amounts is available on the Commission website.

Appendix 5

The Complaint Handling Process



* When complaints under the Racial, Sex & Disability Discrimination Acts are terminated, the complainant may apply to have the allegations heard and determined by the Federal Court or the Federal Magistrates Service.

** Complaints under the Human Rights & Equal Opportunity Commission Act concerning discrimination in employment or a breach of human rights, which cannot be conciliated, cannot be taken to the Federal Court. If the President is satisfied that the subject matter of the complaint constitutes discrimination or a breach of human rights these findings are reported to the Attorney-General for tabling in Parliament.

Appendix 6

Performance Management and Staff Development

The Commission's Performance Management Scheme provides a framework to manage and develop our staff to achieve our corporate objectives. There have been two cycles completed since its implementation on 1 July 1999. The scheme provides regular and formal assessment of an employee's work performance and allows for access to training and skill development.

The Commission's Certified Agreement recognises the need to provide adequate training for staff to support workplace changes. This is especially relevant with changes in the information technology area where staff are provided with relevant and ongoing computer training.

As part of the Commission's staff development strategy staff are provided with support under our Studies Assistance policy. The policy provides for access to study leave where study is relevant to the work of the Commission, an individual's work responsibilities and where it assists with career development.

Workplace diversity and equal employment opportunity

The Commission's Workplace Diversity Plan has been in operation since September 1999. The Commission recognises that diversity in our staff is one of our greatest strengths and assets and is committed to valuing and promoting the principles of workplace diversity through our work practices. The Commission endorsed a strategy through the year to assist in the employment and development of indigenous staff. Other strategies under the plan focus on supporting staff with family responsibilities and supporting employment opportunities for people with disabilities. As a result the Commission supported several work experience placements from people with disabilities through the year.

Occupational Health and Safety

Review of the Commission's Occupational Health and Safety (OH&S) policy was delayed pending the outcome of legislative changes to the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. The Commission's Health and Safety Committee includes a staff health and safety representative and four corporate support staff. The Health and Safety Committee conducted a hazards survey of the workplace in early 2001 as part of its OH&S plan. There was no significant problems found and any minor problems were immediately rectified. Ongoing assistance and support on OH&S and ergonomic issues is provided to new and existing staff. There have been no dangerous accidents or occurrences reported.

The Commission continues to provide staff with access to counselling services through its Employee Assistance Program. This is a free and confidential service for staff and their families to provide counselling on personal and work related problems if required.

Workplace Relations and Employment

Staff in the Commission are employed under section 22 of the *Public Service Act 1999*. The Commission's current Agreement was certified by the Australian Industrial Relations Commission in June 2000 and is in operation until 1 August 2002. The Agreement is comprehensive and was certified under section 170LK of the *Workplace Relations Act 1976*. The number of Commission employees covered by the Agreement as at 30 June 2001 was 90. Productivity savings funded a salary increase to staff, delivered in three instalments over the life of the Agreement. A one off bonus was payable to staff on certification. The Agreement maintains core employment conditions with some streamlining of allowances. Staff are able to purchase additional leave and access further benefits such as salary packaging and cashing out five days recreation leave subject to conditions. Salary progression within classification levels is subject to performance assessment. Salary ranges are reflected in the table below.

Under current arrangements the Commission provides corporate support to the Office of the Federal Privacy Commissioner (OFPC). The OFPC is co-located with the Commission and has negotiated a Memorandum of Understanding for the provision of corporate support. Staff in the OFPC are covered by the Human Rights and Equal Opportunity's Certified Agreement and related workplace policies.



Staffing Overview

The Commission's average staffing level for the year was 92 staff with a turnover of 13% for ongoing staff. An overview of the Commission's staffing profile as at 30 June 2001 is summarised in the table below.

Classification	Male	Female	Full time	Part time	Total Ongoing	Total Non-Ongoing
Statutory Office Holder	2	1	2	1		3
SES Band 2			1	1		1
SES Band 1						
EL 2 above the barrier (\$77,284 - 79,259)			3	2	1	
EL 2 (\$65,962 - 75,968)	8	12	18	2	22	1
EL 1 (\$57,192 - 62,718)	3	6	8	1	7	2
APS 6 (\$44,613 - 51,247)	8	15	23		19	4
APS 5 (\$41,305 - 43,799)	2	4	6		5	1
APS 4 (\$37,032 - 40,210)	4	4	7	1	4	4
APS 3 (\$33,228 - 35,862)	2	14	12	4	12	4
APS 2 (\$29,171 - 32,350)		4	3	1	2	2
APS 1 (\$25,777 - 28,489)	2	1	1	2	2	1
Total	31	65	83	13	74	22

Commonwealth Disability Strategy

The revised Commonwealth Disability Strategy (CDS) was launched by the Government in late 2000. Full details on the CDS can be found on the Department of Family and Community Services website at www.facs.gov.au/disability/cds. Through the CDS the Government seeks to ensure its policies, programs and services are as accessible to people with disabilities as they are to all other Australians. This of course is integral to the work of the Commission and evident in the work we do.

The Commission along with all other Commonwealth agencies is to report against the CDS performance framework annually. The CDS identifies five core roles that may be relevant to the agency. The Commission's primary roles are that of policy adviser, service provider and employer. Full details on of the policies and services highlighted in the below can be found within the relevant section of the annual report.

As part of this process the Commission considered that it was an important step to review our last Disability Action Plan and this can be found on the Commission's website. The Commission will also be developing a new action plan in 2001/2002. The Commission is committed to implementing best practices in providing and improving access to its services for people with disabilities. In particular our Complaint Handling processes, online access to our services and website, and consultation with disability groups provide examples of what we are doing to achieve this.

Commonwealth Disability Strategy Performance Reporting June 2001

Further details on programs and policies outlined against the performance indicators can be found in the relevant section of the annual report.

POLICY ADVISOR ROLE

Performance Indicator 1

New or vised policy/program assess impact on the lives of people with disabilities prior to decision.

Performance Measure

Percentage of new or revised policy/program proposals that document that the impact of the proposal was considered prior to the decision making stage

- 100% of Terms of Reference for Commission inquiries are distributed for comment prior to a decision to proceed. Submissions to inquiries are taken in all formats, verbal (transcribed by the Commission), email, handwritten letters. Submissions are made available to all on the Commission website, except where otherwise requested.
Performance measure=100%.
- Following feedback sought from disability sector, the Commission decided not to terminate complaint about TV captioning due to broader unresolved issues identified in submissions.

Performance Indicator 2

People with disabilities are included in consultation about new or revised policy/program proposals.

Performance Measure

Percentage of consultations about new or revised policy / program proposals that are developed in consultation with people with disabilities.

Current level of performance 2000 - 01

- World Congress Against Racism consultations around Australia were held in accessible venues and promoted to disability organisations in local areas.
- The Commission sponsored the Forum on sterilisation of women with disabilities, held as part of the Disability with Attitude Conference. Commissioner Susan Halliday attended the Forum
- The Accessible E Commerce Forum and Building Access Policy Committee are actively resourced by the Commission. Disability sector representatives work with the Commission in developing ongoing Agenda for these Fora.
- Launch of captioned movies, and preparatory meetings were interpreted by both Auslan signers and real time captioners.

Performance Indicator 3

Public announcements of new, revised or proposed policy/program initiatives are available in accessible formats for people with disabilities in a timely manner.

Performance Measure

- Percentage of new, revised or proposed policy / program announcements available in a range of accessible formats.
- Time taken in providing announcements in accessible formats.



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Current level of performance 2000 - 01

- All information about new Commission initiatives is available on a W3C compliant web site simultaneous to public release. For more information on accessibility compliance refer to <http://www.w3c.org>.
Performance measure for web release = 100%.
- Email lists deliver information and links to several thousand subscribers. All National Disability peaks subscribe to this list.
- Sex Discrimination Unit Pregnancy Guidelines released in the year are available in accessible *format via W3C compliant web page, published simultaneously.
- The Disability Rights Unit (DRU) Update is distributed via Radio for the Print Handicapped, a National network. In 2001, DRU evaluated the Update service via a user survey and incorporated feedback to improve navigation of the web site.
- Other accessible formats are available on requesting and can be provided within two days.
- For the provision of announcements in accessible formats the performance measure= 100%

PROVIDER ROLE

Further details on the Commission's Complaint Handling function with a full description of its services and relevant statistics can be found in the Complaint Handling Section of the annual report on page 38.

Performance Indicator 1

Complaints Information Line provides information about complaint Handling service to people with disabilities.

Performance Measure

- Complaints information service accessible to people with disabilities.
- Number of calls to inquiries line related to disability issues.

Current level of performance 2000 - 01

- The Complaints information is available in electronic and alternative formats. Email facility for the lodgement of complaints is available. TTY facility is available with a national 1300 number at local call cost.



- All Complaint Handling brochures are available on the Commission website in accessible electronic format. Information about the complaints process and legislation is available in plain English format on the Commission website. The website is updated regularly.
- 19% of telephone enquiries calls received related to disability issues
- Commission information is available in alternative formats on request.
- A complaints information referral list is updated to ensure callers with disabilities can be referred to an appropriate advocacy groups.

Performance Indicator 2

Complaint handling service accessible to people with disabilities.

Performance Measure

- Number of complaints received under the DDA.
- Number of complaints lodged by people with disabilities under all legislation administered by the Commission.
- Number of complainants who identify the need for specific assistance on intake form.
- Complaints received about accessibility of service.

Current level of performance 2000 - 01

- 504 complaints were received under DDA legislation for 2000 - 01. Refer to the Complaints handling section of the annual report for further details.
- Complaints were received from people identifying as having a disability under all Acts administered by the Commission. 47% of responses to a demographics question indicated the complainant had a disability.
- There were no complaints received regarding access to the Commission complaint handling service or premises. Performance measure = 100%.
- The Commission's premises are accessible. Premises used for remote conciliations conferences are accessible. Performance measure = 100%.
- The Complaint Handling Section (CHS) has established an Access

Human Rights and Equal Opportunity Commission

Committee to review access to the CHS service by the community, including specific focus on people with disabilities. Full details are available in the annual report.

Performance Indicator 3

Staff training and development includes training related to people with disabilities

Performance Measure

Percentage of training programs that include information regarding people with disabilities and relevance to complaint handling processes.

Current level of performance 2000 - 01

- CHS investigation and conciliation training courses include specific training on accommodating people with disabilities in the complaint handling investigation and conciliation processes. Performance measure = 100%.
- Ad hoc CHS training sessions specifically address relevance to people with disabilities who use complaint handling services. Performance measure = 100%.
- CHS Complaint Handling Procedures Manual advises staff to consider reasonable accommodation for people with disabilities is provided during the investigation and conciliation process such as provision of Auslan interpreters, use of TTY, use of alternative formats for information. Performance measure = 100%.

Performance Indicator 4

Complaint mechanism in place to address concerns raised about service and addresses requirements of people with disabilities.

Performance Measure

Established complaint/grievance mechanism in operation. Detailed in Charter of service which is provided to all parties to a complaint and available on website. Provided in alternative format on request.

Current level of performance 2000 - 01

- Charter of Service addresses roles and responsibilities of the Commission and parties.



- No complaints about accessibility of service or disability related issues were received under the charter in the year.
- Performance measure = 100%.

EMPLOYER ROLE

Performance Indicator 1

Employment policies, procedures and practices comply with the requirements of the *Disability Discrimination Act 1992*.

Performance Measure

Number of employment policies, procedures and practices that meet the requirements of the *Disability Discrimination Act 1992*.

Current level of performance 2000 - 01

- The Corporate Plan includes reference to APS values.
- The Certified Agreement (CA) contains reference to Workplace Diversity principles. Most of the Commission's policies on employment are contained within the CA.
- The Workplace Diversity Plan (WDP) outlines strategies to maximise employment opportunities for people with disabilities. This has included expanded work experience opportunities for people with disabilities in 2000 - 01. All new staff on induction are provided with a copy of the WDP.
- The Commission's previous Disability Action Plan was reviewed in 2001.
- The Email/Internet policy was finalised in 1999 and is reviewed annually. It specifically refers to the inappropriate use of email that may demean people with disabilities.
- No formal complaints / grievances made by staff with disabilities with regard to current work practices.

Performance Indicator 2

Recruitment information for potential job applicants is available in accessible formats on request.

Performance Measure

- Percentage of recruitment information requested and provided in accessible electronic formats and accessible formats other than electronic.
- Average time taken to provide accessible information in electronic formats and formats other than electronic.

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Current level of performance 2000 - 01

- Performance in providing accessible formats for recruitment material = 100%
- Recruitment information is able to be provided in any format. All recruitment material is on the Commission's website and available by download simultaneously as advertising in the press. Advertisements in the press advise that information is available at contact phone number, by TTY phone and on the Commission's website. The Commission's website meets the criteria for accessibility as outlined in the Government Online Strategy and the Deputy Disability Commissioner has advised in the process. The site received a very positive report following an independent audit in early 2000. Over a two week period in June 2001 the number of hits on the job vacancies page was 723. Statistics are available on the use of the site.
- No requests for alternate formats such as Braille were requested during 2000-01.

Performance Indicator 3

Agency recruiters and managers apply the principle of reasonable adjustment.

Performance Measure

- Percentage of recruiters and managers provided with information on reasonable adjustment.

Current level of performance 2000 - 01

- Selection guidelines reviewed to include information on reasonable adjustment and guidelines for interviewing staff with disabilities. Guidelines are now provided with selection material to the selection Committee. Guidelines are available on the Intranet.
- Recruitment action is managed internally and not outsourced.

Performance Indicator 4

Training and development programs consider the needs of staff with disabilities.

Performance Measure

Percentage of training and development programs that consider the needs of staff with disabilities.

Current level of performance 2000 - 01

Due to the small number of staff training is co-ordinated by each of the unit managers under the Commission's Performance Management scheme. There are few training courses run in-house because of the small number of staff.

- Training nomination forms include specific requirements that may be needed such as:
 - wheelchair access,
 - accessible toilets/parking
 - a hearing device
 - sign language interpreter
 - an attendant
 - a support person
 - information in Braille, Audio Cassette, large Print, ASCII format
- A selection Workshop held in-house in 2000 included information on reasonable adjustment and interviewing people with disabilities.

Performance Indicator 5

Training and development programs include information on disability issues as they relate to the content of the program.

Performance Measure

Percentage of training and development programs that include information on disability issues as they relate to the program.

Current level of performance 2000 - 01

- As noted above training is co-ordinated by each individual section and there are few courses that are run in-house.
- A Selection training workshop was run in-house and this included information on disability issues,.
- Induction includes information on Workplace Diversity and relevant legislation that the Commission administers, including the DDA.
- The Complaint Handling Section conducts training and information on disability issues for staff.

Human Rights and Equal Opportunity Commission

Performance Indicator 6

Complaint/grievance mechanism, including access to external mechanisms, in place to address issues and concerns by staff.

Performance Measure

Established complaints/grievance mechanisms, including access to external mechanisms in operation.

Current level of performance 2000 - 01

- There is an established process in the Certified Agreement for complaints/grievances, which includes access to external review through the Merit Protection and Review Agency.
- All staff are advised of access to the Commission's Employee Assistance Program and encouraged to use this service when needed. This free service provides counselling and support for staff and their families.
- Provision of access to complaints/grievance mechanisms = 100%

Note: Accessible electronic formats include ASCII (or .txt) files and html for the web. Non electronic accessible formats include Braille, audio cassette, large print and easy English. Other ways of making information accessible include video captioning and Auslan interpreters.





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 2001. The financial statements comprise:

- Statement by the President;
- Statements of Financial Performance, Financial Position and Cashflows;
- Schedules of Contingencies and Commitments; and
- Notes to and forming part of the Financial Statements.

The President is responsible for the preparation and presentation of the financial statements and the information they contain. I have conducted an independent audit of the financial statements in order to express an opinion on them to you.

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 statements, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Australian Accounting Standards, other mandatory professional reporting requirements and statutory requirements in Australia 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.

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130 Elizabeth Street
SYDNEY NSW
Phone (02) 9367 7100 Fax (02) 9367 7102

Audit Opinion

In my opinion,

- (i) the financial statements have been prepared in accordance with Schedule 1 of the Financial Management and Accountability (Financial Statements 2000-2001) Orders;
- (ii) the financial statements give a true and fair view, in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and Schedule 1 of the Financial Management and Accountability (Financial Statements 2000-2001) Orders, of the financial position of the Human Rights and Equal Opportunity Commission as at 30 June 2001 and the results of its operations and its cash flows for the year then ended.

Australian National Audit Office



P Hinchey
Senior Director

Delegate of the Auditor-General

Sydney
5 October 2001

Financial Statements

Human Rights and Equal Opportunity Commission Statement by the President

In my opinion, the attached financial statements give a true and fair view of the matters required by Schedule 1 of the Financial Management and Accountability (Financial Statements 2000 - 01) Orders made under section 63 of the *Financial Management and Accountability Act 1997*.



Alice E.S Tay
President
4 October 2001

Human Rights and Equal Opportunity Commission
Statement of Financial Performance
for the period ended 30 June 2001

	Notes	2000-01 \$	1999-2000 \$
Revenues from ordinary activities			
Revenues from government	3.1	10,609,000	14,426,000
Sales of goods and services	3.2	2,796,646	3,245,221
Other	3.3	86,664	62,741
Total revenues from ordinary activities		<u>13,492,310</u>	<u>17,733,962</u>
Expenses from ordinary activities			
Employees	4.1	6,849,056	9,015,177
Suppliers	4.2	5,437,306	7,361,150
Depreciation and amortisation	4.3	677,836	641,025
Disposals of assets	3.4	13,954	22,756
Write-down of assets	4.4	29,003	685,379
Total expenses from ordinary activities		<u>13,007,155</u>	<u>17,725,487</u>
Net operating surplus from ordinary activities		485,155	8,475
Equity interests			
Net surplus attributable to the Commonwealth		<u>485,155</u>	<u>8,475</u>

The above statement should be read in conjunction with the accompanying notes.

Human Rights and Equal Opportunity Commission
Statement of Financial Position
as at 30 June 2001

	Notes	2000-01 \$	1999-00 \$
ASSETS			
Financial assets			
Cash		2,237,009	1,537,633
Receivables	5	<u>473,636</u>	<u>622,609</u>
Total financial assets		<u>2,710,645</u>	<u>2,160,242</u>
Non-financial assets			
Infrastructure, plant and equipment	6, 1, 6, 2	2,010,588	2,236,575
Intangibles	6.3	113,253	97,926
Other	6.4	<u>266,578</u>	<u>91,331</u>
Total non-financial assets		<u>2,390,419</u>	<u>2,425,832</u>
Total assets		<u><u>5,101,064</u></u>	<u><u>4,586,074</u></u>
LIABILITIES			
Debt			
Other	7	<u>2,314,057</u>	<u>3,055,075</u>
Total debt		<u>2,314,057</u>	<u>3,055,075</u>
Provisions			
Capital use charge		35,000	-
Employees	8.1	<u>1,406,493</u>	<u>2,048,111</u>
Total provisions		<u>1,441,493</u>	<u>2,048,111</u>
Payables			
Suppliers	8.2	358,609	270,905
Other	8.3	<u>732,527</u>	<u>-</u>
Total payables		<u>1,091,136</u>	<u>270,905</u>
Total liabilities		<u><u>4,846,686</u></u>	<u><u>5,374,091</u></u>
EQUITY			
Capital		1,006,000	1,095,000
Reserves		55,592	55,592
Accumulated deficits		<u>(807,214)</u>	<u>(1,938,609)</u>
Total equity	9	<u><u>254,378</u></u>	<u><u>(788,017)</u></u>
Current liabilities		2,598,988	2,256,805
Non-current liabilities		2,247,698	3,117,286
Current assets		2,977,223	2,251,573
Non-current assets		2,123,841	2,334,501

The above statement should be read in conjunction with the accompanying notes.

Human Rights and Equal Opportunity Commission
Statement of Cash Flows
for the period ended 30 June 2001

	Notes	2000-01 \$	1999-00 \$
OPERATING ACTIVITIES			
Cash received			
Appropriations for outputs		10,640,000	15,435,000
Sales of goods and services		3,749,200	2,983,893
Interest		82,203	62,741
GST refunds		247,120	-
Total cash received		14,718,523	18,481,634
Cash used			
Employees		6,778,880	8,580,036
Suppliers		6,692,263	7,842,805
Total cash used		13,471,143	16,422,842
Net cash from operating activities	10	1,247,380	2,058,792
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		645	3,107
Total cash received		645	3,107
Cash used			
Purchase of infrastructure, plant and equipment		548,649	543,265
Total cash used		548,649	543,265
Net cash used by investing activities		(548,004)	(540,158)
Net increase in cash held			
Cash at the beginning of the reporting period		1,537,633	18,998
Cash at the end of the reporting period		2,237,009	1,537,633

The above statement should be read in conjunction with the accompanying notes.

Human Rights and Equal Opportunity Commission
Schedule of Commitments
as at 30 June 2001

	2000-01 \$	1999-00 \$
OTHER COMMITMENTS		
Operating leases	7,807,929	9,502,241
Other commitments	131,439	379,793
Total other commitments	<u>7,939,368</u>	<u>9,882,034</u>
COMMITMENTS RECEIVABLE	<u>(2,611,450)</u>	<u>(1,932,576)</u>
Net commitments	<u><u>5,327,918</u></u>	<u><u>7,949,458</u></u>
BY MATURITY		
All net commitments		
One year or less	1,466,480	2,264,524
From one to five years	3,861,438	5,684,934
Over five years	-	-
Net commitments	<u><u>5,327,918</u></u>	<u><u>7,949,458</u></u>
Operating Lease Commitments		
One year or less	2,497,430	2,367,876
From one to five years	5,310,499	7,134,365
Over five years	-	-
Commitments	<u><u>7,807,929</u></u>	<u><u>9,502,241</u></u>

Schedule of Contingencies
as at 30 June 2001

CONTINGENT LOSSES		(70,000)
Total contingent losses	<u>-</u>	<u>(70,000)</u>
CONTINGENT GAINS	-	-
Total contingent gains	<u>-</u>	<u>-</u>
Net contingencies	-	(70,000)

At 30 June the Commission recognised no contingent losses or gains. The contingent loss noted in 1999-00 was realised in 2000-01 and is included in Suppliers expense.

Schedule of Unquantifiable Contingencies

As at 30 June 2001, the Commission was named as the respondent in three applications for special leave in the High Court which are yet to be heard, a number of matters before the Federal Court of Australia and a matter before the District Court of South Australia. It is not possible to estimate the amounts of the eventual payments that may be required in relation to these claims, though it is not common for costs to be awarded against the Commission in these matters.

The Commission has also intervened in three matters since June 2000. Although it is technically possible that a cost order could be made against the Commission in one of these matters, such an order is unlikely.

The above schedules should be read in conjunction with the accompanying notes.

Human Rights and Equal Opportunity Commission Notes to and forming part of the Financial Statements for the year ended 30 June 2001

Note 1 - Objectives of the Human Rights and Equal Opportunity Commission

The Commission has one outcome:

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

The Commission's objective is to ensure that Australians:

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

Note 2 - Summary of significant accounting policies

2.1 Basis of Accounting

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general purpose financial report.

The statements have been prepared in accordance with:

- Schedule 1 of the Financial Management and Accountability (Financial Statements 2000-01) Orders made by the Finance Minister for the preparation of Financial Statements in relation to financial years ending on 30 June 2001;
- Australian Accounting Standards and Accounting Interpretations issued by the Australian Accounting Standards Boards;
- other authoritative pronouncements of the Boards; and
- the Consensus Views of the Urgent Issues Group.

The statements have been prepared having regard to:

- Statements of Accounting Concepts;
- the Explanatory Notes to Schedule 1, and Guidance Notes issued by the Department of Finance and Administration.

The Agency Statements of Financial Performance and Financial Position have been prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets which as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

Assets and liabilities are recognised in the Commission's Statement of Financial Position when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. Assets and liabilities arising under agreements equally proportionally unperformed are however not recognised unless required by an Accounting Standard. Liabilities and assets which are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Revenues and expenses are recognised in the Agency Statement of Financial Performance when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

The continued existence of the Commission in its present form, and with its present functions, is dependent on Government policy and on continuing appropriations by Parliament for the Commission's administration and functions.

2.2 Changes in Accounting Policy

Changes in accounting policy have been identified in this note under their appropriate headings.

The accounting policies used in the preparation of these financial statements are consistent with those used in 1999-2000.

2.3 Agency and Administered items

The Commission has no administered items.

2.4 Reporting by Outcomes

A comparison of Budget and Actual figures by outcome specified in the Appropriation Acts relevant to the Agency is presented in Note 17. The net cost to Budget outcomes shown includes intra-government costs that are eliminated in calculating the actual budget outcome for the Government overall.

2.5 Revenues from government

Revenues from government are revenues relating to the core operating activities of the Commission. Policies for accounting for revenue from government follow; amounts and other details are given in Note 3.1.

(a) Revenues from Government - Agency Appropriations

Appropriations to the Commission for its departmental outputs are recognised as revenue to the extent that they have been received into the Commission's Bank account or are entitled to be received by the Commission at year end.

(b) Resources Received Free of Charge

Services received free of charge are recognised as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

(c) Other Revenue

Revenue from the sale of goods is recognised upon delivery of goods to customers. Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets. Dividend revenue is recognised when the right to receive a dividend has been established. Revenue from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

Agency revenue from the rendering of a service is recognised by reference to the stage of completion of contracts or other agreements to provide services to Commonwealth bodies. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

2.5 Employee entitlements

(a) Leave

The liability for employee entitlements includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Commission is estimated to be less than the annual entitlement for sick leave.

The liability for annual leave and current long service leave reflects the value of total leave entitlements of all employees at 30 June 2001 and is recognised at the nominal amount.

The non-current proportion of the liability for long service leave is recognised and measured at the present value of the estimated future cash flows to be made in respect of all employees at 30 June 2001. In determining the present value of the liability, the Commission has taken into account attrition, deaths and pay increases through promotion and inflation.

(b) Separation and redundancy

Provision is made for separation and redundancy payments in circumstances where the Commission has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

(c) Superannuation

Staff of the Commission contribute to the Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS). Employer contributions amounting to \$540,261 (1999-00: \$730,948) in relation to these schemes have been expended in these financial statements.

No liability for superannuation is recognised as at 30 June as the employer contributions fully extinguish the accruing liability which is assumed by the Commonwealth, except for that component at Note 8.1 which recognises only those employer contributions accrued in 2000-01 and paid in the subsequent year.

Employer Superannuation Productivity Benefit contributions totalled \$107,398.64 (1999-00: \$140,482).

2.7 Leases

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.

Operating lease rentals as shown in Note 4.2 represent actual rental expense for the year adjusted for the impact of lease incentives. Calculations are in accordance with mandatory reporting requirements.

Lease incentives taking the form of 'free' leasehold improvements and rent holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

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.

2.8 Unearned Revenue

As at 30 June the Commission recognised payments for services under contract, for which costs have not yet been incurred, as unearned revenue. In the event of the services not being performed the moneys would have to be repaid.

2.9 Cash

Cash includes notes and coins held and any deposits held at call with a bank or financial institution.

2.10 Financial Instruments

Accounting policies for financial instruments are stated at Note 16.

2.11 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor agency's accounts immediately prior to restructuring.

2.12 Disposal of Assets

Assets disposed are at the end of their useful lives, or are technically obsolete or have been found to be un-economic to repair.

2.13 Transfer of assets

Assets have been relinquished as a consequence of restructuring arrangements, at the amounts at which they were recognised in the Commission's accounts immediately prior to restructuring.

2.14 Property, plant and equipment

Asset recognition threshold

All depreciable non-current assets with historical cost equal to or in excess of \$2,000 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.

Revaluations

Infrastructure, plant and equipment are revalued progressively in accordance with the 'deprival' method of valuation in successive 3-year cycles, so that no asset has a value greater than three years old. The current cycles commenced in 1998-99. All assets on hand at the commencement of the cycle will be revalued in 2001-02.

Assets in each class acquired after the commencement of the progressive revaluation cycle are not captured by the progressive revaluation then in progress.

The Commission recognises infrastructure, plant and equipment at its depreciated replacement cost.

Any assets which would not be replaced or are surplus to the requirements are valued at net realisable value. At 30 June 2001, the Commission had no assets in this situation.

All valuations are independent.

Recoverable amount test

Schedule 1 requires the application of the recoverable amount test to departmental non-current assets in accordance with AAS 10 Recoverable Amount of Non-Current Assets. The carrying amounts of these non-current assets have been reviewed to determine whether they are in excess of their recoverable amounts. In assessing recoverable amounts, the relevant cash flows have been discounted to their present value.

Depreciation and Amortisation

Depreciation is calculated on a straight line basis so as to write off the cost of each item of infrastructure, 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.

Depreciation/amortisation rates (useful lives) and methods are reviewed at each balance date and necessary adjustments are recognised in the current, and future reporting periods, as appropriate. Residual values are re-estimated for a change in prices only when assets are revalued.

Depreciation and amortisation rates applying to each class of depreciable asset are based on the following useful lives:

	2000-2001	1999-2000
Leasehold improvements	Lease term	Lease term
Plant and equipment	4 to 10 years	4 to 10 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 4.3.

2.15 Taxation

The Commission's activities are exempt from all forms of taxation except fringe benefits tax and the goods and services tax.

2.16 Foreign Currency

Transactions denominated in a foreign currency are converted at the exchange rate at the date of the transaction. Foreign currency receivables and payables are translated at the exchange rates current as at balance date. Associated currency gains and losses are not material.

2.17 Insurance

The Commission has insured for risks through the Government's insurable risk managed fund, called Comcover. Workers compensation is insured through Comcare Australia.

2.18 Comparative Figures

Comparative figures have been adjusted to conform to changes in presentation in these financial statements where required.

2.19 Capital use charge (CUC)

A capital usage charge of 12% is imposed by the Government on the net departmental assets of the Commission.

	2000-01 \$	1999-00 \$
Note 3 - Operating revenues		
3.1 Revenues from government		
Appropriations for outputs	10,584,000	14,396,000
Resources received free of charge	25,000	30,000
Total	<u>10,609,000</u>	<u>14,426,000</u>
3.2 Sales of goods and services		
Goods	27,205	649,044
Services	2,769,441	2,596,177
Total	<u>2,796,646</u>	<u>3,245,221</u>
Cost of goods sold	<u>-</u>	<u>-</u>
	<u>2,796,646</u>	<u>3,245,221</u>
3.3 Interest from deposits	<u>86,664</u>	<u>62,741</u>
3.4 Proceeds and Expenses from Sales of Assets		
Non-financial assets -Infrastructure, plant and equipment		
Revenue (proceeds) from sale	(645)	(3,107)
Expense from sale	14,599	25,863
Loss on sale	<u>13,954</u>	<u>22,756</u>
Note 4 - Operating expenses		
4.1 Employee expenses		
Remuneration (for services provided)	6,809,882	8,730,988
Separation and Redundancy	39,174	284,189
Total	<u>6,849,056</u>	<u>9,015,177</u>
4.2 Suppliers Expenses		
Supply of goods and services	4,514,839	6,493,204
Operating lease rentals	922,467	867,946
Total	<u>5,437,306</u>	<u>7,361,150</u>
4.3 Depreciation and Amortisation		
Depreciation of property, plant and equipment	166,942	170,442
Amortisation of leased assets	483,724	437,941
Intangibles - Computer software	27,170	32,642
Total	<u>677,836</u>	<u>641,025</u>

	2000-01 \$	1999-00 \$
4.4 Write-down of assets		
Financial Assets		
Receivables	29,003	4,043
Non-Financial Assets		
Plant and equipment - revaluation decrement	-	653,376
Plant and equipment - write-off	-	27,960
Total	<u>29,003</u>	<u>685,379</u>

Note 5 - Financial Assets

Receivables		
Appropriations	-	56,000
Interest receivable	4,461	-
Goods and services	377,342	566,609
GST receivable	107,875	-
	<u>489,678</u>	<u>622,609</u>
Less: Provision for Doubtful Debts	(16,042)	-
Total	<u>473,636</u>	<u>622,609</u>

Receivables (gross) which are overdue are aged as follows:

Not overdue	356,004	381,726
Overdue by:		
Less than 30 days	45,370	38,414
30 days to 60 days	11,011	175,377
60 to 90 days	4,245	717
more than 90 days	73,048	26,375
Total	<u>489,678</u>	<u>622,609</u>

Note 6 - Non-financial assets

6.1 Infrastructure, Plant & Equipment		
Plant & Equipment at cost	418,132	237,585
Less: Accumulated depreciation	<u>(237,203)</u>	<u>(23,727)</u>
	180,929	213,858
Plant & Equipment at 1998-99 valuation	1,035,005	1,124,493
Less: Accumulated depreciation	<u>(747,581)</u>	<u>(876,770)</u>
	287,424	247,723
Leasehold improvements at cost	524,945	274,380
Less: Accumulated amortisation	<u>(141,076)</u>	<u>(43,468)</u>
	383,869	230,912
Leasehold improvements at 1999-00 valuation	4,169,310	4,169,310
Less: Accumulated depreciation	<u>(3,010,944)</u>	<u>(2,625,228)</u>
	1,158,366	1,544,082
Total	<u>2,010,588</u>	<u>2,236,575</u>

The revaluations were as at 1 July 1999 in accordance with the progressive revaluation policy stated at Note 2 and were completed by an independent valuer, Australian Valuation Office.

6.2 Analysis of Property, Plant, Equipment and Intangibles

TABLE A: Movement summary 2000-01 for all assets irrespective of valuation basis

Item	Land	Buildings	Total Land & Buildings	Infrastructure, Plant & Equipment	Computer software - total intangibles	Total
	\$	\$	\$	\$	\$	\$
Gross Value as at 1 July 2000	-	-	-	5,805,768	302,297	6,108,065
Additions:						
- acquisition of new assets	-	-	-	490,493	42,897	533,390
Revaluations: write-ups (write-downs)	-	-	-	-	-	-
Assets transferred in/(out)	-	-	-	(100,763)	-	(100,763)
Write-offs	-	-	-	-	-	-
Disposals	-	-	-	(48,106)	-	(48,106)
Gross Value as at 30 June 2001	-	-	-	6,147,392	345,194	6,492,586
Accumulated Depreciation/Amortisation as at 1 July 2000	-	-	-	3,569,193	204,371	3,773,564
Depreciation/Amortisation charges for assets held 1 July 2000	-	-	-	476,337	-	476,337
Depreciation/Amortisation charges for additions	-	-	-	173,929	27,570	201,499
Revaluations	-	-	-	-	-	-
Assets transferred in/(out)	-	-	-	(49,148)	-	(49,148)
Write-offs	-	-	-	-	-	-
Disposals	-	-	-	(33,507)	-	(33,507)
Accumulated Depreciation/Amortisation as at 30 June 2001	-	-	-	4,136,804	231,941	4,368,745
Net book value as at 30 June 2001	-	-	-	2,010,588	113,253	2,123,841
Net book value as at 1 July 2000	-	-	-	2,236,575	97,926	2,334,501

Net assets transferred out in the table above comprises:

- Disposals due to restructuring of administrative arrangements - net assets \$51,615

TABLE B: Summary of balances of assets at valuation at 30 June 2001

Item	Land	Buildings	Total Land & Buildings	Infrastructure, Plant & Equipment	Computer software - total intangibles	Total
	\$	\$	\$	\$	\$	\$
As at 30 June 2001						
Gross Value	-	-	-	5,204,315	-	5,204,315
Accumulated Depreciation/Amortisation	-	-	-	(3,758,525)	-	(3,758,525)
Net book value	-	-	-	1,445,790	-	1,445,790
As at 30 June 2000						
Gross Value	-	-	-	5,293,803	-	5,293,803
Accumulated Depreciation/Amortisation	-	-	-	(3,501,998)	-	(3,501,998)
Net book value	-	-	-	1,791,805	-	1,791,805

	2000-01	1999-00
	\$	\$
6.3 Intangibles		
Computer software - internally developed	345,194	302,297
Less: Accumulated depreciation	(231,941)	(204,371)
Total	<u>113,253</u>	<u>97,926</u>
6.4 Other		
Prepayments		
Rent	159,118	-
Other	107,460	91,331
Total	<u>266,578</u>	<u>91,331</u>
Note 7 - Other Debt		
Lease incentives	<u>2,314,057</u>	<u>3,055,075</u>
Note 8 Provisions and Payables		
8.1 Employee Provisions		
Salaries and wages	150,671	268,902
Leave	1,237,250	1,594,907
Superannuation	18,572	30,394
Separation and redundancies	-	153,908
Aggregate employee entitlement liability	<u>1,406,493</u>	<u>2,048,111</u>
Current	724,206	803,230
Non-current	682,287	1,244,881
8.2 Supplier Payables		
Trade creditors	339,637	266,930
Operating lease rentals	18,972	3,975
Total	<u>358,609</u>	<u>270,905</u>
8.3 Other Payables		
Unearned revenue	<u>732,527</u>	<u>-</u>

Note 9 - Equity

Item	Accumulated Results		Asset revaluation reserve		Total reserves		Capital		TOTAL EQUITY	
	2000-01	1999-00	2000-01	1999-00	2000-01	1999-00	2000-01	1999-00	2000-01	1999-00
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Balance 1 July 2000	(1,938,609)	(1,847,084)	55,592	55,592	55,592	55,592	1,095,000	1,006,445	(788,017)	(885,047)
Equity rounding adjustment prior year	-	-	-	-	-	-	-	(445)	-	(445)
Equity injection: Appropriation	-	-	-	-	-	-	-	89,000	-	89,000
Operating Surplus/(Deficit)	485,155	8,475	-	-	-	-	-	-	485,155	8,475
Restructuring transfers	681,241	-	-	-	-	-	(89,000)	-	592,241	-
Dividends	-	-	-	-	-	-	-	-	-	-
Capital Use Charge	(35,000)	-	-	-	-	-	-	-	(35,000)	-
Net revaluation increments/decrements	-	-	-	-	-	-	-	-	-	-
Balance 30 June 2000	(807,214)	(1,838,609)	55,592	55,592	55,592	55,592	1,006,000	1,095,000	254,378	(788,017)

Note 9 - Equity (cont)**Restructuring**

As a result of a restructuring of administrative arrangements, the Commission relinquished its responsibility for the delivery of functions under the Privacy Act 1988.

The *Privacy Amendment (Office of the Privacy Commissioner) Act 2000* amended the *Privacy Act 1988* and established the Office of the Federal Privacy Commissioner as a separate entity.

In respect of the functions relinquished, the following assets and liabilities were transferred by the Commission:

	2000-01	1999-00
	\$	\$
Total assets relinquished	55,585	-
Total liabilities relinquished	647,826	-
Net assets relinquished	<u>(592,241)</u>	<u>-</u>
Net Contribution by Government as owner during the period	<u>(592,241)</u>	<u>-</u>

Note 10 - Cash flow reconciliation

Reconciliation of Cash per Statement of Financial Position to Statement of Cash Flows

• Cash at year end per Statement of Cash Flows	2,237,009	1,537,633
• Statement of Financial Position items comprising above cash: 'Financial Asset -Cash'	2,237,009	1,537,633

Reconciliation of operating surplus to net cash from operating activities:

Net surplus	485,155	8,475
Restructuring transfers	592,241	-
Fixed asset transfer	51,615	-
Other asset transfer	15,259	-
Provision for doubtful debts	16,042	-
Depreciation and Amortisation	677,836	641,025
Loss on disposal	13,954	704,092
Recognition of capital reserve	-	88,555
(Increase)/Decrease in Receivables	132,931	728,516
(Increase)/Decrease in Prepayments	(175,247)	137,020
Increase/(Decrease) in Employee provision	(641,619)	270,631
Increase/(Decrease) in Suppliers	87,704	201,365
Increase/(Decrease) in Debt	(741,018)	(720,887)
Increase/(Decrease) in Other payables provision	732,527	-
Net cash from operating activities	<u>1,247,380</u>	<u>2,058,792</u>

Note 11 - Executive Remuneration

The number of Executives who received or were due to receive total remuneration of \$100,000 or more:

REMUNERATION OF	2000-01 Number	1999-00 Number
\$100,000-\$109,999	1	-
\$120,000-\$129,999	-	1
\$130,000-\$139,999	1	-
\$140,000-\$149,999	-	2
\$150,000-\$159,999	-	1
\$170,000-\$179,999	1	4
\$180,000-\$189,999	1	-
\$190,000-\$199,999	-	1
\$200,000-\$209,999	1	-
	<u>5</u>	<u>9</u>

	2000-01 \$	1999-2000 \$
The aggregate amount of total remuneration of Executives shown above:	<u>815,991</u>	<u>1,456,889</u>

The aggregate amount of separation and redundancy payments during the year to executive officers shown above:	<u>-</u>	<u>87,949</u>
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Note 12 - Remuneration of Auditors

Financial statement audit services are provided free of charge to the Commission by the Auditor-General. The fair value of the audit services was:

was:	25,000	30,000
Other Services		
Amounts paid in relation to the audit of two special purpose financial reports	2,773	3,000
Total	<u>27,773</u>	<u>33,000</u>

Note 13 - Act of grace payments and waivers

No Act of Grace payments were made during the reporting period.

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997.

Note 14 - Average Staffing Levels

The average staffing levels for the Commission during the year were:

ASL	ASL
<u>91</u>	<u>126</u>

Note 15 - Appropriations

15.1 Agency appropriations	2000-01	1999-2000
Annual Appropriations for Departmental items (outputs)	\$	\$
Appropriation Acts 1 & 3 credits:		
Section 7 - Act 1 - basic appropriations (budget)	10,584,000	14,396,000
Section 7 - Act 3 - basic appropriations	-	-
Section 10 - adjustments	-	-
Section 11 - Advance to the Finance Minister	-	-
Section 12 - Comcover receipts	-	-
Total Current Appropriation Acts	10,584,000	14,396,000
Add: FMA Act Appropriations:		
s30 appropriations	-	-
s30A appropriations (GST recoverables)	247,120	-
s31 appropriations	3,832,048	3,049,741
Total appropriated in the year	14,663,168	17,445,741
Balance brought forward from previous period	1,479,137	-
Total appropriations available for payments	16,142,305	17,445,741
Payments during the year	13,905,296	15,972,329
Balance of appropriations (unspent) at 30 June carried to next period	2,237,009	1,473,412

The brought forward figure for the balance of appropriations for the prior period has been amended to incorporate petty cash on hand of \$5,727.

15.2 Annual Appropriations for Departmental Capital items

	Equity injections		Loans		Carryovers		Total	
	2000-01	1999-00	2000-01	1999-00	2000-01	1999-00	2000-01	1999-00
	\$	\$	\$	\$	\$	\$	\$	\$
Appropriation Act No 2 & 4								
Section 10 - Act No 2 (Budget)	-	89,000	-	-	56,000	950,000	56,000	1,039,000
Section 10 - Act No 4	-	-	-	-	-	-	-	-
Advance to the Finance Minister	-	-	-	-	-	-	-	-
Total Current Appropriation Acts	-	89,000	-	-	56,000	950,000	56,000	1,039,000
Add: FMA Act appropriations	-	-	-	-	-	-	-	-
Add: Appropriation Act No 4	-	-	-	-	-	-	-	-
s30 appropriations	-	-	-	-	-	-	-	-
s30A appropriations (GST recoverables)	-	-	-	-	-	-	-	-
Total appropriated in the year	-	89,000	-	-	56,000	950,000	56,000	1,039,000
Balance available at 1 July brought forward from previous period	58,494	-	-	-	-	-	58,494	-
Payments during the year	58,494	30,506	-	-	56,000	950,000	114,494	980,506
Balance of appropriations at 30 June carried to next period	-	58,494	-	-	-	-	-	58,494

Note 16 - Financial Instruments

16.1 Terms, conditions and accounting policies

Financial Instrument	Notes	Accounting Policies and Methods (Including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Assets		Financial assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably recognised.	
Cash		Deposits are recognised at their nominal amounts. Interest is credited to revenue as it accrues.	The Commission received interest payments from term deposits and the operating account. All accounts are held at the RBA and operate under the DOFA agency banking arrangements.
Receivables for goods and services	5	Receivables are recognised at the nominal amount due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provision is made when collection is judged less rather than more likely.	Balance of receivables are with entities external to the Commonwealth. Credit terms are net 30 days.
Financial liabilities		Financial liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.	
Lease incentives	7	Lease incentives are recognised as a liability at the time of receipt. The amount of the liability is reduced on a straight line basis over the life of the lease by allocating a portion of the rent expense against the current balance.	The Commission received lease incentives on entering a property operating lease in October 1994. Lease payments are made monthly.

16.2 Interest rate risk

Financial instrument	Notes	Floating interest rate		Fixed interest rate		Non-interest bearing		Total		Weighted average effective interest rate	
		00-01	99-00	00-01	99-00	00-01	99-00	00-01	99-00	00-01	99-00
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Financial Assets											
Cash		2,237,009	1,531,906	-	-	-	5,727	2,237,009	1,537,633	5%	5%
Interest receivable	5	4,461	-	-	-	-	-	4,461	-	5%	n/a
Receivables for goods and services	5	-	-	-	-	377,342	566,609	377,342	566,609	n/a	n/a
Appropriations	5	-	-	-	-	-	56,000	-	56,000	n/a	n/a
Total Financial Assets (Recognised)		2,241,470	1,531,906	-	-	377,342	628,336	2,618,812	2,160,242	n/a	n/a
Total Assets								5,101,064	4,586,074		
Financial Liabilities											
Lease incentives	7	-	-	-	-	2,314,057	3,055,075	2,314,057	3,055,075	n/a	n/a
Trade creditors	8.2	-	-	-	-	339,637	266,930	339,637	266,930	n/a	n/a
Operating lease rentals	8.2	-	-	-	-	18,972	3,975	18,972	3,975	n/a	n/a
Unearned revenue	8.3	-	-	-	-	732,527	-	732,527	-	n/a	n/a
Total Financial Liabilities (Recognised)		-	-	-	-	3,405,193	3,325,980	3,405,193	3,325,980	n/a	n/a
Total Liabilities								4,845,686	5,374,091		

16.3 Net Fair Values of Financial Assets and Liabilities

Agency	Note	2000-01		1999-00	
		Total Carrying amount	Aggregate Net Fair value	Total Carrying amount	Aggregate Net Fair value
Financial Assets		\$	\$	\$	\$
Cash		2,237,009	2,237,009	1,537,633	1,537,633
Interest receivable	5	4,461	4,461	-	-
Receivables for goods and services	5	377,342	377,342	566,609	566,609
Appropriations	5	-	-	56,000	56,000
Total Financial Assets		2,618,812	2,618,812	2,160,242	2,160,242
Financial Liabilities (Recognised)					
Lease incentives	7	2,314,057	2,314,057	3,055,075	3,055,075
Trade Creditors	8.2	339,637	339,637	266,930	266,930
Operating lease rentals	8.2	18,972	18,972	3,975	3,975
Unearned revenue	8.3	732,527	732,527	-	-
Total Financial Liabilities (Recognised)		3,405,193	3,405,193	3,325,980	3,325,980

Financial Assets

The net fair values of cash and non-interest bearing monetary financial assets approximate their carrying amounts.

Financial liabilities

The net fair values of lease incentives liabilities are based on discounted cash flows using current interest rates for liabilities with similar risk profiles.

The net fair values for trade creditors are short-term in nature and are approximated by their carrying amounts.

d) Credit Risk Exposures

The Commission's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Financial Position.

The Commission has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

Note 17 - Reporting of Outcomes

	Outcome 1	
	Budget \$	Actual \$
Net Subsidies, benefits and grant expenses	-	-
Other administered expenses	-	-
Total net administered expenses	-	-
Add Net cost of departmental outputs	14,334,000	10,098,845
Outcome before extraordinary items	14,334,000	10,098,845
Extraordinary items	-	-
Net Cost to Budget Outcome	14,334,000	10,098,845
Outcome specific assets deployed as at 30/6/01	3,617,000	5,101,064
Assets that are not outcome specific deployed as at 30/6/01	-	-

Note 17 - Reporting of Outcomes (cont'd)

	Outcome 1	
	Budget \$	Actual \$
Major Agency Revenues & Expenses by Outcome		
Operating Revenues		
Revenues from government	14,334,000	10,584,000
Sale of goods and services	1,718,000	2,796,646
Other non-taxation revenues	74,000	111,664
Total operating revenues	16,126,000	13,492,310
Operating Expenses		
Employees	8,143,000	6,849,056
Suppliers	7,298,000	5,437,306
Other	741,000	720,793
Total operating expenses	16,182,000	13,007,155

Note 18 Trust Moneys

Comcare Trust Account

Purpose - monies held in trust and advanced to the Commission by COMCARE for the purpose of distributing compensation payments made in accordance with the Safety Rehabilitation and Compensation Act 1988.

	Trust Money Comcare Trust Account	
	2000-01 \$	1999-2000 \$
Balance carried forward from previous period	-	-
Receipts during the period	2,648	-
Available for payments	2,648	-
Payments made	2,648	-
Balance carried forward to next period	-	-

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