Human Rights and
Equal Opportunity Commission

Annual Report 2002–2003

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Public Affairs Unit
Human Rights and Equal Opportunity Commission
Level 8, Piccadilly Tower
133 Castlereagh Street
Sydney NSW 2000
GPO Box 5218
Sydney NSW 2001

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: www.humanrights.gov.au
Email: paffairs@humanrights.gov.au

The 2002-03 Annual Report is available on the Commission's website at www.humanrights.gov.au/annrep02_03/

Human Rights and Equal Opportunity Commission

13 October 2003

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 2003, 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,

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

Contents

Significant achievements

- Improved on-line human rights education modules. See page 29.
- An increase of over 1 167 000 page views on the Commission's website (4 372 899 during 2002-03). See page 33.
- An increase in the number of conciliated complaints. See page 44.
- Completion of *Change and Continuity: Review of the Federal Unlawful Discrimination Jurisdiction*. See page 107.
- Consultations and publication of *Development and Indigenous Land: A Human Rights Approach*. See page 122.
- National Indigenous Legal Advocacy Courses accredited. See page 123.
- Release of *'Don't judge what I can do by what you think I can't'* to celebrate the 10 year anniversary of achievements under the Disability Discrimination Act. See page 126.
- An increase of 48 work plans submitted under the Disability Discrimination Act from last year. See page 131.
- 341 submissions to the National Inquiry into Children in Immigration Detention. See page 139.
- *Isma – Listen*: National consultations on eliminating prejudice against Arab and Muslim Australians. See page 156.
- Release of *A Time to Value: Proposal for a National Paid Maternity Scheme* and various consultations. See page 163.

Statement from the President

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

I am delighted to present my first statement as President of the Human Rights and Equal Opportunity Commission. Much of what is reported in this volume occurred before I took up my appointment. The last twelve months have been a time of challenge and success for the Commission as it continues the important task of promoting and protecting the observance of human rights in Australia.

My first duty is to acknowledge the extraordinary contribution to this Commission by the former President, Professor Alice Erh-Soon Tay. Professor Tay was appointed in April 1998. She brought to the Commission a lifetime of passion for education and a desire to provide practical leadership in the field of human rights. She deftly guided the Commission through a time of significant change, particularly with regard to the changing nature of the Commission's complaint handling role and the transfer of the Commission's hearing function to the Federal Court and the Federal Magistrates Service. She also provided great focus for the Commission's education programs and its intervention and amicus curiae functions before the courts.

Professor Tay was also a strong and effective advocate for the Commission, particularly in recent times with the introduction before Parliament of the Australian Human Rights Commission Bill 2003. The amendments proposed by this Bill would seriously impact on the work of the Commission. Professor Tay's contribution to the Commission and the Australian legal community cannot be overstated.

The Commission is currently able to seek leave of a court to intervene in cases that raise human rights or discrimination issues. The role of the intervener is to provide specialist assistance to the court, independent from the parties to a case. Since it was established in 1986, the Commission has intervened in 35 cases. These include interventions in cases involving family law issues, child abduction, the rights of refugees and asylum seekers, sex and marital discrimination, native title and other general human rights issues. The Bill would require the Commission to obtain the Attorney-General's consent prior to seeking leave to intervene. In the Commission's view, it is inappropriate that a potential party to litigation – such as the Commonwealth – should be able to exercise a 'gatekeeper function' in relation to interveners.

More fundamentally, such a proposal is at odds with the Commission's role as an independent body, responsible for monitoring and promoting Australia's compliance with human rights obligations accepted under international law.

The amendments proposed by the Bill also alter the structure of the Commission, replacing the identified portfolio Commissioners with three generic 'Human Rights Commissioners' who have overlapping responsibilities. The Commission considers this change to be unnecessary. The current structure of the Commission provides a strong educational and advocacy role for individual Commissioners, which has in the past received significant community support.

A strong and independent national human rights organisation is crucial to promote and protect fundamental values of fairness, equality, tolerance and non-discrimination. The success and vitality of the Commission is reflected in the fact that many other nations, particularly those in the Asia Pacific region, have modelled their own national human rights institution on the Commission.

I commenced my appointment as President of the Human Rights and Equal Opportunity Commission in June 2003. It is with a sense of deep privilege and commitment that I take up this position. The promotion and protection of human rights, in one way or another, has been a fundamental concern for me. I believe human rights are not a distant, abstract concept. Rather my experience as a barrister and, later, as a Judge has demonstrated time and again the fact that human rights are central to the lives of all men, women and children in our society. In my time with the Commission I shall strive to find practical and realistic solutions to issues of discrimination and breaches of human rights.

Since its establishment, this Commission has been actively engaged in assisting people find such solutions, including through the resolution of individual complaints of discrimination and by conducting substantial national inquiries. Today there remain many challenges including in particular:

- the fact that Indigenous Australians still lag far behind non-Indigenous Australians in their enjoyment of very many basic human rights;
- that people continue to face discrimination because of their gender, their ethnicity or because they have a disability;
- our treatment of asylum seekers;
- that there is an undercurrent of tension and mistrust between different groups of Australians, fuelled by the tragic events of recent years.

The mere statement that certain human rights are not being fully enjoyed in these and other situations is a very hollow exercise unless the whole community is prepared to acknowledge and recognise those rights and encourage their protection. In times such as these, education must be a key priority for the Commission to help people to understand the human rights of others and their obligation to recognise them. We can help people to understand that the assertion of human rights is not an attempt to take something away from those that 'have', but rather, it is an occasion to extend to those who 'have not' something that is theirs for the benefit of the whole community.

The Commission's success in its educative role can be seen through initiatives such as:

- the Youth Challenge program for secondary schools and the development of on-line resources for teachers;
- our engagement with the media, to comment on the human rights principles in important news stories;
- the growing popularity of our website; and
- the huge demand for printed resources, such as *Face the Facts: Some Questions and Answers about Immigration, Refugees and Indigenous Affairs*.

But education is much broader that that – it involves raising questions of national importance and inviting people to think more deeply about the issues at hand. This occurred, for example, with the National Inquiry into Paid Maternity Leave and the National Inquiry into Children in Immigration Detention – both major national inquiries. It also occurred when the Commission intervened in the 'Tampa' case and the 'IVF' case.

The overview of the Commission's functions and the portfolio reports concerning:

- Complaints;
- Aboriginal and Torres Strait Islander Social Justice;
- Race discrimination;
- Sex discrimination;
- Human rights; and
- Disability rights

contained in this Report show that the 2002–2003 year has been one of significant achievements.

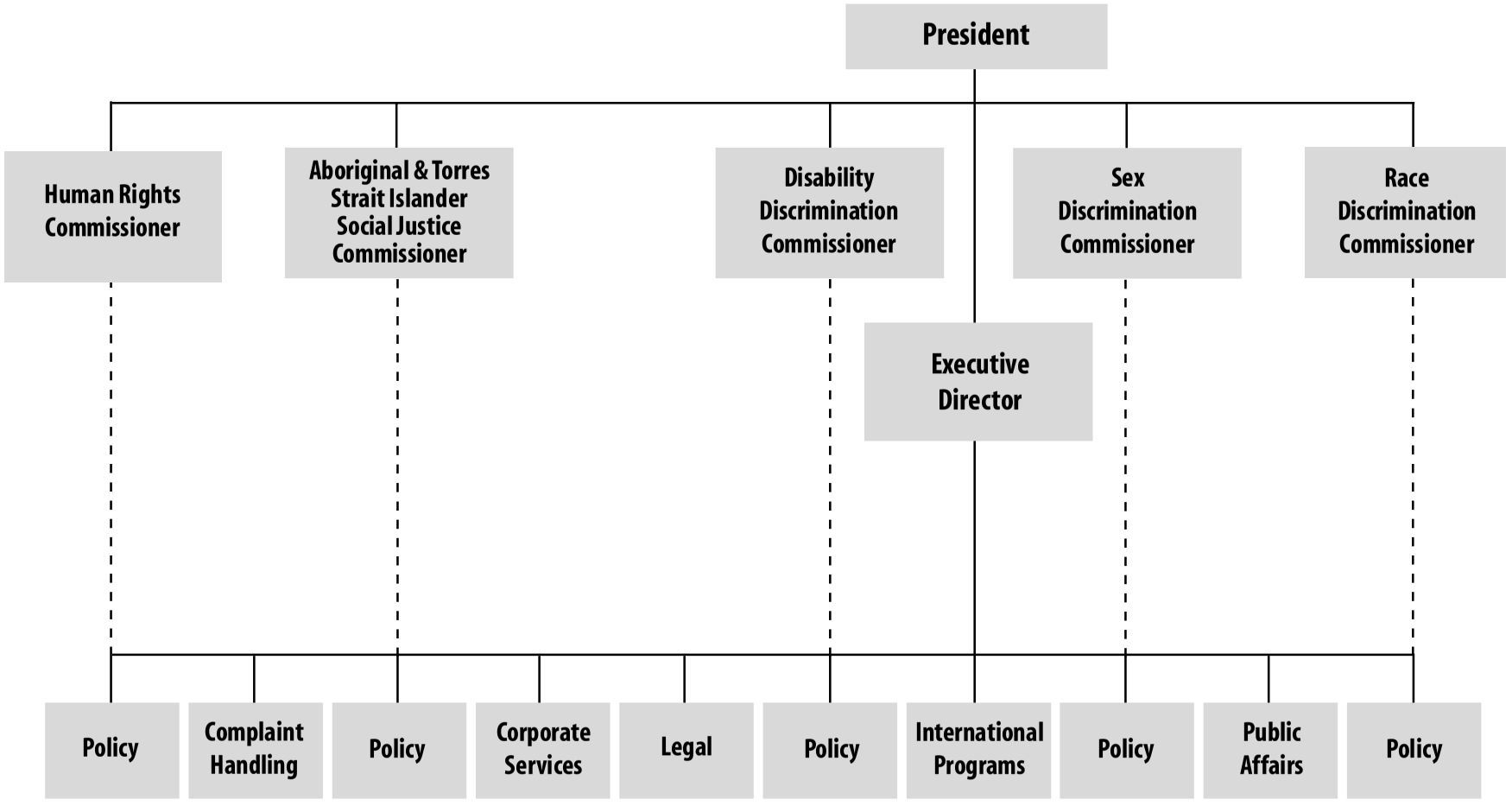
I draw attention also to the role which the Commission continues to play in the international arena, particularly in the Asia Pacific region.

The strength and vitality of human rights institutions in this region is demonstrated by the fact that full membership of the Asia Pacific Forum of National Human Rights Institutions (the 'APF') now numbers 12 countries. The Commission hosted the Forum's Secretariat since its inception in 1996. In March 2002, the Secretariat was established as a fully independent entity – a move that will improve its ability to support existing Forum members and encourage the development of national institutions in other countries.

In 2002-03, 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).

I look forward to working with the members and staff of the Commission to build on the very excellent work that is being carried on by them.

Human Rights & Equal Opportunity Commission Organisational Chart



Chapter 1
The Commission

Vision

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

Mission

To provide leadership on human rights through:

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

To ensure that Australians:

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

As an effective organisation, we are committed to:

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

Structure

The Commission is a national independent statutory body established under the *Human Rights and Equal Opportunity Commission Act 1986*. It has a President and five Commissioners. The five positions are currently held by three persons. Please refer to the organisational chart on page 10 for further information.

President – The Hon. John von Doussa QC

Professor Alice Tay's five year term as President of the Human Rights and Equal Opportunity Commission Professor Tay concluded on 31 May 2003.

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

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

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

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

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

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.

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

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

Dr Ozdowski has a Master of Laws and Master of Arts in Sociology from Poznan University, Poland, and a PhD in Sociology of Law from the University of New England, Armidale, New South Wales. He was awarded a Harkness Fellowship in 1984 for post-doctoral work on race relations, international human rights and immigration law and public administration – studies that took him from Harvard University (Cambridge, MA) to Georgetown University (Washington DC) and the University of California (Berkeley, California).

Dr Ozdowski has been acting Disability Discrimination Commissioner since December 2000.

Sex Discrimination Commissioner – Ms Pru Goward

Pru Goward was appointed Sex Discrimination Commissioner for a five-year term from 30 July 2001. She is an economist by training and a broadcaster and journalist by practice.

Ms Goward completed an Arts degree with Honours in Economics from the University of Adelaide while teaching high school in Adelaide during the 1970s. She later tutored at the University while conducting Masters Research.

She spent 19 years with the ABC as a reporter and later a political commentator, but has also been a university lecturer in Broadcast Journalism, a university Economics tutor, high school teacher, freelance writer and media consultant.

In 1997, she was appointed head of the Commonwealth Office of the Status of Women for a period of two years. During that time the Office became responsible for the first national program of domestic violence prevention and initiated changes for the fairer division of superannuation at divorce.

Prior to her role at the Commission, she was National Director of the Australian Property Institute. Ms Goward is also on the board of the John Curtin School of Medical Research and the Arab Australia Council. She is an ambassador for Good Beginnings and is Official Patron of the ANU Australian Rules Football Club.

Legislation

The Commission is responsible for administering the following Acts:

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

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

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

Human Rights and Equal Opportunity Commission Act

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

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

Racial Discrimination Act

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

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

Sex Discrimination Act

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

Its main aims are to:

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

Disability Discrimination Act

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

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

Functions and powers

The Commission's responsibilities fall within four main areas:

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

In order to fulfil its obligations, the Commission:

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

reasonable prospect of settling the complaint by conciliation or the complaint is lacking in substance. If a complainant, whose complaint has been terminated, wants the complaint heard and determined by the Courts they must lodge an application to the Federal Court of Australia or the Federal Magistrates 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 and is not discontinued for other reasons the President may report on the case and make particular recommendations. The Report is tabled in Parliament.
- May advise on legislation relating to human rights and monitor its implementation; may review existing and proposed legislation for any inconsistency with human rights or for any discriminatory provision which impairs equality of opportunity or treatment in employment or occupation; may examine any new international instruments relevant to human rights and advise the Federal Government on their consistency with other international treaties or existing Australian law; and may propose laws or suggest actions the Government may take on matters relating to human rights and discrimination.

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

1. Refer individual complaints to the President for investigation and conciliation.
2. Report to the Government on any matters arising in the course of its functions.
3. Establish advisory committees.
4. Formulate guidelines to assist in the compliance by organisations and individuals of the requirements of human rights and anti-discrimination legislation and conventions.
5. Intervene in court proceedings involving human rights matters.
6. Grant exemptions under certain conditions (Sex and Disability Discrimination Acts).
7. Conduct inquiries into issues of major importance, either on its own initiative, or at the request of the Attorney-General.
8. Examine enactments.

Specific functions of 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 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
- 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 2002–03 $'000	Actual Expenses 2002–03 $'000	Budget 2003–04 $'000
Total Administered Expenses	12, 995	13, 477	13, 511
Prices of Department Outputs 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.	12, 995	13, 477	13, 511
Subtotal Output Group 1	**12, 995**	**13, 477**	**13, 511**
Revenue from Government (Appropriation) for Departmental Outputs	11, 137	11,137	11, 764
Revenue from other sources	1, 818	2, 340	1, 747
Total Price of Outputs	12, 995	13, 477	13, 511
Total for Outcome (Total Price of Outputs and Administered Expenses)	**12, 995**	**13, 477**	**13, 511**

	2002–03	2003–04
Staff years (number)	95	95

Human rights education and promotion

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

The Commission's legislative responsibilities are:

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

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

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

All work undertaken by the Commission has a human rights educative base from the handling of individual complaints of discrimination or harassment to the conduct of national Inquiries such as the National Inquiry into Children in Immigration Detention.

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

- Organisation of promotional events such as the annual Human Rights Awards.
- Hosting of conferences and events which promote human rights issues.
- Curriculum-linked education materials for teachers and students on human rights and anti-discrimination issues.
- Human rights website materials for individuals, students, teachers, employers, government and community groups.

- Media engagement by the President and Commissioners with metropolitan, regional and specialist press, radio and television outlets.
- Community consultations and presentations by Commissioners and staff.
- Preparation and distribution of plain English publications on human rights and discrimination.

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

2002 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 2002 Medal and Awards presentation ceremony was held on 10 December 2002 at a luncheon at "Dockside" Cockle Bay Wharf in Sydney. Guest speaker was Professor Lowitja O'Donoghue, who delivered an inspiring speech entitled *In the Name of Protection*. Media personality, Julie McCrossin kindly donated her services as MC.

The Commission is very grateful for the services of the judging panels who give their time and expertise on an honorary basis.

The judges for the 2002 Medal and Awards were: Mr Nick Xynias AO BEM, Professor Gillian Triggs, Professor Larissa Behrendt, John Highfield, Mick O'Regan, Steve Ahern, Sandra Symons, Jacqui Rees, Mike Steketee, Marc Purcell, Brigid Inder, Susan Harris, Associate Professor Brian Kiernan, Doreen Mellor, Allan Russell, Karla Grant, Glenys Rowe, Greg Pickhaver (H.G. Nelson), The Hon Justice C Branson, Mr Nicholas R Cowdery QC, Ms Ruth McColl S.C.

Information on the 2002 winners can be found below and on the Commission's website at www.humanrights.gov.au/hr_awards/awards2002.html.

Human Rights Medal

Winner: Michael Raper, Director, Welfare Rights Centre

Michael Raper, recipient of the 2002 Human Rights Medal.

Michael Raper has been Director of the Welfare Rights Centre in Sydney since 1990 and President of the Australian Council of Social Service (ACOSS) from 1997–2001. He is currently Treasurer of the International Council of Social Work and Treasurer of the South East Asian Chapter.

At the Welfare Rights Centre, Mr Raper and his team deal with over 4 000 low income and disadvantaged clients each year, providing advice and assistance to ensure they can exercise their obligations, rights and entitlements under the Australian social security system.

As ACOSS President, Mr Raper was highly regarded for his passionate commitment, unfailing energy and public advocacy for systemic change to reduce poverty, inequality and hardship in Australia.

The judges were deeply impressed with the impact of Mr Raper's work, and commended him for the valuable work he has undertaken behind the scenes in a field that is often overlooked and receives little acclaim.

Highly Commended

Jean Williams, left, is highly commended by Human Rights Medal judging panel member Professor Larissa Behrendt.

Jean Williams from Queensland who has spent over a decade raising issues concerning the health and welfare of Vietnam Veterans and their families. Through her books, which include Children of the Mist, Mrs Williams has highlighted issues of injustice and human rights breaches in Australia related to the effects of Agent Orange used by the US Government during the Vietnam War.

The judges commended Mrs Williams for the balanced and evidence-based approach she has taken to a sensitive and devastating issue and her long-term, voluntary and largely unrecognised commitment to an area which receives little attention.

Community Award

Joint winners: The Australian Arabic Council and The Asylum Seeker Project – Hotham Mission

Two Melbourne-based community groups shared the 2002 Human Rights Award for Community – the Australian Arabic Council and The Asylum Seeker Project, Hotham Mission.

Australian Arabic Council

Since its establishment as a national organisation in 1992, the Australian Arabic Council (AAC) has campaigned against racism, promoted tolerance and raised awareness of human rights through education.

The Council constantly campaigns for more accurate media representation of Arabic issues and promotes the contribution of Arab civilisation to history and to Australian society.

The judges said the Council had a large and dedicated band of volunteers whose work often went unrecognised. They were impressed by the AAC's concrete, practical initiatives on racial vilification and cultural diversity and commended them for providing leadership against racial intolerance.

The Asylum Seeker Project at Hotham Mission

This Melbourne project supports around 200 asylum seekers living in the community who do not have work rights, Medicare, welfare benefits or settlement support and are on bridging visas awaiting a final outcome of their applications for asylum. The group rely almost completely on project support for housing, monthly living assistance and social and professional support.

The judges praised the project for its grassroots approach, and acknowledged its work, primarily through volunteers, in providing solutions to problems through direct, practical help and by policy proposals to government, such as the alternative detention model. Hotham Mission has in fact shown it can house asylum seekers released from detention on a systematic basis.

Law Award – sponsored by the Law Council of Australia

Winner: SCALES (The Southern Communities Advocacy and Legal Education Service) Community Legal Centre

The Law Award went to a community advocacy and legal centre in Western Australia – the SCALES Community Legal Centre, which operates in the Rockingham/Kwinana region south west of Perth.

SCALES identifies its work as human rights advocacy through individual casework, community development projects and law reform. SCALES' clients are young people, refugees and asylum seekers, women escaping domestic violence and public housing tenants.

A key element of SCALES' success is the Clinical Legal Education Program it operates in conjunction with the Murdoch University School of Law, which provides training and education of law students in human rights practice.

Speaking on behalf of the three judges at the Awards ceremony in Sydney, Nicholas Cowdery QC, said: "We were impressed by the strong human rights culture the centre engendered and reinforced. SCALES' work in training and educating law students in human rights law and practice enabled the legal service to be of a broader benefit to the community as well as the individual clients".

Radio Award

Winner: ABC Classic FM – The Listening Room

***On the Raft, All at Sea*. Reporters: Robyn Ravlich and Russell Stapleton**

2002 Human Rights Radio Award winners Robyn Ravlich (giving acceptance speech) and Russell Stapleton (far right, holding certificates), accepting their awards for their radio documentary *On the Raft, All at Sea.*

'On the Raft, All at Sea', a powerful radio documentary about the experience of three generations of asylum seekers.

The documentary uses the metaphor of a famous early 19th century painting, 'The Raft of the Medusa' by French Romantic painter Gericault, depicting shipwrecked survivors clinging to a flimsy raft adrift at sea, as a reference point for a contemporary exploration of why three asylum seekers risked hazardous journeys across different seas at different times.

The three asylum seekers are: Tuong Quang Luu, one of the first South Vietnamese to become a boat person after the fall of Saigon, who now heads SBS Radio; Sam, an Iraqi who fled Saddam Hussein's regime and paid people smugglers in Indonesia for passage to Australia and who now educates high school students about refugees; and Rudy Jacobsen, a child survivor of the 'Voyage of the Damned', where the SS St Louis sailed from Hitler's Germany in 1939 carrying over 900 Jewish refugees who were denied landing visas in Cuba, the USA and Canada.

Speaking for the Radio judges, the ABC's John Highfield described the program as "radio at its best, using imagery to evoke human rights issues common to three generations of asylum seekers, drawing on intergenerational commonalities across time to show how lessons from these issues have not been taken by those who represent us".

Print Media Award

Winner: Russell Skelton, The Age

Series of articles on asylum seeker issues

The judges described as "powerful, informative and empathetic" the series of articles by Russel Skelton.

His series of articles printed between May and September 2002 address the gap between Australia's immigration policy and its implementation.

The lead report, 'Tales from Behind the Fence', was the first detailed account of conditions at Woomera based upon the evidence of those who worked inside. Other articles tackled a range of issues including: the alleged persecution of non-Muslims in detention; the conflicted role of the Immigration Minister, who acts as official guardian to a group of unaccompanied minors from Afghanistan, and; the trial of the first person charged with people smuggling under legislation passed in 2001.

Television Award

Winner: Four Corners, ABC TV, *'Duty of Care'*

Andrew Fowler (reporter), Anne Connolly (producer), Sarah Curnow and Jo Puccini (researchers)

The program examined the well intentioned social reform of opening the doors of big institutions and the dramatic lack of subsequent community-based support to help mentally ill people released from those institutions to live in the wider community.

The program illustrated how this shift has resulted in sometimes tragic results. Interviews with grieving families of young people who had taken their own lives after being refused an acute care bed, or after absconding from an understaffed ward, were shown. Professionals told of how they were forced to take dangerous gambles, ejecting seriously ill people from hospital to make beds available for new arrivals. Families conveyed the enormous stress as they battled to keep their loved ones living, with minimal backup.

The judges believed the program was comprehensive and well-researched and exposed the mental health system in New South Wales as one which has failed people with mental illness.

Arts Non-Fiction Award

Winner: *Faith – A biography of Faith Bandler*, Professor Marilyn Lake

Faith, Professor Marilyn Lake's biography of Faith Bandler, one of Australia's best loved and most widely respected citizens, was awarded the award in the Arts Non-Fiction category.

Faith is the story of her remarkable life, her journey from childhood in a South Sea Islander community in Northern New South Wales, to national recognition as one of Australia's leading human rights activists.

As the leader of campaigns for Aboriginal rights and against racial discrimination, Faith Bandler emerged as a compelling public figure – a politically effective woman in a public culture dominated by men. Her leadership and influence were crucial to the success of the 1967 referendum on citizenship rights for Indigenous people.

The judges found *Faith* to be engrossing, gently layered and substantial, promoting idealism, carrying an inspirational message, and that by opening a window into historical events and the impulses behind them, the biography provides a valuable resource for future activists.

Regional Workshop on National Human Rights Institutions, Human Rights Education, Media and Racism

This workshop which was held on 15–16 July 2002 was hosted by the Commission and co-sponsored by the United Nations Office of the High Commissioner for Human Rights and the Asia Pacific Forum of National Human Rights Institutions.

It bought together the National Human Rights Institutions of New Zealand, Fiji, India, Indonesia, Mongolia, Sri Lanka, the Philippines, Korea, Malaysia, South Africa, Thailand and Uganda, as well as a number of state-based anti-discrimination bodies, representatives of the federal and state Governments and a large number of non-government organisations including: Amnesty International, Australian Council for Overseas Aid, Public Interest Advocacy Council, Islamic Council and several representatives from United Nations agencies.

The goal of the workshop was to provide national human rights institutions with strategies and skills to strengthen their capacity to use the media to promote human rights education, particularly as it relates to educating against racism.

A diverse range of speakers presented issues such as freedom of expression versus freedom of the press; best practice standards for education about human rights; strategies for the development of information and resource networks. A group of media consultants provided skills training to participants about how to deal with the media.

Papers from this conference are available on the Asia Pacific Forum website www.apf.hreoc.gov.au

Human rights education for teachers and students

The Commission's formal education strategy is aimed at teachers and school students and is conducted by way of workshops and on-line web materials and activities. The materials are developed to provide teachers with a range of teaching materials which are all curriculum linked. In this way teachers can use the materials in the context of the particular subject area they are required to teach. Teaching strategies, activities and links to useful resources are all supplied as part of the resource.

The information about the materials is then disseminated directly to teachers by way of e-mail list serve messages. Some 3 500 teachers subscribe to the Commission's electronic mailing list. Direct and continuing contact with teachers to assist and help them link the material directly to curricula, which vary from state to state, are crucial aspects of the strategy.

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

The workshops were for secondary school students and teachers and were supported by education materials which were curriculum-linked and distributed to all Secondary Schools in Australia.

Youth Challenge workshops with a focus on sexual harassment in schools will recommence in September 2003. They will be accompanied by curriculum linked education materials and videos, and held in Western Australia, South Australia and Queensland and in other states during 2004.

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

Information for Students web pages

www.humanrights.gov.au/info_for_students/

This section of the Commission's website was developed in 1998–99 and was designed to inform students about human rights and provides links to other websites for students. The web usage statistics for this section shows 59 969 people accessed this section during 2002–03. A further section for Tertiary students called 'Human Rights Explained' was published on the web in 1998 and remains one of the most accessed sections of the HREOC website, with 55 586 page views in 2002–03.

On-line human rights education modules

www.humanrights.gov.au/info_for_teachers/modules.html

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

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

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

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

With *Youth Challenge*, students focus on real life issues such as sex, race and disability discrimination, sexual harassment, and rights in the workplace. It encourages students to explore the relevance of human rights to their own experiences and communities.

The on-line program is broken into three distinct units:

1. Human Rights in the Classroom.
2. Case Study 1: Doug and Disability Discrimination.
3. Case Study 2: Young People in the Workplace.

Using video material, stories and exercises, the materials draw on a range of skills, including: research, literacy, discussion, decision making and role playing.

Youth Challenge offers secondary school teachers a resource that is flexible and comprehensive. The materials can be used across many curricular areas including History, English, Civics/Citizenship, Legal Studies, and Studies of Society and Environment. The site provides teaching strategies, guides and worksheets that are easy to access (66 961 people accessed Youth Challenge during 2002–03).

Information for Teachers website

www.humanrights.gov.au info_for_teachers/

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

This section has proved very popular with teachers with 112 690 users accessing the section during 2002–03.

The portal is the on-line framework for this education program. It contains:

- **Education Modules**: Youth Challenge and other education modules.
- **Current Issues Series**: issue focused sets of activities.
- **Human Rights Resources**: links to external human rights resources for teachers.
- **HR Education Mailing List**: an electronic mailing list with monthly updates.

Current Issues Series
www.humanrights.gov.au/
info_for_teachers/current_issues.html

The Commission receives regular requests from teachers and students for material on current human rights issues. Responding to this need, the Commission developed a current issues series.

With the release of *Rabbit-Proof Fence*, a major feature film, the Commission prepared teaching activities linking the film and book (by Doris Pilkington) to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families: *Bringing them home*. The activities direct teachers and students interested in the film/book to the Inquiry report.

A second module focused on paid maternity leave to coincide with the launch of a policy paper by the Sex Discrimination Commissioner. The activities demonstrate to students how paid maternity leave raised issues of sex discrimination and equal opportunity that are relevant to their lives.

Face the Facts education module

www.humanrights.gov.au/
info_for_teachers/face_facts

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

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

Teaching Human Rights and Responsibilities – a resource for secondary school teachers

A hard copy resource for secondary school teachers which expands on the *Human Rights in the Classroom* module of the *Youth Challenge* on-line resource will be launched in September 2003.

The curriculum-linked resource has learning outcomes such as: developing an understanding of what human rights are; appreciating the relationship between rights and responsibilities; and applying the concept of human rights to their daily lives.

Promotion of on-line education materials

In addition to developing this material, the Commission has actively promoted the on-line education program, targeting teachers across Australia. A promotional strategy was developed and executed. Below are the main promotional activities.

Posters and postcards

The Commission produced a series of posters and postcards and sent them to over 3 000 schools nationally. The materials are available as downloads from the website. They were also distributed across teacher organisations, curriculum development bodies, education networks and education journals.

Electronic mailing list

The Commission send each month to 3 500 self-subscribed educators a monthly update:

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

Advertising and editorial

The Commission continues to place advertisements in the education serials/journals for each state and territory. The next period of advertising is planned for new educational modules described above.

Links with teacher networks

The Commission has established links with a number of educators' networks. We are also contacted by these networks for resource support, cross hyperlinking and to give presentations at conferences.

The Commission also works to include links to our program on other websites. In particular, the national on-line education resource, *EdNA On-line*, regularly features information on our education program.

Submission to an Inquiry on Human Rights and Good Governance Education in the Asia Pacific Region

An invitation was received from the Chair of the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs Defence and Trade to participate in an Inquiry into Human Rights and Good Governance Education in the Asia Pacific Region. Public Affairs coordinated a submission to the Inquiry and nominated officers appeared before the Committee. See the submission on-line at www.humanrights.gov.au/about_the_commission/education/index.html

Commission website – www.humanrights.gov.au

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

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

Major additions and improvements

Ongoing development of the Commission's on-line human rights education resources including:

- Further development of the *Youth Challenge* web pages, including *Youth Challenge* videos available 'live' on-line.
- Publication of the *Paid Maternity Leave – Activities on Gender Equality in the Workforce* education resource.
- Ongoing work has been undertaken to create links with useful portals, on-line directories and relevant websites to ensure that the Commission's on-line resources are easy to locate.
- Ongoing development of the Commission's metadata records to ensure easier access to Commission materials from government portals and other search engines. Metadata is created in line with the Australian Government Locator System.
- Ongoing improvements to website to ensure accessibility to all users, including those utilising adaptive technologies. The Commission's website meets recognised best practice standards for usable and accessible web design, including compliance with the World Wide Web Consortium's guidelines on accessibility and implementation of recommendations from the National Office of the Information Economy.
- Publication of more than 200 submissions and transcripts of hearings on the National Inquiry into Children in Immigration Detention section of the website.
- Development of a number of mini-sites within the Commission's main website to provide information on a range of events and issues including:
  - Cyberracism Symposium.
  - Human Rights Awards 2002.
  - Corporate Responsibility – site developed from a forum entitled 'Resource Development on Aboriginal Land; a Human Rights Approach'.

  - *Isma – Listen!* National consultations on eliminating prejudice against Arab and Muslim Australians webpages.
  - E-race – an on-line forum designed for people to comment on current race discrimination issues.
- Publication of a range of reports prepared by the Commission including:
  - *A Time to Value*
  - *Social Justice Report 2002*
  - *Native Title Report 2002*

Electronic mailing lists and feedback facility

The Commission's email based electronic mailing list service provides for regular communications to all constituency groups including community and government. There are currently more than **13 761** subscribers across 10 different lists:

Mailing List	Number of subscribers
Complaints and Legal Information	1 132
Disability Rights Update	1 404
Human Rights Awards Alert	894
Human Rights Education	3 640
Human Rights	1 259
Indigenous Issues	948
Media Mailing List	771
Priority Mailing List	1 206
Race Discrimination	1 004
Sex Discrimination	1 503
Total subscribers	**13 761**

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

Website feedback

The Commission's feedback facility allows users to request help with research and provide constructive feedback on the Commission's on-line resources and site accessibility. Thousands of messages have been received from legal, government, community and employer organisations, the media, schools and individuals during the year and are responded to by Commission staff within five working days.

Statistics

The Commission uses a web statistics system which tracks the number of visitors the site has and how visitors are using the site. This allows the Commission to identify materials that are particularly successful or popular and where we have room for improvement.

Usage of the site has increased over the year with approximately **4 372 899** page views on the server during 2002–03, an increase of 1 167 206 page views compared to 3 205 693 page views in 2001–02. This equates to 39 603 089 hits on the site for 2002–03.

A summary of statistical information is provided below:

Section	Home/Index page views	Section page views
HREOC Homepage www.humanrights.gov.au	277 960	n/a
Aboriginal and Torres Strait Islander Social Justice www.humanrights.gov.au/social_justice	58 777	432 462
Complaints Information www.humanrights.gov.au/complaints_information	35 802	108 803
Disability Rights Homepage www.humanrights.gov.au/disability_rights	69 839	581 345
Human Rights Homepage www.humanrights.gov.au/human_rights	58 590	616 045
Legal Info Homepage www.humanrights.gov.au/legal	31 942	97 600
Racial Discrimination Homepage www.humanrights.gov.au/racial_discrimination	68 037	280 914
Sex Discrimination Homepage www.humanrights.gov.au/sex_discrimination	82 902	298 098
Information for Teachers Homepage www.humanrights.gov.au/info_for_teachers	28 982	112 690
Information for Students Homepage www.humanrights.gov.au/info_for_students	41 761	59 969
Youth Challenge Homepage www.humanrights.gov.au/youthchallenge	11 289	66 961

Information for Employers Homepage www.humanrights.gov.au/info_for_employers	33 254	75 562
Information in Other Languages Homepage www.humanrights.gov.au/other_languages	20 296	55 853
Human Rights Explained Homepage www.humanrights.gov.au/hr_explained	31 126	55 586
Publications Homepage www.humanrights.gov.au/publications	34 083	37 770
Electronic Mailing List Homepage www.humanrights.gov.au/mailing_lists	24 188	24 253
Media Releases Index www.humanrights.gov.au/media_releases	29 802	389 949
National Inquiry into Children in Immigration Detention Homepage www.humanrights.gov.au/human_rights/child_detention	15 965	180 256
Job Vacancies Homepage www.humanrights.gov.au/jobs	40 407	49 265

Commission publications

In addition to all Commission publications being made available on the Commission's website, around 83 200 publications were dispatched in hard copy format during 2002–03.

The most popular publications were *Face the Facts: Some Questions and Answers about Immigration, Refugees and Indigenous Affairs*, the Commission's *Complaint Guide*, *A Time to Value: Proposal for a Paid Maternity Leave scheme* and *Don't Judge What I Can Do By What You Think I Can't*: Ten years of achievements using Australia's Disability Discrimination Act.

A list of publications released during 2002–03 can be found at Appendix 2 of this Report.

Media engagement

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

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

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

In the past year, Commissioners have contributed to public debate on human rights and discrimination issues including refugees and asylum seekers, racial vilification, Indigenous social justice, native title, sex discrimination and harassment, paid maternity leave and other equity issues, disability discrimination and advances in accessibility for people with a disability and on changes to legislation that may affect people's human rights.

The Commission also promotes the Human Rights Medal and Awards, which include a category to recognise an outstanding contribution to human rights through the print media, radio or television.

The Sex Discrimination Commissioner, Pru Goward, was the focus of significant media interest with her proposal for a national scheme for paid maternity leave with the release of the final paper in December 2002 *Time to Value: Proposal for a national scheme of paid maternity leave*.

There was also substantial media interest in the submissions to the National Inquiry into Children in Immigration Detention and the public hearings which were held in all Australian states. Media representatives have been kept informed about the progress of the Inquiry.

The Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner, Dr Sev Ozdowski, tabled in parliament in October 2002, also gained national media coverage.

Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr Bill Jonas, launched his 2002 Social Justice and Native Title reports in Brisbane, Adelaide, Sydney, Melbourne, Alice Springs, Broome and Darwin at public events where Indigenous speakers discussed the future of reconciliation and the issues raised in the reports. There was media coverage of most of the launches by print media, radio and television.

Dr Jonas launched *Isma? – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians* with consultations throughout Australia, which attracted considerable media interest.

Commissioner Jonas, Senator Aden Ridgeway and Labor member Carmen Lawrence attended a joint press conference at Parliament House in Canberra in August 2002, to launch the Senate Inquiry into Reconciliation.

The 10th anniversary of the federal Disability Discrimination Act and the launch of a report by the acting Disability Discrimination Commissioner, outlining the achievements made in 10 years under the Act attracted media at the forums held in Tasmania, Victoria, Western Australia, South Australia, Canberra and Darwin.

The Commission also issued statements about changes to immigration laws and to laws governing security and promoted its intervention in the 'Al Masri' case, the 'Trudy Gardner' case, the Catholic Education Office request for exemption from the Sex Discrimination Act, the High Court's Miriuwung-Gajerrong decision, the Federal Court's decision in 'Jones v Scully', the Federal Court decisions in the 'Toben' case on race hate and the internet and intervention in the 'privative clause' case. (see the Legal section at Chapter 3 of this Report for further information).

In the past year, the Commission has issued 95 media releases and the President and Commissioners have had published a range of opinion pieces and articles in major newspapers throughout Australia.

Community contacts

Commissioners and staff met with peak bodies and community groups on a range of issues during the year. Some of the significant consultations are noted below.

Disability rights

More than 60 consultations were held by the Disability Discrimination Commissioner and staff, including forums in each capital city in March 2003 on achievements and priorities in using the Disability Discrimination Act, with a particular focus on employment and transport issues. Other consultations included:

- *Building access*. Several meetings each of National Building Access Policy Committee and Building Access Technical Committee working towards upgrading of access provisions of the Building Code of Australia and adoption of Standards in this area under the Disability Discrimination Act, as well as a forum on accessible and adaptable housing.
- *Education*. Several meetings of working groups on accessibility of educational materials.
- *Telecommunications*. Discussions with industry and community representatives in preparation of a major discussion paper on telecommunications accessibility.
- *Local government*. Discussions with several local government areas on access issues and development and implementation of action plans.

Human rights

The Human Rights Commissioner conducted a number of public consultations. These may be broadly characterised into two groups:

- *National Human Rights Dialogue*. Meetings were held in at least 18 locations, addressing groups as diverse as the Toowoomba community within the campus of the University of Southern Queensland, the 2002 FECCA National Conference, the Great Lakes 'Rural Australians for Refugees' within Forster High School and the 'Sir Frank Kitto Oration' to law undergraduates of UNE, to pick some at random.
- *National Inquiry into Children in Immigration Detention*. Public hearings were held in Adelaide, Brisbane and Sydney (twice), while nine focus groups were conducted in Adelaide, two in Brisbane and one in Sydney.

Race discrimination

More than 150 consultations and meetings were convened or attended by the Race Discrimination Commissioner and/or his staff. They included:

- 43 consultations in NSW, Victoria, ACT, the Northern Territory, Queensland and Western Australia, as part of *Isma – Listen:* National consultations on eliminating prejudice against Arab and Muslim Australians.
- 29 meetings to progress the Commissioner's recommendations relating to a community relations strategy for Kalgoorlie in Western Australia.
- Seven briefings on HREOC functions and anti-racism programs for international visitors to the Commission.

Sex discrimination

The Sex Discrimination Commissioner and staff conducted over 107 public consultations and formal meetings in 2002–03 and these included:

- *Paid maternity leave*. A further 20 consultations were conducted during this financial year on the issue of paid maternity leave, following the 61 consultations held in 2001–02. Specifically, two roundtables were held, one with academics who specialize in this area of social policy, and the other with key employer, union and women's group representatives. These consultations significantly contributed to the final paper A Time To Value: Proposal for national scheme of paid maternity leave.
- *Northern Territory Law Reform Committee Inquiry Into the Recognition of Aboriginal Customary Law in the Northern Territory*. Prior to the preparation of the submission to this Inquiry, 26 consultations were carried out in Darwin, Alice Springs and Groote Eylandt in the Northern Territory with Indigenous groups, local government and non-governmental organisations.
- *Trafficking in Women*. Consultations on this issue have recently begun with a variety of stakeholders, including government representatives, non-governmental organisations and international agencies.
- *Sexual Harassment*. Ongoing meetings are held with the Australian Defence Force in relation to the Force's sexual harassment policy.

Aboriginal and Torres Strait Islander social justice

The Social Justice Commissioner's office held at least 113 consultations during 2002–03. Many of these were in relation to issues relating to the annual social justice and native title reports. Significant consultations included:

- *Benchmarking reconciliation and human rights*. Workshop convened by the Commissioner in Sydney on 28–29 November 2002 on integrating human rights approaches to measuring Indigenous disadvantage.
- *National Indigenous Legal Advocacy Courses*. The Commissioner convened a Curriculum Development Advisory Committee for the development of these courses. The Committee met formally four times and was comprised of representatives of Aboriginal and Torres Strait Islander Legal Services, educators, industry bodies, human rights and anti-discrimination commissions, and government.
- *Criminal justice issues*. The Commissioner and staff met with government agencies and Indigenous organisations about juvenile diversionary schemes in the Northern Territory and Western Australia; mandatory sentencing in Western Australia; the situation of Indigenous women in corrections nationally; and the status of recognition Aboriginal Customary Law in the Northern Territory.
- *Consultations on the operation of the Native Title Act*. The Commissioner and staff consulted with the National Native Title Tribunal, Federal Court, Native Title Representative Bodies, Aboriginal and Torres Strait Islander Commission, federal Attorney-General's Department, state and territory departments and mining companies on the operation of the *Native Title Act 1993*, as well as with native title holders and claimants.

Chapter 2
Complaint Handling Section

Introduction

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

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

Once a complaint has been formally accepted by the Commission, the CHS focuses on dealing with the matter in a timely and unbiased manner. The CHS aims to allocate complaints to an officer for action within one month of receipt. While at times allocation to an officer may take a little longer than this, cases that need priority handling are dealt with straight away. Investigation/Conciliation Officers manage complaints on behalf of the President. The management of complaints may involve requesting information and responses to complaints, taking statements, undertaking site inspections, reviewing employment and medical records, facilitating settlement negotiations and conducting conciliation conferences in various locations including regional and remote areas of Australia. If a complaint is resolved through conciliation the matter is closed. Many complaints are resolved by conciliation as parties recognise the benefits of a process where they have direct input into how the matter is resolved without having to resort to more formal court proceedings.

Where a complaint of unlawful race, sex or disability discrimination is unable to be resolved through a conciliation process or where the President is of the view that the complaint is, for example, lacking in substance or would be better dealt with by another organisation, the complaint will be terminated. After that it is up to the complainant to decide if they want to pursue the matter to court. Both parties to a complaint are advised in writing of the President's decision regarding a complaint.

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

In 2002–03:

- 1 236 complaints were received
- 1 308 complaints were finalised
- 32 percent of finalised complaints were conciliated
- 84 percent of complaints were finalised within 12 months of lodgement
- 9 486 telephone/post/email/TTY/in person enquiries were received through the Complaint Information Service

Educating the community about the law and the complaint process and providing training in investigation and conciliation is also a major part of the CHS's work. In 2002–03:

- Approximately 172 organisations throughout all states and territories attended information sessions on the law and the complaint handling process run by the CHS.
- 70 liaison/information sessions were undertaken by the CHS Complaint Information/Indigenous Liaison Officer.
- Seven specialist investigation and/or conciliation skills training courses were conducted for CHS staff and staff from State and Territory Equal Opportunity Commissions, government and non-government agencies.
- 12 skills training courses in administrative investigation were conducted by the CHS for public servants through the Australian Public Service Commission.

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

Key performance indicators and goals

- **Timeliness**. The section's stated performance measure is for 80 percent of complaints to be finalised within 12 months of the date of receipt. In 2002–03 the CHS finalised 84 percent of matters within 12 months and the average time from receipt to finalisation of a complaint was seven months. A detailed breakdown of timeliness statistics by jurisdiction is provided in Table 10.
- **Conciliation rate**. The section's stated performance measure is for 30 percent of finalised complaints to be conciliated. In 2002–03 the section achieved this goal with a 32 percent conciliation rate.

- **Customer satisfaction survey**. The section's stated performance measure is for 80 percent of parties to be satisfied with the complaint handling process. Data for the past year indicates that 84 percent of parties were satisfied with the service they received and 50 percent rated the service they received as 'very good' or 'excellent'. Further details of survey results for this reporting year are provided below.

Customer satisfaction survey

Since 1997 the CHS has sought feedback on the complaint process from people lodging complaints (complainants) and people responding to complaints (respondents). This feedback is obtained by means of a Customer Satisfaction Survey which is undertaken with a random sample of finalised complaints and predominately conducted by telephone interview. Survey results for the period 1 July 2002 to 30 June 2003 indicate that:

- Seventy-eight (78) percent of complainants and 91 percent of respondents felt that staff explained things in a way that was easy for them to understand.
- Eighty (80) percent of complainants and 96 percent of respondents felt that forms and correspondence from the Commission were easy to understand.
- Fifty-six (56) percent of complainants and 75 percent of respondents felt that the Commission dealt with the complaint in a timely manner.
- Seventy-seven (77) percent of complainants and 95 percent of respondents described complaint handling staff as unbiased.

Overall satisfaction ratings are very similar to results for the past three reporting years. As has been the case in past years, ratings by respondents are generally more favourable than ratings by complainants. This disparity in ratings may be due, in part, to the higher proportion of survey responses received from parties where the complaint has been terminated by the President. In this reporting year, 65 percent of survey responses related to terminated complaints. Where complaints have been terminated, for example on the ground that they are lacking in substance, it is likely that complainants will be more dissatisfied with the outcome of the complaint than respondents and this dissatisfaction with outcome is also likely to influence general complainant feedback on the complaint process.

Service charter

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

In the 2002–03 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 or the officer's supervisor.

Access to services/community education

The Commission's mission statement seeks to promote and facilitate community access to its services and functions. In meeting this challenge the CHS provides the following services:

- **The Complaint Infoline – 1300 656 419**. The Infoline, operating at a local call charge, is open Monday to 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. 8 335 enquirers throughout Australia utilised the Complaint Infoline this reporting year. Enquirers can also e-mail complaintsinfo@humanrights.gov.au. 374 e-mail enquiries were received this year. Further information about the operation of the Complaints Information Service is provided later in this section.
- **CHS webpage – www.humanrights.gov.au/complaints_information/**. This webpage provides the general public and potential users of the service with information about the Commission's complaint handling role and the complaint process. The webpage includes information on how to lodge a complaint, a complaint form, frequently asked questions about complaints and a conciliation register. The conciliation register contains de-identified information about the outcomes of conciliated complaints.
- **On-line complaint form**. This service, which allows complaints to be lodged electronically, continues to be well utilised.
- **Concise Complaint Guide**. This can be accessed and downloaded in 14 community languages.
- **Conciliation circuits**. When required, conciliation officers travel throughout Australia to conduct face to face conciliation conferences. Along with the conferences conducted in the greater Sydney area, CHS officers conducted around 60 conferences in Victoria, 58 in South Australia, 36 in regional New South Wales, 29 in Queensland, 23 in Western Australia, eight in the Australian Capital Territory and five in the Northern Territory.
- **Access working group**. The CHS access working group has been in operation since 1999. The aim of the group is to improve the accessibility of the complaint handling service. This year the CHS information brochure for Indigenous clients was revised with input from the section's Complaint Information/Indigenous Liaison

Officer and the CHS community education presentation was updated.

- **Interpreter and translation services**. In the past reporting year the section utilised a range of interpretation and translation services. The main language groups assisted in 2002–03 were Persian, Mandarin and Arabic.
- **Community education and state liaison**. The CHS provides information sessions concerning federal human rights and anti-discrimination law and the complaint process to community and stakeholder organisations throughout Australia. The CHS conducted presentations to staff and representatives from approximately 172 organisations/groups during this reporting year with presentations taking the form of informal and formal staff meetings and group presentations. Additionally, the CHS Complaint Information/Indigenous Liaison Officer undertook 70 liaison/information sessions during the year. The organisations visited included community legal centres, ethnic community centres, disability and Aboriginal legal services. The regions covered included Wagga Wagga, Cootamundra, Grafton and Lismore in New South Wales; Melbourne, Albury/Wodonga, Portland, Warrnambool and Geelong in Victoria; Launceston, Burnie and Hobart in Tasmania; Brisbane, Rockhampton, Townsville, Gympie, Hervey Bay, Maroochydore and Cairns in Queensland; Perth and Karratha in Western Australia; Darwin, Alice Springs and Tennant Creek in Northern Territory; Adelaide and Whyalla in South Australia and Canberra.

Arrangements with state agencies

In February 2003 the Commission discontinued its formal referral arrangement with the Equal Opportunity Commission, Victoria (EOCV) whereby Victorians who wanted to lodge a complaint under federal legislation could lodge a complaint through the EOCV Referral Centre. The number of complaints the Commission received directly from Victorians had steadily increased to exceed the number lodged through the referral service. The Commission considers this increase in direct lodgements may, in part, be attributed to the accessibility of the Commission's on-line complaint lodgement service and the increased efficiency this brings to the complaint handling process.

The arrangement the Commission now has with the EOCV is the same as the arrangement it has with the Queensland, South Australian, Northern Territory and Western Australian Equal Opportunity Commissions whereby CHS staff utilise facilities at these agencies for conciliation conferences, community education or training and display of CHS publications. Complainants from these states, along with residents of Tasmania and the Australian Capital Territory can lodge complaints under federal law directly with the Commission.

Election of jurisdiction

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

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 these courses. In 2002–03, one statutory investigation course was run in Sydney for Commission staff and staff of anti-discrimination agencies in New South Wales, South Australia and Queensland. Three statutory conciliation courses were run; one in Sydney for Commission staff, one in Melbourne for staff of the Victorian and South Australian Equal Opportunity Commissions and one in Perth for staff of the Western Australian Commission. Variations of the Commission's courses in investigation and conciliation were also run for staff of a state authority and staff of a large national company.

The Commission has, for the second year, worked in partnership with the Australian Public Service Commission to provide a two day investigation training course for federal public servants. The course, which is a variation of the Commission's standard statutory investigation training program, provides theory and skills that can be applied to the investigation of internal complaints and breaches of the Australian Public Service Code of Conduct. In the past year 12 courses have been delivered in various locations around Australia including Perth, Canberra, Melbourne, Darwin and Sydney. In-house courses have also been conducted for staff of the Australian Customs Service, Department of Defence and Centrelink.

In early 2003 the CHS developed a training module on federal human rights and anti-discrimination law to be utilised by the Australian Federal Police as part of its national Confidant Training Program. A senior CHS officer also assisted in the initial presentation of this module.

During this reporting year the Commission's Complaint Procedures Manual was revised and updated. The revised version will be finalised and published in the latter half of 2003.

In mid 2003 the CHS commenced work on a cooperative project with Job Watch Incorporated, Victoria, to produce a video on the Commission's conciliation process. It is hoped that this video, which will be available in late 2003, will provide key information to assist complainants, respondents and advocates to understand and prepare for participation in a conciliation process.

In this reporting year six CHS officers continued study towards Certificate IV accreditation in Assessment and Workplace Training. Staff of the CHS also attended various seminars and training courses relating to their work. These included four Australian Government Solicitor Law Group Seminars, the Community Legal Centres National Conference in Melbourne and the Sixth National Mediation Conference in Canberra.

During 2002–03 CHS staff presented three papers on the Commission's Alternative Dispute Resolution work at the Sixth National Mediation Conference and in November a senior officer presented a paper on recent developments in sex discrimination law at the Second National Conference on Women in Science, Technology and Engineering in Sydney. Two senior officers were also guest speakers at University of Western Sydney courses in discrimination law and Alternative Dispute Resolution.

Other work

In August 2002, the Commission's CHS was awarded a tender to provide training in investigation and conciliation of complaints for staff of the Fiji Human Rights Commission as part of the AusAID Pacific In-Country Training Project. This project involved the development and facilitation of four training workshops in Fiji in October and December 2002 and March and May 2003.

In September 2002 the CHS hosted a training placement for two complaint handling staff from the South African Commission on Gender Equality.

CHS staff also participated in providing information about the Commission's complaint handling work to delegations from human rights institutions, parliamentary and government institutions and non-government organisations from Mongolia, Japan, Vietnam, China, Indonesia and the United Kingdom.

During this reporting year senior CHS staff represented the Commission in discussions with the Attorney-General's Department and stakeholder groups in relation to the Australian Government's proposed Age Discrimination Bill.

Conciliation case studies[1]

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 182 complaints under the Racial Discrimination Act. The majority of these complaints related to employment and the provision of goods and services. The CHS finalised 258 complaints under this Act and 15 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Racial Discrimination Act are provided later in this Chapter.

Complaint of race discrimination and racial hatred in employment

The complainant, who is of Chinese origin, was employed by a private utilities company. He claimed that during his employment he was subjected to racial abuse in that co-workers would mimic his accent and make comments such as "*Bloody Chin-Chong, the room smells like dim sim*" and "*Don't hug the chin-chong, he has got AIDS*". The complainant also alleged that he was treated less favourably because of his race in that, in contrast with other employees, he was more frequently rostered to work at lunch time and his views were not considered during his performance review.

The company denied that the complainant was abused because of his race and noted that the individual respondents denied making the alleged remarks. One of the individual respondents concurred that he may have offended the complainant by responding on occasions in a purportedly "Chinese" accent but he claimed this was done in the context of a shared joke. The company also stated that the complainant did not make any official complaint in relation to alleged racial remarks. The company claimed that the other issues raised by the complainant were industrial issues in dispute between the complainant and his supervisor and were not related to the complainant's race.

The complaint was resolved by conciliation. The complainant agreed to withdraw his complaint and the respondent agreed to provide the complainant with a written apology and a work reference and pay him $5 000 in recognition of the embarrassment, humiliation and stress that he may have endured during his employment.

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

Allegation of race discrimination by liquor store

The complainant, who is Aboriginal, alleged that staff of a liquor store discriminated against him because of the colour of his skin. He stated that he entered the store, had a look around and selected a bottle of beer from the fridge. He claimed that when he approached the counter to pay, the teller said "*We want to search you*" and the Manager said "*I saw you put a can of drink into your jumper*". The complainant refused to allow the staff to search him and told the Manager to call the police. The complainant claims that when the police arrived, they strip searched him and then let him go because they could not find any stolen goods on his person.

The respondent denied race discrimination and advised that the complainant was suspected of theft because of his manner when he was in the store. The respondent claimed that the situation deteriorated because of the complainant's initial reaction and his insistence on being searched by the police.

The matter was resolved by conciliation with the complainant accepting a written apology from the respondent company.

Complaint of race discrimination in employment

The complainant, a 16 year old Aboriginal girl, stated that at the time of the alleged discrimination she had been employed on a part-time basis by the respondent grocery company for approximately four months. She claimed that on her final day of employment she logged onto her cash register but only worked on the register for about 15 minutes as she was instructed to work in another section. She claimed that when she logged off her cash register she noticed that the register was out by $50 and when she advised the Manager of this he said "*what have you done with the money*". The complainant alleged that these words, and the manner in which the Manager spoke to her, amounted to an accusation that she had stolen the money. She claimed that she was treated this way because of her Aboriginality and that another non-Aboriginal employee who made a mistake with her cash register was not treated as she was. The complainant resigned from her employment.

The respondent company denied that the alleged words were said to the complainant and denied that the complainant was accused of stealing the money or treated less favourably than other non-Aboriginal employees. The manager of the store claimed that the complainant was asked to explain why her cash register did not balance and that this was standard practice.

The matter was resolved through telephone discussions with the parties, with the respondent company agreeing to pay the complaint $200 in general damages.

Allegation of racial hatred by neighbour

The complainant is of Vietnamese background and is a tenant in public housing. The complainant alleged that since 1998 she has been subjected to racial hatred by her neighbour. The alleged action of the neighbour included saying "*Go back to Vietnam*", calling her an animal, mimicking her accent and making rude gestures to her. The complainant claimed that despite complaints to the department about her

neighbour the department failed to take any action to resolve the matter. The complainant alleged that her racial background was also a factor in the department's failure to resolve her complaint.

While the neighbour denied that she had made the alleged comments or done the alleged acts, she agreed that there have been ongoing disputes between her and the complainant. The department denied that it treated the complainant less favourably because of her race. The department also advised that the complainant's concerns were investigated but the investigation was discontinued as the allegations could not be substantiated.

During the Commission's inquiry process the department approved the neighbour's application for transfer and the complainant agreed to resolve her complaint against her neighbour on that basis. The complaint against the department was resolved on the basis of the department's agreement that 'racial hatred' would be a factor for consideration in the criteria for housing transfer.

Alleged race discrimination and racial hatred in employment

The complainant, who was originally from Serbia, was employed as a van driver for an Australian Government statutory authority. The complainant alleged that his supervisor made offensive comments about Serbians to him and to others while he was present. For example, the supervisor is alleged to have made comments such as "*He is a Serb and Serbs make ethnic cleansing, He might kill you*". The complainant claimed that the company was slow to investigate his internal complaint and that he was victimised for lodging the complaint. A co-worker provided evidence to support the complainant's claim that offensive comments about Serbs had been made in the workplace.

The individual respondent denied making the alleged comments but agreed that he had asked questions about the political situation in Serbia. The individual respondent said that he was an immigrant himself and would not make offensive comments about other people's racial background. While the company indicated that it had extensive EEO and harassment policies, it noted that it had no record of the individual respondent having received training in EEO issues.

The complaint was resolved at a conciliation conference. The company had already transferred the complainant to a job he enjoyed where he no longer had contact with the individual respondent. The respondent company assured the complainant that his career had not been compromised in any way and that steps would be taken to ensure the confidentiality of his complaints. The company also provided the complainant with acknowledgement of the distress he had suffered.

Complaint of race discrimination against Indigenous employee

The complainant, who is Indigenous, claimed that on 26 January when he attended work, he saw a notice on the staff notice board entitled 'Aboriginal application for employment'. He claimed that the mock application form reinforced negative stereotypes about Aboriginal people. For example, in the section entitled 'Income' the following was written "theft-unemployment-armed robbery" and under the section entitled 'Abilities' the following was written "rapist, VD spreader, pub fighter". The

complainant said that another copy of the document was found in the storeroom and when he told management about the incidents he was told not to worry about it.

The company claimed that it did not formally investigate the incident as the area where the document was posted was accessible to all employees and contractors. The company said, however, that they placed a notice on all notice boards stating that the document was racist and unacceptable. The notice further stated that if an employee was found to be responsible they would be banned from attending the site. The company confirmed that another copy of the document was found and immediately destroyed. The company claimed that they reacted appropriately and took all reasonable steps to address the incident when it was brought to their attention.

The complaint was resolved by conciliation with the complainant agreeing to withdraw his complaint on the basis that the company would revise its EEO policies and procedures, appoint Harassment Contact Officers, implement cultural awareness training for all staff and provide the complainant with a statement of regret.

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 380 complaints under the Sex Discrimination Act. The large majority of complaints related to employment and 35 percent of the complaints alleged pregnancy discrimination. The Commission finalised 395 complaints under this Act and 43 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Sex Discrimination Act are provided later in this Chapter.

Alleged discrimination in employment because of pregnancy

The complainant claimed that she commenced full-time employment as an office administrator with a small training consultancy company in September 2001. She claimed that three months later she advised the company director that she was pregnant and was suffering from pregnancy related illness. She alleged that when advised of this the Director said words to the effect: "*Look, this will jeopardise your position*". The complainant claimed that a few weeks later when she advised the Director that she was again ill the Director said "*That's it. I have had enough. Pack your stuff and go*" and terminated her employment. The complainant claimed that the company signed a separation certificate which indicated that her employment was terminated due to her pregnancy and frequent illness.

The company denied that the complainant was discriminated against on the basis of her pregnancy and associated illness. The company stated that it had accommodated the complainant's medical appointments and had allowed her to take sick leave. The company denied that the complainant's employment was terminated but rather claimed that the complainant resigned. The company stated that the details on the separation certificate had been completed by the complainant prior to signature by the company.

The complaint was resolved by conciliation with the company agreeing to provide the complainant with written and verbal references and an ex-gratia payment of $6 000.

Complaint of sexual harassment by co-worker

The complainant is employed by the respondent company in its catering section. The complainant alleged that she was sexually harassed by the chef during her employment. Specifically she alleged that the chef told sexual jokes, asked her sexual questions such as would she 'bark doggy style' during sex and touched her

in a sexual way. The complainant claimed that the chef continued to act this way despite her asking him to stop the behaviour. The complainant stated that she initially complained to her supervisor but no action was taken so she approached her manager who brought the matter to the attention of the human resources section. The complainant alleged that the company did not deal with her concerns appropriately in that initially no action was taken when she complained to her supervisor and while the chef was subsequently counselled for his behaviour she was still required to work with him. The complainant also claimed that other staff made jokes about her allegations.

As the complainant was still employed with the company, a conciliation conference was held within one month of the complaint being lodged with the Commission. At this conference the company agreed that the complainant had been sexually harassed and stated that the chef had been counselled about his behaviour and given a final warning. The company denied that it was vicariously liable for the acts of its employee.

The complaint was resolved with an agreement that the complainant would withdraw her complaint in return for the company providing an undertaking that she would not have to work with the chef, reaccrediting annual leave that she had taken as a result of the alleged incident and paying her $1 000 calculated on the basis of sick leave taken as a result of the alleged incident.

Allegation of sex and pregnancy discrimination in employment

The complainant was employed with the respondent insurance company as a full-time Assistant Account Executive. The complainant claimed that the company had advised her that part-time employment would be available when she returned from maternity leave. The complainant alleged that she tried to negotiate part-time work in the lead-up to her return to work but her request was denied and she was therefore forced to resign.

The company claimed that a high level of personal care is required to ensure clients are properly managed and therefore employment is only on a full-time or permanent job-share basis. The company claimed that it attempted to arrange job-sharing for the complainant with another staff member, with no success. The company stated that it offered the complainant four days work per week for a six month period but she rejected this offer.

The complaint was resolved at conciliation with the company agreeing to withdraw her complaint in return for payment of $5 250 compensation and a statement of regret.

Complaint of sex discrimination and sexual harassment in employment

The complainant was employed in an administrative position with a manufacturing company. The complainant alleged that three junior male employees displayed pornographic magazines, used vulgar language accompanied by sexual gestures such as imitating masturbation, made comments about pornographic videos and discussed the purchase of sex aids. The complainant claimed that these male workers also challenged her authority as a manager. The complainant claimed she complained

about this behaviour but the company took inappropriate or inadequate disciplinary action against these employees. The complainant alleged that after she complained she was demoted and criticised for her work performance and eventually her employment was terminated.

The complaint was resolved by conciliation with the complainant agreeing to withdraw her complaint against all respondents in return for payment of $10 000 compensation, provision of a statement of service and a letter from the company expressing regret for any negative experiences during her employment.

Allegation of discrimination on the grounds of sex and pregnancy

The complainant was employed as a clerk on a part-time/job-share basis with a medium-sized manufacturing company. The complainant alleged that her manager harassed her during her pregnancy in that he was hostile towards her and made inappropriate comments such as telling her that being pregnant would be a burden to him and her job-share partner and making comments about how much she ate. The complainant claimed that during her pregnancy she requested a change to the days she worked but this was not accommodated by the company. The complainant alleged that when she was due to return to work she contacted the company requesting a 20-minute period each day to express milk and a suitable place in which she could do so. She claimed that she was advised that any time spent expressing milk would be not be counted as work time and that she could only express milk in the women's toilets. The complainant claimed that the women's toilets were infrequently cleaned and unhygienic.

The company denied that the complainant was harassed because of her pregnancy and the manager denied making the comments attributed to him. The company stated that the complainant's request to change her work days was refused as the changes were not acceptable to her job-share partner. It was agreed that the complainant was advised that she could express milk in the women's toilet and that the twenty minutes a day spent expressing milk would not be counted as work time.

The matter was resolved through a conciliation process. The respondent agreed to pay the complainant $5 300 general damages, review its policies with specific attention to sex and pregnancy discrimination and arrange EEO training for all managers.

Complaint of sexual harassment and victimisation

The complainant was employed as a sales representative with a building company. The complainant alleged that from the time she commenced employment in late 1999 the sales manager subjected her to comments and gestures that were offensive and sexual in nature and made unwelcome advances and requests for sexual favours. The alleged acts of the sales manager included approaching her from behind and simulating sexual acts and regularly making comments of a sexual nature such as telling her she had "*nice tits*". The complainant also claimed that the sales manager said salary would be decreased and suggested that if she wanted to earn more money she could perform sexual favours. The complainant alleged that when the

manager became aware of her plans to marry; his behaviour became even more offensive, humiliating and intimidating. The complainant claimed that when she made an internal complaint to her employer she was victimised in that she was told she would be moved to another work location. The complainant alleged that her employer took no effective steps to investigate or resolve her complaint and that this inaction led to the Manager's continued harassment and victimisation of her. The complainant stated she was unable to continue working and lodged a worker's compensation claim.

The company stated that it had conducted an internal investigation and the Manager admitted to making some comments of a sexual nature but denied that these constituted sexual harassment. The company claimed it took all reasonable steps to deal with the complainant's concerns although it had no formal sexual harassment policy in place. The company claimed that the change in the complainant's pay structure was due to a new commission structure and that the complainant was moved to another work location because of falling demand at the location where she was employed.

The complaint was resolved by conciliation. The complainant did not wish to return to work with the company and agreed to withdraw her complaint in return for payment of $50 000 in general damages, a statement of service and an apology.

Disability Discrimination Act

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

In this reporting year, the Commission received 493 complaints under the Disability Discrimination Act. The majority of these complaints concerned employment and the provision of goods, services and facilities. The Commission finalised 463 complaints under this Act and 41 percent of these finalised complaints were conciliated. Detailed statistics regarding complaints under the Disability Discrimination Act are provided later in this Chapter.

Complaint of disability discrimination in employment

The complainant had been employed as a warehouse supervisor for some years with the respondent company. The complainant suffered a workplace injury which resulted in impairment to his spine and leg. The complainant alleged that his employment was terminated after the injury because his employer felt he was unable to safely perform the inherent requirements of his position. The complainant disputed that he was unable to perform his duties safely and claimed the employer had not asked him whether there was any reasonable adjustment that would assist him perform his duties. The complainant noted that he had evidence that he could improve his mobility with a foot brace and he also claimed that the employer had not raised any concerns about his performance or mobility prior to terminating his employment.

The respondent company claimed that the complainant was unsteady when he walked and stated it had genuine concerns that the complainant could fall or trip in the warehouse, thus endangering himself and fellow workers.

The complaint was resolved through a conciliation process with the employer agreeing to reinstate the complainant and pay him $52 000 in compensation for lost wages, superannuation and legal costs.

Alleged discrimination in education

The complainant's daughter has Juvenile Diabetes which results in her experiencing hypoglycaemia (low blood sugar) which is addressed by an intake of food or juice to increase her blood sugar levels. The complainant alleged that her daughter's school had discriminated against her daughter in that it had refused to allow hypo boxes, which contain food and juice, to be placed in the classroom. The complainant also alleged that she was refused permission to speak with staff of the school canteen to inform them of her daughter's specific food requirements.

The school acknowledged that it was reluctant to place hypo boxes in all classrooms due to concerns that this may disrupt the other students. The school also stated that

it had refused to allow the complainant to speak directly to canteen staff because they are mainly volunteers who change regularly. The school advised that it had spoken to the canteen manager, who is the only paid and regular staff member at the canteen, and that a photo of the complainant's daughter had been placed in the canteen so all volunteers could encourage her to choose appropriate food and drink.

The complaint was resolved by conciliation with the school agreeing to arrange for a diabetes educator to present information to staff and develop to a specific management plan for the complainant's daughter. The school also agreed that it would endeavor to ensure that the complainant's daughter is not excluded from any program, activity or service provided by the school due to her diabetes.

Complaint regarding access to website

The complainant has a vision impairment. He claimed that the respondent government department's website was not accessible to him because of its format. The complainant advised that he was willing to withdraw his complaint if the respondent modified the website so that it complied with the World Wide Web Consortium's Web Content Accessibility Guidelines either directly or through an accessible alternative. The complainant's settlement proposal was sent to the respondent department for its consideration.

The department responded with a draft website accessibility action plan. The plan details the actions the department will take to provide access to its materials in alternative formats. In the interim the complainant was also provided with text versions of all the documents which he required from the website. The complainant advised the Commission that he was satisfied with this outcome.

Allegation of discrimination by employee with a vision disability

The complainant, who has a vision impairment, had worked for the respondent Australian Government authority for approximately 12 years. He claimed that his employer had accommodated his disability for six years by providing a large screen computer for his exclusive use. The complainant stated that when some of his office's functions were transferred to another city he and his co-workers were assigned new duties that required a different computer program. The complainant stated that the images from the new program could not be magnified and therefore the effect of his large screen was lost. As a result, he was unable to perform computer based duties and was provided with what he regarded as 'menial' clerical work. He alleged that his colleagues continued to do overtime on a regular basis but he was denied the opportunity to earn overtime and do higher duties as he could not use the computer. The complainant stated that the problem would be resolved if a new computer screen was purchased but he claimed the respondent was reluctant to spend $10 000 on a new screen.

The respondent agreed that the person who designed the software had been unaware of the complainant's disability or his specific needs. The respondent said that the problem was being addressed but it was not an easy matter to solve. The respondent agreed that the complainant had been on alternate duties for some eight months when the complaint was lodged.

The complaint was resolved by conciliation with the respondent agreeing to purchase a compatible computer screen for the complainant and provide him with additional support and training to address any disadvantage to his career. The respondent also provided the complainant with a statement of regret.

Complaint of discrimination in higher education

The complainant, who is blind, stated that in 2001 he enrolled in a business studies course as a distance student. The complainant claimed that at the time of enrolment the university's Disability Liaison Officer agreed that his course material would be provided in a format compatible with his JAWS screen reader. He claimed that none of the provided course materials were compatible with JAWS. The complainant stated that he attended two meetings at the University to outline the difficulties he was experiencing and that the University gave assurances that the problems would be addressed. He claimed however that at the end of 2001 he had not been able to complete any course work and that while he enrolled again in 2002 he later withdrew because he had still not received any material that was compatible with JAWS.

The University acknowledged that the complainant may, at the outset, have been given assurances about material being translated into a format compatible with JAWS which could not be fulfilled when translation difficulties emerged. The University noted that it had not anticipated the difficulties involved in translating materials for the complainant's course which involved translating tables and graphs as well as text.

The complaint was resolved by conciliation with the University agreeing to pay the complainant $15 000 compensation.

Access to premises, goods, services and facilities on holiday

The complainant has a physical disability and uses a wheelchair. She stated that when booking a resort holiday for herself and her family through a booking agent she sought, and was given assurances, that the resort apartment was wheelchair accessible. She claimed that when she arrived at the resort the apartment had a step at the entrance and after complaining, a wooden ramp was placed at the door and two pieces of wood were placed between the space from the ramp to the door frame. The complainant alleged that the temporary entrance ramp did not comply with Australian Standards and the backdoor of the apartment and bathroom were also not wheelchair accessible.

The resort claimed that when the booking was made the request was for a 'wheelchair friendly room' and that numerous wheelchair users had stayed in the apartment where the complainant was located. The resort claimed that if the booking agent had made it clear that the complainant wished to be totally independent, they would not have accepted the booking.

The complaint was resolved through a conciliation process with the respondent agreeing to provide the complainant with an apology, purchase a portable ramp which complies with Australian Standards and pay the complainant $7 000 compensation.

Human Rights and Equal Opportunity Commission Act

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

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

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

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

If a complaint of alleged discrimination or alleged breach of a human right is neither conciliated nor declined, the President can undertake further inquiry. If the President is satisfied that the subject matter of the complaint constitutes discrimination in employment or is a breach of a human right, the President must report the findings to the Attorney-General for tabling in Parliament. The Commission's Legal Services assist the President in this part of the process. Further details of this process are provided in the Legal Services Section, Chapter 3 of this report.

In this reporting year, the Commission received 181 complaints under the Human Rights and Equal Opportunity Commission Act. The majority of these complaints concerned alleged breaches of the *International Covenant on Civil and Political Rights* and discrimination in employment based on criminal record or age. The Commission finalised 192 complaints under this Act. Ten percent of these finalised complaints were conciliated and six percent were referred for reporting. Detailed statistics regarding complaints under the Human Rights and Equal Opportunity Commission Act are provided later in this Chapter.

Alleged discrimination in employment on the ground of criminal record

The complainant worked for a freight company as a fork lift driver. The complainant advised that he had a criminal record including convictions for 'entering and stealing'. The complainant alleged that because of his criminal record, his employer had insinuated on a number of occasions that the complainant was responsible for freight which had gone missing at work.

The respondent denied discriminating against the complainant on the basis of his criminal record. The company said that it had never insinuated that the complainant

was responsible for missing freight and noted that it gave the complainant permanent employment despite his criminal record.

The complaint was resolved by conciliation. The complainant did not wish to return to employment with the company and the parties agreed that the complainant would withdraw his complaint in return for payment of six weeks wages.

Complaint of discrimination in employment on the ground of sexual preference and disability

The complainant alleged that he was discriminated against, harassed and victimised by staff at the school where he worked as a teacher. He claimed that staff subjected him to public taunts about wearing women's clothes and pink clothing. The complainant claimed that management did not effectively deal with the incidents and he developed a reactive depression causing him to take time off work. The less favourable treatment he claimed to have experienced on his return to work included being subjected to numerous comments about his illness, pressured to resign from his position as subject coordinator, excluded from staff appraisal and denied information about the class timetable. The complainant also alleged that his teaching load was increased and his personal and professional belongings were moved to another office where his name and the phrase "*takes it up the arse*" had been written on the whiteboard.

The school claimed that any actions of staff were in the context of a joke and that the school was very concerned and supportive of the complainant in relation to his return to work. The school claimed that the depression the complainant suffered predated this work incident and was related to another health problem. The respondent stated that it was the complainant who suggested that he step down from the role of subject coordinator and the school denied that the complainant was excluded from staff appraisal or denied information about the timetable. The school claimed that the increase in the complainant's teaching load was the result of the move from subject coordinator to normal teaching duties and that the complainant was required to move to a new office because of changes in accommodation arrangements for teaching staff.

The complaint was resolved through a conciliation process. The parties agreed that the complainant would withdraw his complaint in return for apologies from the school and staff members involved in the incidents, an undertaking by the school to discipline individuals involved in the incidents and payment of $11 000 compensation. The complainant agreed to return to full-time work at the school.

Allegation of age discrimination in employment

The complainant alleged that she was advised by her supervisor at the nursing home where she worked that she was to be dismissed from her position as a kitchen hand as they wanted an older and more mature person for the job. The complainant stated that she was informed that this decision was based on complaints from the cook about her work performance. She also claimed that her supervisor had previously made comments such as "*it is not a young person's job*". The complainant claimed that while she was advised that she could keep her non-kitchen hand shifts she decided to leave her employment.

The respondent claimed that the complainant was not dismissed but resigned. The respondent stated that the complainant's supervisor was endeavouring to resolve a dispute between the complainant and another employee and did not mean to discriminate against or upset the complainant. The respondent advised that it had developed an improvement plan regarding age discrimination in the workplace that was to be implemented in the near future.

The complaint was resolved by conciliation, the parties agreeing that the complainant would withdraw her complaint in return for a written apology and $4 000 compensation.

Complaint of discrimination in employment on the ground of criminal record

The complainant worked as a cleaner at a large public facility and had previously been subjected to a criminal record check in order to obtain his security pass. Some five months after commencing work security procedures at the facility were reviewed and upgraded and employees underwent a further check of their criminal history. The complainant alleged that he was deemed a security risk and ordered off the work site due to his criminal record. The complainant claimed that this was unfair as his offences were in relation to traffic infringements that had occurred ten years ago.

Prior to the Commission receiving a response from the respondent company, the complaint was resolved with the company agreeing to issue the complainant with a security pass which would allow him to return to work at the facility.

Allegation of discrimination in employment because of trade union activity

The complainant was employed with a large statutory authority and was a union member. She alleged that she was unfairly counselled about organising training without proper authorisation. She also alleged that when she approached her manager to express an interest in promotion opportunities he said *"do you think that I would like anyone on my Management Team who runs to the union"*. The complainant stated that she lodged an internal grievance with her employer but there was no proper investigation of the matter.

The authority denied that it had discriminated against the complainant on the basis of her trade union activity. It claimed that the complainant was counselled because she had breached its Code of Ethics. In addition, the respondent claimed that the complainant was unsuccessful in applying for a promotion because, in terms of merit, the other candidate had greater claims for the position. The authority also denied that the complainant's manager had made the alleged comments to the complainant.

In the middle of the Commission's investigation the complainant advised that she had resolved the complaint directly with the respondent and the terms of settlement included acceptance of a separation package.

Complaint of discrimination on the ground of age

The complainant, who was employed by an Australian Government department, alleged that for a number of years he had been subjected to offensive comments about his age. He claimed for example that he was called 'old' and 'decrepit' and was subjected to a betting game about his age. The complainant claimed that he developed a significant psychiatric condition because of this treatment and was later dismissed from employment.

The department denied that the complainant had been discriminated against on the basis of his age. The department stated that the first time the allegations of harassment came to its attention was in late 2001 when the complainant requested a transfer. The department claimed that it investigated the alleged incidents and determined that any such conduct had ceased in mid 2001 and that most of the comments were 'innocent banter' and 'friendly jibes'. The department advised that it ordered its employees to cease any jokes or comments that could be construed as harassment. The department stated that the complainant was dismissed from employment as he was determined to be medically unfit due to a long-standing medical condition unrelated to the issues in his complaint.

The complaint was resolved through a conciliation process with the parties agreeing that the complainant would withdraw his complaint and the respondent would pay the complainant $15 000 compensation.

Complaint handling statistics

Preliminary comments

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

It is important to note, when comparing complaint data between different agencies and across reporting years, that there may be variations in the way the data is counted and collected. Some additional information explaining the Commission's approach to statistical reporting is footnoted. Further clarification about complaint statistics can be obtained by contacting the CHS.

Summary

The overall number of complaints received and finalised in 2002–03 is generally similar to the numbers received and finalised in the previous reporting year.

In 2002–03, 40 percent of complaints were lodged under the Disability Discrimination Act, 31 percent under the Sex Discrimination Act, 15 percent under the Racial Discrimination Act and, 14 percent under the Human Rights and Equal Opportunity Commission Act.

The number of complaints received and finalised under the Racial Discrimination Act in 2002–03 are very similar to the figures for the last reporting year. As in the previous year, employment and the provision of goods and services remain the main areas of complaint.

In comparison with the previous reporting year there has been a slight decrease (four percent) in the number of complaints lodged under the Sex Discrimination Act. While the grounds and areas of complaint are generally similar across the two reporting years, there was a further increase in the percentage of complaints alleging pregnancy discrimination (five percent). This means that over the past three years there has been a 19 percent increase in such complaints. The Commission is of the view that this increase in complaints can, in part, be attributed to increased public awareness resulting from the Commission's ongoing policy work on pregnancy related issues.

Complaints under the Disability Discrimination Act are the largest ground of complaint and in this reporting year there was an increase in the number of complaints received (nine percent). The areas of complaint are generally similar to the last reporting year with complaints about employment and provision of goods, services and facilities dominating.

Complaints under Human Rights and Equal Opportunity Commission Act have decreased by 23 percent compared to the previous year. This decrease can, in part, be attributed to the associated decrease in complaints received about conditions and treatment in immigration detention which is reflective of the decreased number of detainees in Australia during the past reporting year. This decrease in complaints

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

Of all the complaints finalised in this reporting year, 32 percent were conciliated which is slightly above the conciliation rate for the previous year. There was also a slight increase in the conciliation success rate with 64 percent of matters where conciliation was attempted being successfully resolved.

In this reporting year complaints under the Sex Discrimination Act had the highest conciliation rate (43 percent) and a high conciliation success rate (61 percent). Complaints under the Disability Discrimination Act had a conciliation rate of 41 percent and the highest conciliation success rate (73 percent).

Complaints under the Racial Discrimination Act had a conciliation rate of 15 percent and a success rate of 41 percent. As noted in last year's report, lower resolution rates for race discrimination matters appear to be linked with difficulties complainants often have in demonstrating a link between their race and the alleged less favourable treatment and the associated limited case precedent in this area. While only a small number of HREOCA complaints were resolved by conciliation (10 percent), 61 percent of matters where conciliation was attempted were resolved. The overall low conciliation rate in relation to HREOCA matters can be attributed to the fact that many human rights matters are declined as they do not constitute a breach of human rights as defined by the Act. HREOCA complaints that relate to alleged breaches of human rights by the Commonwealth generally have a low conciliation rate (four percent in this reporting year) as they often concern broad policy issues which are difficult to resolve at the individual complainant level. However, HREOCA complaints regarding employment under the International Labour Organisations Convention (ILO 111) have a much higher conciliation success rate (13 percent in this reporting year).

Information on the geographical location, sex and ethnicity of complainants is provided in Tables 6, 8 and 9 below. Demographic data voluntarily provided by complainants at the commencement of the complaint process[2] provides additional information on complainants. This data, which is similar to data obtained in the last reporting year, indicates that many complainants (28 percent) knew about the Commission prior to lodging their complaint and the main sources of referral were legal centres/private solicitors and family/friends. The majority of complainants (64 percent) indicated that their main source of income at the time of the alleged act was from full, part-time or casual employment. Approximately 37 percent of complainants advised at the beginning of the complaint process that they were represented.[3] The main forms of representation were privately funded solicitors (27 percent) and representation by a friend, family member or support person (24

2 73 percent of complainants returned the demographic data survey in this reporting year.
3 Representation status may change during the complaint process.

percent).

Data collected on respondent categories indicates that in the last reporting year approximately 56 percent of complaints were against private enterprise, 18 percent were against Australian Government departments/statutory authorities and 10 percent were against state departments/statutory authorities. The next main respondent categories were educational institutions (six percent), clubs and incorporated associations (three percent) and local government (three percent).

Complaint Information Service

Table 1: Telephone, TTY, e-mail, in-person and written enquiries received

Enquiry type	Total
Telephone	8 319
TTY	16
E-mail	374
In-person	128
Written	631
Total	**9 468**

Table 2: Enquiries received by issue*

Issue	Total
Race	748
Race – racial hatred	351
Sex – direct	430
Sexual harassment	679
Sex – marital status, family responsibilities, parental status, breastfeeding	235
Sex – pregnancy	457
Sexual preference, transgender, homosexuality, lawful sexual activity	152
Disability – impairment	1 252
Disability – HIV/AIDS, hepatitis	26
Disability – workers compensation	150
Disability – mental health	376
Disability – intellectual disability, learning disability	110
Disability – maltreatment, negligence	42
Disability – physical feature	46
Age – too young	40
Age – too old	198
Age – compulsory retirement	7
Criminal record, criminal conviction	238
Political opinion	21
Religion, religious organisations	236
Employment – personality conflicts, favouritism	310

Employment – union, industrial activity	132
Employment – unfair dismissal, other industrial issues	532
Employment – workplace bullying	699
Human rights – children	107
Human rights – civil, political, economic, social	319
Immigration – detention centres	59
Immigration – visas	136
Prisons, prisoners	87
Police	88
Court – Family Court	142
Court – other law matters	112
Privacy – data protection	105
Neighbourhood disputes	75
Advertising	12
Local government – administration	51
State government – administration	141
Federal government – administration	195
Other	471
Total	**9 567**

* One enquiry may have multiple issues.

Table 3: Enquiries received by state of origin

State of origin	Total	Percentage (%)
New South Wales	4 412	46
Victoria	1 229	13
South Australia	560	6
Western Australia	445	5
Queensland	1 788	19
Australian Capital Territory	209	2
Tasmania	171	2
Northern Territory	170	2
Unknown/overseas	484	5
Total	**9 468**	**100**

Complaints overview

Table 4: National complaints received and finalised over the past two years

	2001–02	2002–03
Received	1 271	1 236
Finalised	1 298	1 308

Table 5: Outcomes of national complaints finalised over the past two years

	2001–02 (percent)	2002–03 (percent)
Terminated/declined	55	56
Conciliated	30	32
Withdrawn	14	11
Reported (Human Rights & Equal Opportunity Commission Act only)	1	1

Table 6: State of origin of complainant at time of lodgement

State of origin	Total	Percentage (%)
New South Wales	525	42
Victoria	256	21
South Australia	164	13
Western Australia	85	7
Queensland	132	11
Australian Capital Territory	25	2
Tasmania	11	1
Northern Territory	31	2
Unknown/overseas	7	1
Total	**1 236**	**100**

Table 7: Complaints received and finalised by Act

Act	Received	Finalised
Racial Discrimination Act (RDA)	182	258
Sex Discrimination Act (SDA)	380	395
Disability Discrimination Act (DDA)	493	463
Human Rights and Equal Opportunity Commission Act (HREOCA)	181	192
Total	**1 236**	**1 308**

Chart 1: Complaints received by Act

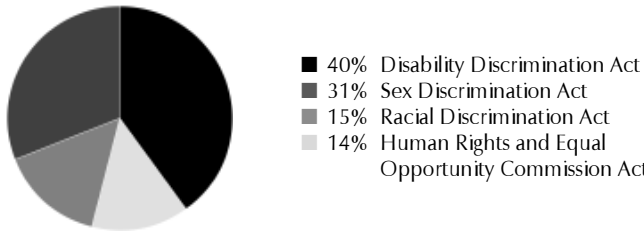


Table 8: Complaints received by category of complainant by Act

	RDA	SDA	DDA	HREOCA	Total
Individual male	129	49	266	127	571
Individual female	50	331	224	47	652
Couple or family	2	–	3	1	6
On others behalf	–	–	–	–	–
Organisation	1	–	–	4	5
Community, other group	–	–	–	2	2
Total	**182**	**380**	**493**	**181**	**1 236**

Table 9: Complaints received by ethnicity of complainant by Act

	RDA	SDA	DDA	HREOCA	Total
Non-English speaking background	105	96	113	98	412
Aboriginal and Torres Strait Islander	51	11	10	3	75
English speaking background	26	273	370	80	749
Total	**182**	**380**	**493**	**181**	**1 236**

Table 10: Time from receipt to finalisation for complaints finalised during 2002–03

	RDA (%)	SDA (%)	DDA (%)	HREOCA (%)	Cumulative Total (%)
0 – 3 months	12	16	17	31	18
3 – 6 months	21	25	26	25	42
6 – 9 months	20	31	33	19	70
9 – 12 months	10	17	15	11	84
More than 12 months	11	10	8	10	94
More than 18 months	1	1	1	4	95
More than 24 months	25 *	–	–	–	100

* It is noted that 23 percent of the racial discrimination matters over 24 months old were part of a large group of complaints that had been on hold awaiting decisions of a state administrative body. If these matters are subtracted from the cumulative total, 98 percent of complaints were finalised within 12 months and 100 percent of complaints were finalised within 18 months.

Racial Discrimination Act

Table 11: Racial Discrimination Act* – complaints received and finalised

	Total
Received	182
Finalised	258

* Includes complaints lodged under the racial hatred provisions.

Table 12: Racial Discrimination Act – complaints received by ground

Racial Discrimination Act	Total	Percentage (%)
Association	7	2
Colour	30	8
National origin, extraction	57	16
Ethnic origin	102	29
Descent	2	1
Race	107	30
Victimisation	6	2
Racial hatred	41	12
Total*	**352**	**100**

* One complaint may have multiple grounds.

Table 13: Racial Discrimination Act – complaints received by area

Racial Discrimination Act	Total	Percentage (%)
Right to equality before the law	6	2
Access to places and facilities	6	2
Land, housing, other accommodation	16	5
Provision of goods and services	85	24
Right to join trade unions	–	–
Employment	149	42
Advertisements	–	–
Education	3	1
Incitement to unlawful acts	4	1
Other – section 9	36	10
Racial hatred	47	13
Total*	**352**	**100**

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

Table 14: Racial Discrimination Act – outcomes of finalised complaints

Racial Discrimination Act	Total
Terminated	**195**
Not unlawful	8
More than 12 months old	4
Trivial, vexatious, frivolous, misconceived, lacking in substance	88
Adequately dealt with already	52
More appropriate remedy available	1
Subject matter of public importance	–
No reasonable prospect of conciliation	42
Withdrawn	**18**
Withdrawn, does not wish to pursue, advised the Commission	16
Withdrawn, does not wish to pursue, settled outside the Commission	2
Conciliated	**38**
Administrative closure*	**7**
Total	**258**

* Not an aggrieved party or state complaint previously lodged.

Chart 2: Racial Discrimination Act – outcomes of finalised complaints

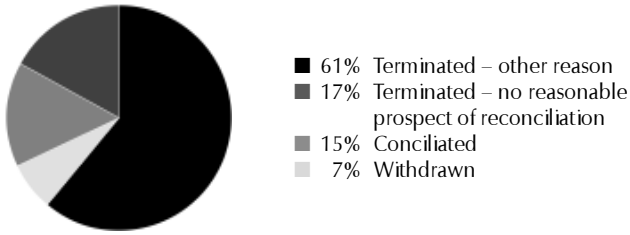


Table 15: Racial hatred complaints received and finalised

	Total
Received	34
Finalised	41

Table 16: Racial hatred complaints received by sub-area

Racial Discrimination Act	Total	Percentage (%)
Media	12	35
Disputes between neighbours	11	32
Personal conflict	–	–
Employment	1	3
Racist propaganda	–	–
Entertainment	–	–
Sport	–	–
Public debate	–	–
Other*	10	30
Total**	**34**	**100**

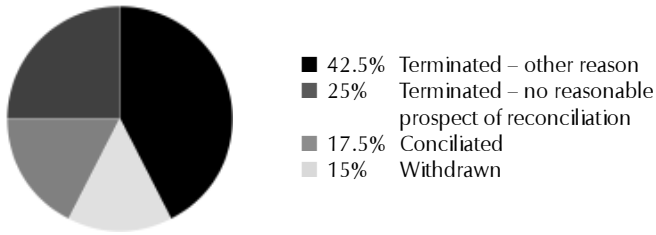
* This category includes complaints in the area of education, provision of goods and services and comments made by people in the street and in passing vehicles.
** One sub-area is recorded for each racial hatred complaint received.

Table 17: Outcomes of finalised racial hatred complaints

Racial Discrimination Act	Total
Terminated	**27**
Not unlawful	6
More than 12 months old	1
Trivial, vexatious, frivolous, misconceived, lacking in substance	10
Adequately dealt with already	–
More appropriate remedy available	–
Subject matter of public importance	–
No reasonable prospect of conciliation	10
Withdrawn	**6**
Withdrawn, does not wish to pursue, advised the Commission	6
Withdrawn, does not wish to pursue, settled outside the Commission	–
Conciliated	**7**
Administrative closure*	**1**
Total	**41**

* Not an aggrieved party or state complaint previously lodged.

Chart 3: Outcomes of finalised racial hatred complaints



Sex Discrimination Act

Table 18: Sex Discrimination Act – complaints received and finalised

Sex Discrimination Act	Total
Received	380
Finalised	395

Table 19: Sex Discrimination Act – complaints received by ground

Sex Discrimination Act	Total	Percentage (%)
Sex discrimination	184	28
Marital status	25	4
Pregnancy	230	35
Sexual harassment	172	27
Parental status, family responsibility	19	3
Victimisation	21	3
Total*	**651**	**100**

* One complaint may have multiple grounds.

Table 20: Sex Discrimination Act – complaints received by area

Sex Discrimination Act	Total	Percentage (%)
Employment	568	87
Goods, services and facilities	39	6
Land	–	–
Accommodation	1	–
Superannuation, insurance	–	–
Education	9	1
Clubs	7	1
Administration of Commonwealth laws and programs	17	3
Application forms etc	4	1
Trade unions, accrediting bodies	6	1
Total*	**651**	**100**

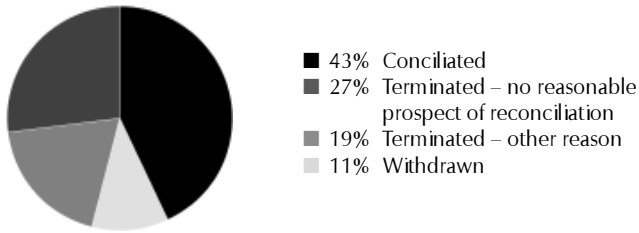
*An area is recorded for each ground, so one complaint may have multiple and different areas.

Table 21: Sex Discrimination Act – outcomes of finalised complaints

Sex Discrimination Act	Total
Terminated	**173**
Not unlawful	13
More than 12 months old	4
Trivial, vexatious, frivolous, misconceived, lacking in substance	42
Adequately dealt with already	5
More appropriate remedy available	6
Subject matter of public importance	–
No reasonable prospect of conciliation	103
Withdrawn	**41**
Withdrawn, does not wish to pursue, advised the Commission	39
Withdrawn, does not wish to pursue, settled outside the Commission	2
Conciliated	**161**
Administrative closure*	**20**
Total	**395**

* Not an aggrieved party or state complaint previously lodged.

Chart 4: Sex Discrimination Act – outcomes of finalised complaints



Disability Discrimination Act

Table 22: Disability Discrimination Act – complaints received and finalised

Disability Discrimination Act	Total
Received	493
Finalised	463

Table 23: Disability Discrimination Act – nature of complainant's disability

Disability Discrimination Act	Total
Physical disability	169
A mobility aid is used – e.g. walking frame or wheelchair	56
Physical disfigurement	22
Presence in the body of organisms causing disease – HIV/AIDS	9
Presence in the body of organisms causing disease – other	13
Psychiatric disability	88
Neurological disability – e.g. epilepsy	29
Intellectual disability	15
Learning disability	25
Sensory disability – e.g. hearing impaired	28
Sensory disability – deaf	17
Sensory disability – vision impaired	30
Sensory disability – blind	20
Work related injury	46
Medical condition – e.g. diabetes	45
Other	33
Total*	**645**

* One complainant may have multiple disabilities.

Table 24: Disability Discrimination Act – complaints received by ground

Disability Discrimination Act	Total	Percentage (%)
Disability of person(s) aggrieved	862	95
Associate	23	3
Disability – person assisted by trained animal	6	1
Disability – use of appliance	–	–
Harassment	12	1
Victimisation	2	–
Total*	**905**	**100**

*One complaint may have multiple grounds.

Table 25: Disability Discrimination Act – complaints received by area

Disability Discrimination Act	Total	Percentage (%)
Employment	480	53
Goods, services and facilities	220	24
Access to premises	36	4
Land	–	–
Accommodation	28	3
Incitement to unlawful acts or offences	–	–
Advertisements	–	–
Superannuation, insurance	17	2
Education	98	11
Clubs, incorporated associations	10	1
Administration of Commonwealth laws and programs	16	2
Sport	–	–
Application forms, requests for information	–	–
Trade unions, registered organisations	–	–
Total*	**905**	**100**

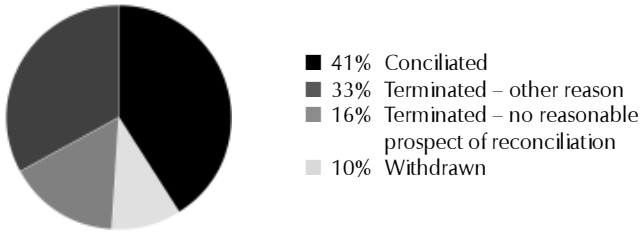
* An area is recorded for each ground, so one complaint may have multiple and different areas.

Table 26: Disability Discrimination Act – outcomes of finalised complaints

Disability Discrimination Act	Total
Terminated	**219**
Not unlawful	25
More than 12 months old	5
Trivial, vexatious, frivolous, misconceived, lacking in substance	100
Adequately dealt with already	11
More appropriate remedy available	8
Subject matter of public importance	–
No reasonable prospect of conciliation	70
Withdrawn	**43**
Withdrawn, does not wish to pursue, advised the Commission	40
Withdrawn, does not wish to pursue, settled outside the Commission	3
Conciliated	**186**
Administrative closure*	**15**
Total	**463**

* Not an aggrieved party, state complaint previously lodged.

Chart 5: Disability Discrimination Act – outcomes of finalised complaints



Human Rights and Equal Opportunity Commission Act

Table 27: Human Rights and Equal Opportunity Commission Act – complaints received and finalised

Human Rights and Equal Opportunity Commission Act	Total
Received	181
Finalised	192

Table 28: Human Rights and Equal Opportunity Commission Act – complaints received by ground

Human Rights and Equal Opportunity Commission Act	Total	Percentage (%)
Race – ILO 111	–	–
Colour – ILO 111	–	–
Sex – ILO 111	–	–
Religion – ILO 111	16	8
Political opinion – ILO 111	1	0.5
National extraction – ILO 111	–	–
Social origin – ILO 111	2	1
Age – ILO 111	26	13
Medical record – ILO 111	–	–
Criminal record – ILO 111	30	15
Impairment – including HIV/AIDS status (ILO 111)	–	–
Marital status – ILO 111	–	–
Disability – ILO 111	–	–
Nationality – ILO 111	–	–
Sexual preference – ILO 111	20	10
Trade union activity – ILO 111	21	11
International Covenant on Civil and Political Rights	53	27
Declaration on the Rights of the Child	2	1
Declaration on the Rights of Mentally Retarded Persons	3	1
Declaration on the Rights of Disabled Persons	–	–
Convention on the Rights of the Child	15	8
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	3	1
Not a ground within jurisdiction	1	0.5
Not a human right as defined by the Act	6	3
Total*	**199**	**100**

* One complaint may have multiple grounds.

Table 29: Human Rights and Equal Opportunity Commission Act – complaints received by area

Human Rights and Equal Opportunity Commission Act	Total	Percentage (%)
Acts or practices of the Commonwealth	71	36
Employment	119	60
Not act or practice of the Commonwealth – not employment cases	9	4
Total*	**199**	**100**

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

Table 30: Human Rights and Equal Opportunity Commission Act – non-employment complaints received by sub-area

Human Rights and Equal Opportunity Commission Act	Total	Percentage (%)
Prisons, prisoners	15	18
Religious institutions	1	1
Family Court matters	3	3.5
Other law court matters	2	2.5
Immigration	51	60
Law enforcement agency	–	–
State agency	1	1
Other service provider – private sector	–	–
Local government	1	1
Education systems	–	–
Welfare systems	2	2.5
Personal or neighbourhood conflict	1	1
Health system	2	2.5
Other	6	7
Total*	**85**	**100**

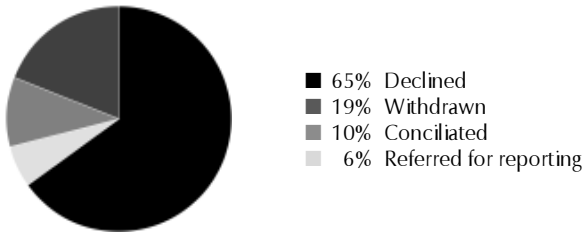
* One complaint may have multiple sub-areas.

Table 31: Human Rights and Equal Opportunity Commission Act – outcomes of finalised complaints

Human Rights and Equal Opportunity Commission Act	Total
Declined	**161**
Does not constitute discrimination	18
Human rights breach, not inconsistent or contrary to any human right	33
More than 12 months old	7
Trivial, vexatious, frivolous, misconceived, lacking in substance	37
Adequately dealt with already	10
More appropriate remedy available	20
Withdrawn, does not wish to pursue, advised the Commission	26
Withdrawn, does not wish to pursue, settled outside the Commission	1
Withdrawn or lost contact	9
Conciliated	**19**
Referred for reporting*	**12**
Administrative closure**	–
Total	**192**

* 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 or state complaint previously lodged.

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



Chapter 3
Legal Services

The primary responsibilities of the Legal Section for the 2002–03 financial year were to:

- 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 interventions in legal proceedings.
- Act as instructing solicitor for the Commissioners 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.
- Assist the Commission in the preparation of its report on the National Inquiry into Children in Immigration Detention.
- 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.
- Assist in the preparation of submissions to Senate Inquiries and committees, especially where the Commission's core legislation is involved.
- Represent the Commission externally in providing information and education on human rights matters, and to
- Represent the Commission in international project work.

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

Where a complaint is made under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) alleging breaches of human rights and discrimination in employment, the President or his delegate 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. The Legal Section assists the President or his delegate to inquire into the complaints and prepare reports to the Attorney-General.

Between 1 July 2002 and 30 June 2003, the following reports were tabled in Parliament by the Minister pursuant to this Commission function (the full reports are available at www.humanrights.gov.au/legal/reports_hreoca.html):

HREOC Report No. 19

Report of an inquiry into a complaint by Mr Mark Hall against the NSW Thoroughbred Racing Board (August 2002)

Mr Hall lodged a complaint with the Commission alleging discrimination in his employment and occupation on the ground of his criminal record. That complaint arose after the Board prevented Mr Hall from working for Ms Gai Waterhouse of Gai Waterhouse Racing Stables as a stablehand from about 28 April 1999 and refused to issue him with a stablehand licence on or about 21 June 1999. Mr Hall alleged that the reason, or one of the reasons, for the Board's refusal to allow him to continue working as a stablehand and its refusal to issue him with a licence, was his criminal record.

In response, the Board claimed that the decision was not made on the basis of Mr Hall's criminal record but on other grounds, in particular Mr Hall's failure to disclose his criminal record. Alternatively, the Board relied upon the inherent requirements exception to discrimination.

Commissioner Ozdowski found that Mr Hall had been discriminated against on the ground of his criminal record and that the inherent requirements exception did not apply.

The Commissioner made the following recommendations in relation to the payment of compensation to Mr Hall and in relation to the prevention of a repetition of the relevant acts and/or a continuation of the relevant practices:

- that the Board pay to Mr Hall the amount of $33 303.05 (plus interest), and
- that the Board conduct a review of its processes regarding the use of criminal records, having regard to the following matters:

- the definition of discrimination in section 3 of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth)
- the broader human rights context, including relevant international law obligations such as those contained in article 17 of the *International Covenant on Civil and Political Rights*, and
- the need to develop clear written guidelines regarding the procedures of the Board for the use of criminal record, which reflect those matters.

As at the date of the report, the Commission had no knowledge that any action had been taken or was being taken by the Board as a result of the recommendations or findings.

HREOC Report No. 20

Report of an inquiry into a complaint by Ms Renai Christensen against Adelaide Casino Pty Ltd of discrimination in employment on the basis of criminal record (July 2002)

This Report is of an inquiry into a complaint by Ms Renai Christensen alleging that she was discriminated against by Adelaide Casino Pty Ltd (Adelaide Casino) when she sought employment as a bar attendant in October 2000. Adelaide Casino rejected Ms Christensen's application for employment at the final stage of the selection process because its security representative declined to certify that Ms Christensen was a 'fit and proper person' to be employed, a requirement of the *Casino Act 1997* (SA). Adelaide Casino was of the view that the circumstances of a larceny offence committed by Ms Christensen as a juvenile (some seven or eight years earlier) meant that she did not meet the requirements of trustworthiness and good character.

The former President of the Commission found that Adelaide Casino had discriminated against Ms Christensen on the basis of her criminal record.

In particular, the former President found that:

- the term 'criminal record' encompasses not only the actual record of a conviction but also the circumstances of a conviction
- the decision to exclude Ms Christensen from the final stage of the selection process constitutes a distinction made on the basis of her criminal record, which had the effect of nullifying her equality of opportunity or treatment in employment
- trustworthiness and good character are inherent requirements of the job of bar attendant. However, in the circumstances of this complaint (including Ms Christensen's work history since the conviction), the connection between the rejection of Ms Christensen's application on the basis of her criminal record and those requirements is not sufficiently close.

The former President recommended that Adelaide Casino apologise to Ms Christensen for rejecting her application as a bar attendant because of her juvenile conviction and not further exclude her from applying for employment because of that conviction.

In response to these findings and recommendations Adelaide Casino stated that it maintained its view that there was no inappropriate discrimination and advised it would not be taking any action in response to the findings and recommendations.

HREOC Report No. 21

Report of an inquiry into a complaint by six asylum seekers concerning their transfer from immigration detention centres to State prisons and their detention in those prisons

This Report concerns an inquiry into breaches of the *International Covenant on Civil and Political Rights* by the Department of Immigration and Multicultural and Indigenous Affairs, (DIMIA), on behalf of the Commonwealth. The complaint was made by Amnesty International on behalf of six men seeking asylum in Australia. Each of the detainees was held in immigration detention pursuant to section 189 of the Migration Act, initially in an Immigration Detention Centre (IDC). The complaint concerned the transfer of the detainees from the IDCs in which they were held to state correctional facilities (state prisons), and the continued detention of the detainees in those prisons. Amnesty alleged, on behalf of the detainees, that this transfer, and the continued detention of the detainees in the state prisons was a breach of their human rights.

The former President found:

- the transfer of one asylum seeker from an IDC to a state prison was an act by DIMIA which was inconsistent with, and contrary to, the asylum seekers' human rights recognised in article 9(1) of the *International Convention on Civil and Political Rights*
- the decision to continue the detention of two of the asylum seekers in Western Australian state prisons was an act by DIMIA which was inconsistent with, and contrary to, their human rights recognised in article 9(1) of the *International Convention on Civil and Political Rights*
- the decision of DIMIA to transfer one of the asylum seekers to a state prison from a detention centre, and the failure by DIMIA to consider the rape of the asylum seeker during monthly reviews of his imprisonment, were acts by the Australian Government which were inconsistent with, and contrary to, his human rights recognised in article 10(1) of the *International Convention on Civil and Political Rights*
- the failure by DIMIA to provide separate treatment for the six asylum seekers while they were held in immigration detention in New South Wales and West Australian state prisons was

> inconsistent with, and contrary to, their human rights recognised in article 10(2)(a) of the *International Convention on Civil and Political Rights*.

Of the six complainants, one was deported and one removed from Australia in April 2000. The Commission made a number of recommendations in the Report to prevent a repetition of the relevant acts and the continuation of the relevant practices.

DIMIA provided a response to those recommendations, stating that it did not agree with the findings made by the former President and thus did not propose to take any action in relation to the recommendations made.

HREOC Report No. 22

Report of an inquiry into a complaint by Mr XY concerning his continuing detention despite having completed his criminal sentence

This Report concerns an inquiry into a complaint lodged by Mr XY alleging that the continuing and indefinite nature of his detention amounts to a breach of his rights under article 9(1) of the *International Covenant on Civil and Political Rights (ICCPR)* which provides as follows:

> *"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law".*

The complainant came to Australia in February 1982 and was granted permanent residency in July 1988. He was born in Germany, though claimed he was a stateless person of no nationality. The complainant was convicted of criminal offences in Australia, and served his criminal sentence in Western Australia. He was served with a deportation order by DIMIA on 23 July 1997. Mr XY completed his criminal sentence on 11 June 2000 and since that date was detained pursuant to section 253 of the *Migration Act 1958* (Cth). This provides that if a person is subject to a deportation order, then they may be detained in immigration detention pending their deportation. Negotiations took place between DIMIA and the Polish Government in an attempt to deport the complainant to Poland. However, DIMIA advised in a letter dated 25 June 2002 that negotiations with Poland had ceased as the Polish Government would not issue the complainant with a certificate of Polish citizenship. In that letter, DIMIA also advised that negotiations with the German Government for the complainant's possible deportation to Germany, which had commenced as early as 1997, were continuing. At the date that the Report was issued by the former President in October 2002, Mr XY continued to be detained pursuant to section 253 of the *Migration Act 1958* at the Perth IDC.

The former President of the Commission found that negotiations with Germany, if ever entered into by the German Government, had stagnated, and there was no evidence to confirm the likelihood of Mr XY's deportation to that country. She was of the view that the complainant's detention had been indeterminate since some time in 2001, and most certainly was indeterminate by March 2002 when the

Polish Government confirmed that it would not accept him, and that this amounted to arbitrary detention. The former President therefore found that the continued detention of Mr XY was in breach of article 9(1) of the *International Convention on Civil and Political Rights*. She recommended that Mr XY be released from detention pending deportation, and that the Commonwealth of Australia pay him financial compensation in the amount of $45 000.

On 23 September 2002, the Commission wrote to DIMIA to seek its advice as to what action it had taken or proposed to take as a result of the findings and recommendations of the former President. In a letter to the Commission dated 8 October 2002, an officer of DIMIA provided comments and stated that as DIMIA did not accept the former President's findings it did not propose to take any action on the basis of her findings or recommendations.

HREOC Report No. 23

Report of an inquiry into a complaint by Mr Hassan Ghomwari concerning his immigration detention and the adequacy of the medical treatment he received while detained (October 2002)

This inquiry related to a complaint by Mrs Kylie Ghomwari on behalf of her husband Mr Hassan Ghomwari. Mr Ghomwari was placed in Villawood Immigration Detention Centre (VIDC) after DIMIA discovered that he had overstayed his visitor visa. A decision was made to transfer him to the Metropolitan Reception and Remand Centre (MRRC) at Silverwater. While there, Mr Ghomwari contracted Hepatitis B. Mrs Ghomwari asserted that the human rights of her husband were breached in two ways:

- Mrs Ghomwari alleged that her husband did not receive appropriate medical assistance for his Hepatitis B after his return to the VIDC, and
- Mrs Ghomwari criticised the conditions of her husband's detention at the MRRC, and in particular that he was held with, and received the same treatment as, convicted prisoners in the MRRC.

The former President found that article 10(1) of the *International Convention on Civil and Political Rights* had been breached. In particular, she found that:

- the level and quality of medical services provided by the Australian Government to Mr Ghomwari after his return to the VIDC on 8 May 2000 did not meet minimum international standards and was inconsistent and contrary to his human rights recognised in article 10(1), and
- the failure by the Australian Government to provide Mr Ghomwari with a regime of separate treatment while he was held in immigration detention in the MRRC was inconsistent with, and contrary to, his human rights recognised in article 10(2)(a).

The former President recommended that the Australian Government pay compensation in the amount of $26 500 and take immediate steps to comply with its obligations under article 10(1) in respect of the medical services provided to persons in immigration detention in all immigration detention centres in Australia. DIMIA did not accept the former President's findings, arguing that it already complied with its obligations under article 10(1) in respect of medical services provided to persons in detention, and as a result, did not state what action it had taken or proposed to take in relation to any of the recommendations.

HREOC Report No. 24

Report of an inquiry into complaints by five asylum seekers concerning their detention in the separation and management block at the Port Hedland Immigration Reception and Processing Centre (PHIRPC) (December 2002)

Amnesty International Australia complained that the asylum seekers' human rights were violated when they were placed in the Separation and Management Block within the PHIRPC (known as Juliet or 'J' block), on 1 December 2000 and held there for six and a half days.

The former President of the Commission did not find that the initial transfer of the asylum seekers to 'J' block was in breach of their human rights.

However, the former President found that:

- the Commonwealth's detention of the asylum seekers in 'J' block for six and a half days constituted arbitrary detention within the meaning of article 9(1) of the *International Convention on Civil and Political Rights*, and
- the conditions of detention accorded to the asylum seekers while they were held in 'J' block breached their right to be treated with humanity and respect for their inherent dignity under article 10(1) of the *International Convention on Civil and Political Rights*.

The former President recommended that the Australian Government:

- pay compensation to each of the asylum seekers for the violation of their rights under articles 9(1) and 10(1) of the *International Convention on Civil and Political Rights* of $25 000, and a further $10 000 in compensation on account of the aggravated circumstances
- apologise to each of the asylum seekers in writing
- take all steps to ensure that the conditions of detention in any form of segregated detention area meet minimum standards of humane treatment as required by article 10(1), and
- take all steps necessary to implement all the recommendations of the Security Risk Management Report commissioned by the Commonwealth after the incident, including the development

of policies and procedures setting out the process for at least daily review of segregated detention, and the grounds for maintaining segregated detention.

DIMIA did not indicate what, if any, action it was going to take in relation to the first and second recommendation. In relation to the third recommendation, it indicated that while it does take all steps to ensure compliance with article 10(1) of the ICCPR, there were some failures to comply with operating policies and procedures at the time and while these failures were not a breach of article 10(1), they would not occur again as an improved system had been put in place since the alleged breaches. In relation to recommendation four, DIMIA indicated that the Security Risk Management Report has "informed the Department's thinking and assisted in its program of continuous improvement across all centres".

HREOC Report No. 25

Report of an inquiry into a complaint by Mr Mohammed Badraie on behalf of his son Shayan regarding acts or practices of the Commonwealth of Australia (the Department of Immigration and Multicultural and Indigenous Affairs)

This Report concerned a complaint alleging acts or practices inconsistent with, or contrary to, the *Convention on the Rights of the Child*. Those acts or practices occurred in connection with the detention of the complainant's son at Woomera Immigration Reception and Processing Centre and the Villawood Immigration Detention Centre with his family.

The former President found that a number of the acts and practices complained of were inconsistent with, or contrary to, the following articles of the *Convention on the Rights of the Child*:

- article 3(1) of the *Convention on the Rights of the Child*, which provides that in all actions concerning children the best interests of the child shall be a primary consideration
- article 19(1) of the *Convention on the Rights of the Child*, which, among other things, obliges Australia to take positive steps to protect children from physical and mental violence
- article 37(c) of the *Convention on the Rights of the Child*, which provides that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age, and
- article 37(b) of the *Convention on the Rights of the Child*, which, among other things, provides that no child shall be deprived of his or her liberty unlawfully or arbitrarily and that the arrest, detention or imprisonment of a child shall be for the shortest appropriate period of time.

The former President recommended that compensation in the amount of $70 000 be paid by the respondent and that a written apology be furnished on behalf of the respondent, by the Minister for Immigration and Multicultural and Indigenous Affairs. The former President indicated that those recommendations reflected the serious nature of the breaches involved in this matter. As at the date of the Report, to the Commission's knowledge, the respondent had not taken any action in response to those recommendations.

The former President also made other recommendations aimed at preventing a repetition of the relevant acts and/or a continuation of the relevant practices. The respondent provided material which indicated that it had taken certain steps which partially addressed some of those matters.

External litigation

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), section 20(1)(e)
- *Sex Discrimination Act 1984* (Cth), section 48(1)(gb)
- *Disability Discrimination Act 1992* (Cth), section 67(1)(l)
- *Human Rights and Equal Opportunity Commission Act 1986* (Cth), sections 11(1)(o) and 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 guidelines that the Commission uses to determine if it will seek leave to intervene in a matter are publicly available on the Commission's website at www.humanrights.gov.au/legal/intervention_info.html

The relevant Court handed down the following decisions during the 2002–03 financial year.

Attorney-General for the Commonwealth v Kevin and Jennifer

A summary of the Commission's involvement in this matter is detailed in the 2001–02 *Annual Report*, available on the Commission's website at www.humanrights.gov.au/annrep01_02/.

The Full Court of the Family Court handed down its decision on 21 February 2003. The Full Court considered that the central issue to be considered was whether it was open to Justice Chisholm to find that at the date of the marriage between Kevin and Jennifer, Kevin (a post-operative transsexual person who was registered at birth as a female) was a man within the meaning of the Marriage Act. The Court made

clear that the issue of whether a marriage can occur between people of the same sex was not in issue in this case, and that the status of pre-operative transsexual people was not directly in issue.

The Commission's submissions in this matter focused on the international human rights principles it considered relevant to the issues before the Court, general principles of statutory construction under Australian law, especially in relation to the interpretation of certain aspects of the Marriage Act, and the application of those principles to the grounds of appeal. A full copy of those submissions are at www.humanrights.gov.au/legal/guidelines/submission_kevin_jennifer.html.

The judgment necessarily dealt with a wide range of issues. The following points, however, can be highlighted:

- the words "man" and "marriage" as used in the Marriage Act should bear their contemporary ordinary everyday meaning
- in considering what the contemporary everyday meaning of the words "man" and "woman" were, the Court considered the English case of Corbett v Corbett [1971] P83 which held that an individual's sex is determined at birth by reference to an examination of three biological factors, that is, chromosomes, gonads and genitals. The Full Court did not find the reasoning in Corbett to be persuasive, and found that it does not represent the law in Australia. It agreed with Justice Chisholm's view that a range of factors are relevant to the consideration of determining a person's sex for the purposes of marriage law, such as their cultural sex, social acceptance and 'brain sex'
- the Court referred extensively to the Commission's submissions concerning the human rights issues relevant to the case and stated that 'we should say that we were most indebted to the Commission for its assistance, which proved very helpful to us in considering this matter'.

At the time of this report, the Attorney-General had not sought special leave to appeal to the High Court in this matter.

Ming Dung Luu v Minister for Immigration and Multicultural Affairs

The Commission's involvement in this matter prior to this financial year can be found on the Commission's website at www.humanrights.gov.au/annrep01_02/ and www.humanrights.gov.au/annrep00_01/.

The proceedings involve the application for judicial review of a decision of the Minister for Immigration and Multicultural Affairs (the "Minister") to detain Mr Luu in immigration detention in a maximum security prison, pending his deportation, following his parole in relation to a serious assault charge. Section 253(9) of the *Migration Act 1958* (Cth) allows the Minister to release people who are detained in immigration detention pending deportation. The Minister determined not to exercise his power to release Mr Luu or revoke the deportation order. Mr Luu's application

for that decision to be judicially review was dismissed by Justice Marshall and during the last financial year, the Full Court handed down its decision dismissing Mr Luu's appeal from that decision.

In its submissions at first instance and on appeal, the Commission focussed upon matters arising from the Minister's decision under section 253(9). The Commission's submissions can be found at www.humanrights.gov.au/legal/guidelines/submissions_luu.html and www.humanrights.gov.au/legal/guidelines/submission_mingdungluu.html. In summary, amongst other things, the Commission's submissions were dealt with by the Court as follows:

- *whether the detention of Mr Luu's detention was arbitrary and thus in this matter*. The Full Court did not rule out the possibility that there may be some implied upper temporal limit on the power to detain a person subject to a deportation order but held that any such limit was not breached in circumstances where it had been found as a fact (by Justice Marshall) that the Minister was able to give a reasonably specific approximation of when Mr Luu was able to be deported
- *whether Australia's treaty obligations under articles of the International Covenant on Civil and Political Rights by reason of its indeterminacy*. Justice Marshall considered (and the Full Court was prepared to assume) that such obligations may be relevant considerations for the purposes of the exercise of the discretion under section 253(9) of the *Migration Act 1958* (Cth). However, any requirement to have regard to those obligations did not give rise to reviewable error in light of Justice Marshall's findings of fact regarding the Minister's views on the likelihood of deportation
- *whether, upon its proper construction, section 253(9) of the Migration Act 1958 (Cth) permitted the Minister to have regard to "the protection of the Australian community" in making the decision to maintain the appellant in immigration detention*. The Full Court considered but did not accept the Commission's submissions regarding this issue.

Members of the Yorta Yorta Aboriginal Community v State of Victoria & Ors

In May 2002, the High Court granted leave to the Commission to intervene in an appeal brought by Members of the Yorta Yorta Aboriginal Community against the decision of the Full Court of the Federal Court. The Full Court had upheld the decision of the primary judge, dismissing the applicants' native title claim. The claim, which related to land in south-western New South Wales and north-western Victoria, involved the first application for determination of native title to come on for trial after the enactment of the *Native Title Act 1993* (Cth).

The central issue before the High Court was the construction of the definition of 'native title' in section 223 of the *Native Title Act 1993*. Under that section, 'native title' is defined, in part, as the rights and interests of Aboriginal peoples or Torres

Strait Islanders in relation to land or water possessed under the traditional laws acknowledged and customs observed by those peoples.

The Commission's submissions are available at www.humanrights.gov.au/legal/guidelines/yorta_yorta.html. The Commission submitted that the provisions of the *Native Title Act 1993* should be construed consistently with the following human rights principles: equality before the law in articles 2 and 5 of the *International Convention on the Elimination of all forms of Racial Discrimination* and article 26 of the *International Covenant on Civil and Political Rights*; the rights of Indigenous minorities to enjoy their culture in article 27 of the *International Covenant on Civil and Political Rights*; and, freedom of religion in article 18 of the *International Covenant on Civil and Political Rights*. The Commission's submissions emphasised that, consistent with these human rights principles, the inquiry as to the existence of native title should commence with consideration of the claimant group's current acknowledgment and observance of laws and customs and whether that has a traditional basis. That is, tradition should be viewed from the perspective of the present, rather than from an historical perspective which requires the claimants to show that laws and customs have been handed down from generation to generation.

On 12 December 2002 the Court by a majority of five to two dismissed the appeal. Their Honours were satisfied there was no continued acknowledgment and observance of laws and customs and the forebears of the claimants had ceased to occupy their lands in accordance with those laws and customs.

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

The Commission was given leave to intervene in the hearing of these two appeals by a Full Court of the Federal Court (comprised of Chief Justice Black and Justice Beaumont, Wilcox, French and von Doussa).

The common issues in each appeal concerned the construction and validity of the so called "privative clause" amendments inserted in the *Migration Act 1958* (Cth) following the *MV Tampa* incident. Those amendments were introduced with the stated purpose of significantly reducing the availability of judicial review of administrative decisions made under the *Migration Act 1958* (Cth) and under the *Migration Regulations 1994* (Cth).

The Commission's full submissions can be found at www.humanrights.gov.au/legal/guidelines/submission_naav.html. The Commission argued that the Court should adopt a generous interpretation of the privative clause such that a broader category of jurisdictional error would provide a basis for seeking judicial review. The key concept underlying the Commission's submissions was:

- that the Australian legal system recognises, in various ways, an obligation to provide an effective remedy to persons present in this country whose interests have been adversely affected by a decision of an officer of the Australian Government, where the decision is otherwise than in accordance with law

- in the alternative, the Commission contended that the clause was constitutionally invalid in that judicial power was being conferred upon decision-makers under the *Migration Act 1958* (Cth) or that if the Refugee Review Tribunal's decisions, which involved jurisdictional error, were protected by the privative clause, the amendments constituted an impermissible intrusion by Parliament into the exercise of judicial power.

The five judges of the Full Court delivered separate judgments. All members of the Court accepted that the privative clause is valid. The majority view (Chief Justice Black and Justice Beaumont and von Doussa) was that while the amendments to the legislation do not prevent access to the Courts, they leave little scope for an applicant to argue successfully that the decision affecting him/her was invalid on legal grounds. Justice Wilcox and French were of the view that the amendments do not operate to restrict judicial review as substantially as the Minister contended.

Both NABE and NAAV have sought special leave to appeal to the High Court and the application is to be heard on 12 September 2003.

Leave granted to intervene in the financial year

During 2002–03, the Commission was granted leave to intervene in six matters. Summaries of those matters follow:

Ainsworth Game Technology v Song

The Commission was granted leave to appear as intervener by the Full Federal Court in this matter. The matter was an appeal from a decision of the Federal Magistrates Court.

The case concerned a female employee, Ms Song, who sought flexible work hours to enable her to leave work in the afternoon and pick-up/drop-off her child from kindergarten. Ms Song was told by her employer that she would have to work part-time if she wished to leave work for this purpose and would not be able to take a late lunch break as she had requested.

The applicant's complaint of discrimination on the basis of family responsibilities (section 14(3A) of the *Sex Discrimination Act 1984* (Cth)) was upheld by Raphael FM. The Magistrate found that unilaterally altering the employee's employment from full-time to part-time amounted to a "dismissal" for the purposes of the section, and that the employee had discriminated against Ms Song in requiring her to work part-time. The Court ordered that Ms Song be reinstated to her former employment and that her employment agreement be varied to permit her to take her lunch break from 2.55pm to 3.25pm.

The employer appealed, challenging both the decision in relation to the meaning of "dismissal" and the power of the Magistrate to make the order he did relating to her hours of employment. The Commission made written and oral submissions on the meaning of "dismissal" in section 14(3A). The submissions argued that a broader

definition of that term, such that it includes constructive dismissal as in the present case, is correct and consistent with the beneficial nature of the Sex Discrimination Act.

The parties were encouraged by the Full Court to enter into further negotiation to resolve the case at the conclusion of submissions. The matter was subsequently settled prior to the delivery of judgment by the Full Court.

Ashmore Reef Inquest

The Commission was granted leave to appear as intervener at this inquest in November 2002 into the deaths of two female asylum seekers.

The two women had travelled from Indonesia on board a boat, the "Sumbar Lestari", with 158 other asylum seekers (the majority being from Afghanistan) and four crew members. It was their intention to reach Ashmore Reef and seek asylum in Australia. On 8 November 2001, the boat was sighted by an Australian Customs Vessel a short distance outside Australian waters. In accordance with 'Operation Relex' (part of the Government's Border Protection Policy), it was ordered to stop and was handed a warning notice. It continued into Australian waters and was soon boarded by members of the Royal Australian Navy. Shortly after this boarding occurred there was an explosion on the boat and it caught fire. All people on board the boat were evacuated as the boat sank and the Customs and Navy personnel began a rescue operation. Two women, Ms Fatimah Husseini and Ms Nurjan Husseini drowned in this evacuation as neither could swim.

At the Inquest into their deaths, the Commission sought to raise relevant international human rights issues and, in particular, the right to life. The Commission focussed on whether the Australian Customs Vessel and the Royal Australian Navy were adequately equipped to deal with a Safety Of Life At Sea (SOLAS) situation and whether their focus on border protection issues compromised their ability to do so. The Commission's full submissions are available at www.humanrights.gov.au/legal/ashmore/leave_intervene.html.

Importantly, and against the submission of the Commonwealth, the Coroner appeared to accept that article 6 of the *International Covenant on Civil and Political Rights* applies to asylum seekers outside of Australian territory and "enjoins the State not only to refrain from intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction".

The Coroner found that the cause of death of the two deceased women was immersion (drowning) after they were forced into the water on 8 November 2001 when their boat caught on fire.

Graincorp v Markham

This matter was an appeal to a Full Bench of the Australia Industrial Relations Commission (AIRC) against a decision of Commissioner Blair that the termination of the employment of the respondent, Mr Markham, was harsh, unjust or unreasonable. The basis for the termination was conduct of Mr Markham which had occurred at a training course in which he was alleged to have sexually harassed

a colleague, Ms Barton. Mr Markham had engaged in an aggressive and sexually derogatory outburst which related to Ms Barton while he was in a hotel room adjoining hers. It was claimed by Mr Markham that his outburst was not directed to Barton and that he did not know she was in her room at the time.

Commissioner Blair had found that the actions of Markham were unsatisfactory but did not amount to sexual harassment.

The Commission was granted leave by the AIRC to intervene and made oral and written submissions on the question of sexual harassment. The Commission's submissions can be located at www.humanrights.gov.au/legal/guidelines/submission_markham.html.

The Commission submitted that Commissioner Blair had erred in attempting to equate several phrases Mr Markhan had made and that the context of the words was relevant in determining whether or not they amounted to sexual harassment. The Commission argued that the words amounted to "sex-based harassment", which may constitute sexual harassment or sex discrimination depending upon the context.

The Commission further submitted that Commissioner Blair had erred in holding that sexual harassment needed to be "directly directed" at its "target" and that there needs to be an intent to harass.

The submission also emphasised the broader context of equality of opportunity in employment in determining what constitutes "harsh, unjust and unreasonable" termination. In this context, the Commission submitted that sex-based harassment (whether it falls within the definition of sexual harassment or not) enforces and perpetuates modes of behaviour that should not be seen as acceptable in light of the international standards to which Australia has committed itself.

The AIRC upheld the appeal and found that the termination was not harsh, unjust or unreasonable. They found that, in the context of the conduct, sexual harassment had taken place. The AIRC departed from some of the factual findings of Commissioner Blair in some important respects and disagreed with his key findings as to the nature of sexual harassment. In particular, the AIRC confirmed that it is not necessary to have an "intent to harass" the relevant test is whether or not a reasonable person, having regard to all the circumstances, would have anticipated offence, humiliation or intimidation.

Minister for Immigration and Multicultural and Indigenous Affairs v Al Masri

This matter involved consideration of section 196 of the *Migration Act 1958* (Cth).

Mr Al Masri is a Palestinian asylum seeker from the Gaza strip whose application for a protection visa was refused by a delegate of the Minister and the Refugee Review Tribunal. Mr Al Masri asked the Minister to return him to the Gaza Strip. Officers of the Minister's department were unable to meet that request as Israel, Egypt and Jordan refused to cooperate. The department had also tried (and failed) to remove Mr Al Masri to Syria.

At first instance, Justice Merkel found that there was no prospect of Mr Al Masri being removed in the reasonably foreseeable future and therefore ordered his release

from detention. After Mr Al Masri was released, negotiations with Israel resulted in an agreement that allowed the Minister to effect his removal to the Gaza Strip. In a further decision, Justice Merkel ruled that it was permissible for Mr Al Masri to be taken back into immigration detention on the basis that it had become possible to effect Mr Al Masri's removal. Mr Al Masri was then detained and subsequently removed. The Minister nevertheless continued with an appeal against Justice Merkel's initial decision and the Commission was granted leave to intervene in the appeal.

The Full Federal Court (comprised of Chief Justice Black, Justice Sundberg and Weinberg) dismissed the Minister's appeal and awarded costs to the respondent. The Court found that the power under section 196 of the *Migration Act 1958* (Cth) to detain was subject to limitations which, on the facts before the Court, had been exceeded, making Mr Al Masri's detention unlawful.

The Court noted that the central issue in the appeal was whether the power and duty of the Minister to detain an unlawful non-citizen, who had no entitlement to a visa but who had asked to be removed from Australia, continued even when there was no real likelihood or prospect of that person's removal in the reasonably foreseeable future. The Court held in relation to the following matters (all of which were the subject of submissions by the Commission which can be found at www.humanrights.gov.au/legal/intervention/almasri.html):

- clear words are required before a statute can be construed as removing a fundamental right which in this case was the right to personal liberty. Their Honours agreed with Justice Merkel's conclusion that the power to detain under section 196 of the *Migration Act 1958* (Cth) is subject to an implied limitation.
- the Full Court stated that it was "fortified" in that conclusion by reference to the principle that section 196 should, so far as language permits, be interpreted and applied in a manner consistent with established rules of international law and which accords with Australia's treaty obligations.

The Minister has since filed an application for special leave to appeal to the High Court.

Minister for Immigration and Multicultural and Indigenous Affairs v VFAD

The respondent to this appeal is an Afghan asylum seeker who was detained at Curtin Immigration Reception and Processing Centre in Western Australia. The respondent lodged an application for review with the Refugee Review Tribunal when he was advised that his application for a protection visa had been refused.

The respondent's lawyers made a Freedom of Information application for copies of all documents on the respondent's departmental file. When the file was produced to the respondent's solicitors, they discovered a document headed 'Protection Visa Decision Record' granting the respondent a protection visa. That document was signed by a delegate of the Minister for Immigration and Multicultural and Indigenous Affairs but its contents had never been communicated to the respondent. The Minister contended that that document represented a "draft assessment" and not the final decision.

The respondent commenced proceedings in the Federal Court seeking a declaration that the respondent had been granted a protection visa and was a lawful non-citizen. The respondent also sought, by way of interlocutory relief, an order that pending the hearing and determination of his application he be released from immigration detention. Justice Merkel heard that application at first instance and ordered that the Minister be restrained from continuing to detain the respondent in immigration detention. The Minister appealed that decision to the Full Federal Court and the Commission was granted leave to intervene in the hearing of the appeal.

The central issues on appeal focussed upon whether the power to make interlocutory orders could be exercised to order the release, until final hearing of the substantive matter, of persons in immigration detention, or whether the Minister was correct in submitting that that power had been withdrawn since the introduction of section 196(3) of the *Migration Act 1958* (Cth).

The Full Federal Court unanimously dismissed the Minister's appeal.

Their Honours expressly or implicitly accepted the majority of the Commission's submissions which can be found at www.humanrights.gov.au/legal/intervention/vfad.html. In particular, their Honours accepted the Commission's submission that Parliament had not made "unmistakably clear" its intention to abrogate the power of the Court to protect a fundamental freedom by ordering the release in appropriate circumstances, on an interlocutory basis, of persons in detention who have seriously arguable claims to be lawful non-citizens and thus to have their liberty.

The Court further noted that it was "fortified" in its conclusion by reference to the principle that that section 196 should, so far as language permits, be interpreted and applied in a manner consistent with established rules of international law and which accords with Australia's treaty obligations. The Commission had submitted (and the Court accepted) that articles 2(3), 9(1) and 9(4) of the *International Covenant on Civil and Political Rights* were relevant in that context.

S134/2002 v Minister for Immigration and Multicultural and Indigenous Affairs

This matter (which was heard by the High Court in conjunction with the matter of *S157/2002 v Commonwealth*) dealt with the construction and validity of the so called "privative clause" amendments inserted in the *Migration Act 1958* (Cth) following the Tampa incident. Those amendments were discussed above in relation to the matters of NAAV and NABE.

Broadly speaking, there were two issues to be decided by the High Court:

- whether the privative clause and associated provisions were constitutionally valid, and
- if so, how the privative clause and associated provisions should be construed.

The Commission made submissions only on the construction of the privative clause and these submissions can be located at www.humanrights.gov.au/legal/guidelines/submission_s134.html.

The High Court handed down separate decisions in the two matters. The more significant decision is that handed down in *S157/2002*, where the Court found that the privative clause and associated provisions were constitutionally valid. However, the Court rejected a submission made by the Minister for Immigration and Multicultural and Indigenous Affairs and the Commonwealth in which it was suggested that the privative clause had reduced all otherwise mandatory requirements of the *Migration Act 1958* (Cth) and Regulations to the status of "mere guidelines". In a joint judgment, Justice Gaudron, McHugh, Gummow, Kirby and Hayne held that a breach of the express or implied conditions and limitations imposed by the *Migration Act 1958* (Cth) will be reviewable if such a breach amounted to a jurisdictional error.

Their Honours did not provide exhaustive guidance as to what classes of error would be reviewable. Those issues will now need to be determined on a case-by-case basis, with the Courts considering the particular power being exercised and the wording of the statutory provisions in question.

Chief Justice Gleeson and Justice Callinan (in separate judgments) substantially agreed with the joint judgment. However, Justice Callinan appeared to put the threshold test to be made out by an applicant for judicial review of a migration decision somewhat higher than the majority, referring to a need to show a "manifest error of jurisdiction".

Amicus curiae

Section 46PV of Human Rights and Equal Opportunity Commission Act provides that the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Disability Discrimination Commissioner, the Human Rights Commissioner, the Race Discrimination Commissioner and the Sex Discrimination Commissioner may, with permission of the Federal Court or Federal Magistrates Service, seek to appear as *amicus curia*e (or friend of the Court) in the hearings of complaints that have been terminated by the President. The proceedings in which the relevant Commissioner or Commissioners can exercise this function are proceedings:

- in which the Commissioner thinks that the orders sought, or likely to be sought, may affect to a significant extent the human rights of persons who are not parties to the proceedings
- that, in the opinion of the Commissioner, have significant implications for the administration of the relevant Act or Acts administered by the Commission
- that involve special circumstances that satisfy the Commissioner that it would be in the public interest for the Commissioner to assist the court concerned as amicus curiae.

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

There were two matters in the financial year in which a Commissioner appeared as amicus curiae. Those matters are:

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

The Access for All Alliance alleges disability discrimination in the provision of services by the Hervey Bay City Council. The particular services which are the subject of the complaint are:

- an outside entertainment area at a local community centre is said to be inaccessible to people with mobility disabilities because it lacks a ramp which complies with Australian Standards (in terms of gradient, handrails and curbrails) and is alleged to lack an area (such as a concrete 'pad') from which people with mobility disabilities can enjoy entertainment provided at the centre
- certain toilet blocks in the Hervey Bay area effectively inaccessible by virtue of the placement of handbasins on the outside of the blocks, making them inappropriate for use by persons with bodily function aids who may need to use the handbasins as part of their toileting routine, and
- concrete picnic tables on the Scarness Foreshore Development fail to allow access for mobility impaired members of the Alliance because the fixed chairs do not contain a gap sufficient to enable access.

The matter was heard by Federal Magistrate Baumann from 2–5 June. The Acting Disability Discrimination Commissioner was granted leave to appear as amicus curiae and made written and oral submissions on:

- the correct approach to statutory construction in the context of the *Disability Discrimination Act 1992* (Cth)
- the importance of dignity and amenity in determining whether or not a person can, for the purposes of the *Disability Discrimination Act 1992* (Cth), comply with a relevant requirement or condition and whether or not it is 'reasonable'
- the interpretation of the defence of 'unjustifiable hardship' under sections 23(2) and 24(2) of the *Disability Discrimination Act 1992* (Cth), the test for which is set out in section 11 of the *Disability Discrimination Act 1992* (Cth) and its relationship with the concept of 'reasonableness' in section 6, and
- the relationship between Australian Standards, the Building Code of Australia ('the BCA') and the *Disability Discrimination Act 1992* (Cth), including the relevance of the Australian Standards and the BCA in determining the ability of persons with a disability to comply with a requirement or condition, and the concept of 'reasonableness' under section 6.

As at the end of the financial year, the decision of Federal Magistrate Baumann was reserved.

Trudy Gardner v All Australia Netball Association (AANA)

The respondent AANA imposed an interim ban preventing pregnant women from playing netball in the Commonwealth Bank Trophy, the national tournament which they administered. The applicant was pregnant when the ban was imposed and was prevented from playing in a number of matches as a result. She complained of discrimination on the basis of her pregnancy in the provision of services under section 22 of the *Sex Discrimination Act 1984* (Cth). The service in this case was the opportunity to participate in the competition as a player.

AANA accepted that it had discriminated against Ms Gardner, but argued that its actions were protected by the exemption contained in section 39 of *the Sex Discrimination Act 1984* (Cth) which provides that it is not unlawful for a voluntary body to discriminate "in connection with" the provision of services to members. It was not disputed at the hearing that AANA is a voluntary body for the purposes of the *Sex Discrimination Act 1984* (Cth), membership of which consisted of State and Territory netball associations. Individual netballers were not eligible to be members of AANA. The issue of dispute was whether or not the exemption under section 39 applied in the present case.

The Sex Discrimination Commissioner was granted leave to appear as amicus curiae in the proceedings and made submissions as to the correct construction of section 39. The submissions of the Commissioner argued for a narrow approach to the section, consistent with the objects of the *Sex Discrimination Act 1984* (Cth). It was argued that the section should only provide protection for discriminatory acts taking place within the membership of a voluntary body – it should not enable discrimination against non-members or the public at large.

Federal Magistrate Raphael decided that exemption in section 39 did not apply to the actions of AANA. He held that it provided protection for voluntary bodies only in their relationships with their members, but not in their relationships with non-members. Ms Gardner was not, and could not be, a member of AANA. The words "in connection with" could not extend the exemption in the manner argued by the respondent and accordingly the actions of AANA constituted unlawful discrimination under the Sex *Discrimination Act 1984* (Cth).

Damages of $6 750 (a sum agreed by the parties) and costs were awarded to Ms Gardner.

Applications under the Administrative Decisions (Judicial Review) Act

The Commission, or a member of 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 or the Federal Magistrates Service seeking judicial review of a decision made by the Commission, the President or a Commissioner. 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 (usually the complainant and respondent to the complaint that was before the Commission) to present the matter to the Court. In a very small number of matters, submission to the jurisdiction of the Court is not practicable – in which case the Commission has appeared, but has in these matters, attempted to assist the Court rather than act in a way that would appear contentious or adversarial.

The numbers of applications made under *Administrative Decisions (Judicial Review) Act 1977* (Cth) for the years 1995–2002 are shown in the table below. The significant decrease in the number of judicial review matters in which the Commission is a party in the financial years of 2000–01, 2001–02 and 2002–03 are the result of the Commission's hearing and determination function in relation to complaint of unlawful discrimination ceasing in April 2000 when it was assumed by the Federal Court and Federal Magistrates Service.

Table 32: Trends in numbers of Administrative Decisions (Judicial Review) Act applications where the Commission is named as respondent

Year	1996–97	1997–98	1998–99	1999–00	2000–01	2001–02	2002–03
Total	11	35	19	22	13	4	7

A significant case under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) that the Commission has been involved in during 2002–03 is the matter of:

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

On 13 November 2000, Hearing Commissioner Innes found that the Department of Education had directly discriminated against Daniel Hoggan on the basis of his disability by exclusion of Daniel Hoggan from school, and by some other acts and omissions concerning the Department's management of him while attending the school.

The Department appealed the decision to the Federal Court. The Commission submitted to the jurisdiction of the Court and did not play an active role in the proceedings. On 29 August 2001, Justice Emmett held that the Commission had erred in law in various respects, and set the decision aside.

The Legal Aid Commission, acting for Mr Purvis, then appealed the decision to the Full Federal Court. The Commission continued to submit to the jurisdiction of the Court. The appeal was heard on 19 February 2002. In its decision dated 24 April 2002, the Full Federal Court (Justice Spender, Gyles and Conti) dismissed the appeal and ordered the appellant (but not the Commission) to pay the department's costs.

The applicant filed an application seeking special leave to appeal the decision of the Full Federal Court to the High Court. The special leave application was heard in Sydney on 5 November 2002. The Court granted the applicant special leave to appeal to the Full Bench of the High Court.

The High Court heard this matter on 29–30 April 2003. The Commission made both oral and written submissions to the Court. In summary, the Commission made submissions on:

- the definition of "disability" in the *Disability Discrimination Act 1992* (Cth)
- the meaning of less favourable treatment in section 5(1) of the *Disability Discrimination Act 1992* (Cth)
- the meaning of "different accommodation or services" in section 5(2) of the *Disability Discrimination Act 1992* (Cth)
- the proper interpretation of section 22 of the *Disability Discrimination Act 1992* (Cth) (discrimination in education).

All parties made additional written submissions in relation to issues that arose during the course of the hearing. The additional submissions of the Commission further addressed the interpretation of section 5 of the Disability Discrimination Act.

As at the date of this report, the Court had reserved its decision.

Review of Federal Anti-Discrimination Jurisdiction 2000–2002

During the financial year, the Legal Section completed a major project titled *Change and Continuity: Review of the Federal Unlawful Discrimination Jurisdiction*. This project was a review of the unlawful discrimination jurisdiction of the Federal Court and Federal Magistrates Service (FMS) for the period September 2000 to September 2002.

The impetus for the project was the transfer on 13 April 2000 of the function for the hearing of complaints of unlawful discrimination under the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth) and the *Disability Discrimination Act 1992* (Cth) from the Commission to the Federal Court and the FMS. This change to the administration of federal unlawful discrimination law was met with some trepidation by sections of the community who feared that the development of jurisprudence in the area would be compromised by a more legalistic approach by the judiciary and that the capacity of the FMS and the Federal Court to make costs orders would result in applicants, often already in a position of vulnerability, as a matter of course being burdened with the costs of the respondent if their proceedings were not successful.

In that context, the Commission undertook to review the operation of the new jurisdiction for a two year period from the date of the first decision being handed down (13 September 2000 to 13 September 2002) so as to:

- assess the nature of the jurisprudence that was emerging from the FMS and the Federal Court in respect of unlawful discrimination law, so as to inform itself of developments in the law
- enable it to more fully consider concerns that the transfer of the jurisdiction would result in the law being interpreted in a more conservative fashion than it was by the Commission
- consider the manner in which interlocutory applications, procedural and evidentiary matters were being dealt with by the FMS and the Federal Court, and
- analyse statistically the costs orders that were being made by the FMS and the Federal Court and the principles that were being applied in the making of such orders.

In summary, the review made the following conclusions:

- to the extent that it is possible to comment on jurisprudential trends after only two years, the interpretation and development of the law under the *Racial Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth) by the Federal Court and FMS was largely consistent with the principles that had been developed by the Commission and the courts that reviewed its decisions during the duration of its jurisdiction

- some principles under the *Disability Discrimination Act 1992* (Cth) have been interpreted by the FMS and the Federal Court in a more restrictive manner since the jurisdiction was transferred. However, that more restrictive approach has taken place in the context of the administrative law review of a decision of the Commission (being the matter of *Purvis v State of New South Wales* referred to above). This matter would have proceeded regardless of whether the Commission did or did not retain its hearing function. In those circumstances, it is not necessarily correct to attribute any narrowing of the relevant principles under the *Disability Discrimination Act 1992* (Cth) to the transfer of jurisdiction to the FMS and Federal Court, and
- where an applicant was unsuccessful in proceedings substantively relating to an application arising out of a complaint of unlawful discrimination, the FMS and the Federal Court did not order, as a matter of course, that the unsuccessful applicant pay the costs of the respondent. The FMS did so in 64 percent of decisions made during the review period and the Federal Court did so in 50 percent of decisions.

A full copy of the review is available at www.humanrights.gov.au/legal/review/.

International project work

Technical cooperation project with the South African Commission on Gender Equality

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 involved in one aspect of that project which relates to legal intervention. The aim of that 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.

In September/October 2002, CGE staff attended the offices of the Commission in Sydney and had the opportunity to see, first hand, how the Commission conducts its own intervention and amicus practice. Members of the Commission's Legal Section also presented a series of structured seminars highlighting particular aspects of the Commission's intervention/amicus work.

Secondment to Malaysian Human Rights Commission

At its inaugural meeting in 1996, the members of the Asia Pacific Forum of National Human Rights Institutions highlighted the desirability of staff exchanges as a means of advancing the promotion and protection of human rights across the Asia Pacific region.

The aims of the staff exchange program included the:

- development of skills and knowledge of the staff of forum member institutions
- implementation of specific activities for both the Secretariat and member institutions, and
- enhancement of the regional nature of the forum's work.

As part of this program, a staff exchange was agreed upon between the Commission and Malaysia (SUHAKAM). From 27 February to 19 March 2003, a senior legal officer of the Commission undertook a placement at SUHAKAM (situated in Kuala Lumpur) and from 24 March to 11 April 2003, a senior legal officer of SUHAKAM undertook a placement at the Commission, primarily within the Legal Section and the Sex Discrimination Unit of the Commission.

Other activities

During 2002–03, staff members of the Legal Section undertook a range of external activities. These included:

- presenting seminars in Sydney, Melbourne, Canberra, Adelaide, Perth and Brisbane in conjunction with the relevant Law Societies on the findings of Change and Continuity: Review of the Federal Unlawful Discrimination Jurisdiction
- attending the Commonwealth Law Conference in Melbourne, Gilbert & Tobin Centre of Public Law Constitutional Law Conference and Gilbert & Tobin Centre of Public Law Conference on a Bill of Rights
- accompanying the Human Rights Commissioner to meetings of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in Geneva
- presenting a lecture to the Malleson's Human Rights Interest Group on Human Rights Law in Australia, and
- participating in the Attorney General's Core Consultative Group on the development of federal age discrimination law.

Chapter 4
Aboriginal and Torres Strait Islander Social Justice

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

Aboriginal and Torres Strait Islander Social Justice Commissioner

Dr William Jonas AM was appointed Aboriginal and Torres Strait Islander Social Justice Commissioner in April 1999. He is also the acting Race Discrimination Commissioner, a position held since September 1999.

Statement from the Commissioner

January 2003 marked the tenth anniversary of the creation of the position of Aboriginal and Torres Strait Islander Social Justice Commissioner. There have been many achievements in these 10 years, and many significant challenges which remain or which have emerged over the period.

The position of Social Justice Commissioner was created by the Australian Parliament at a time of great upheaval for Indigenous people. In 1991, the Royal Commission into Aboriginal Deaths in Custody and HREOC's National Inquiry into Racist Violence had both identified significant human rights concerns about the treatment of Aboriginal and Torres Strait Islander peoples.

Both reports highlighted the necessity for an ongoing independent monitoring mechanism for the human rights situation of Indigenous peoples. The government at the time explained that the position was created to provide an annual state-of-the-nation report and provide a national and independent perspective on the extent of the disadvantage and the action that needs to be taken.

Looking back on these 10 years, we can see great advances in the level of awareness and acceptance of Indigenous issues and in recognition of Indigenous peoples' unique position as the first peoples of this land. This acceptance, however, remains contested and is by no means universal.

It is also a simple statement of fact that there has been inadequate progress in addressing Indigenous disadvantage over the past decade and worrying signs that the situation may regress in relation to significant issues. For example, life expectancy has begun to decline for Indigenous people in Australia and still exists at levels comparable to the rate for non-Indigenous

Australians in the year 1900. Incarceration rates and rates of over-representation in custody for Indigenous peoples have increased since the Royal Commission over 10 years ago. The deteriorating situation of contact of Indigenous women with criminal justice processes, and the clear connections between incarceration and substance abuse, is particularly worrying in this regard. There has also been limited improvement in health statistics over the past decade.

These factors, and the limited progress achieved through the constrained native title system, have led me to express major concerns in the annual social justice and native title reports to federal Parliament. These concerns have been heard by the Parliament, with the Senate following up the recommendations of my *Social Justice Report 2001* about the reconciliation process by establishing an Inquiry into national progress towards reconciliation. The terms of reference of the Inquiry include examining the response of the Government to the recommendations of the 2000 and 2001 Social Justice Reports.

My focus over the past year has been on three main areas: promoting an understanding of the applicability of human rights to setting targets and benchmarks for addressing the inequality faced by Indigenous peoples; promoting the recognition of Indigenous cultural identity as the bedrock for progressing Indigenous issues; and assisting in the development of Indigenous community capacity to articulate and protect the human rights of Indigenous people.

There have been significant developments in the past year in putting into place processes for reporting on the extent of marginalisation faced by Indigenous peoples, and on progress in addressing it. To date, these developments have not led to the establishment of concrete goals and targets for government achievement on Indigenous issues. As a result, we don't know what the government's vision is for what Indigenous communities should look like in five, 10 or 20 years and of what they consider would be an acceptable level of achievement and improvement in living conditions.

The current approach is missing a critical, evaluative component. Human rights standards are capable of addressing this deficiency and so I have focused on promoting an understanding of the importance of human rights obligations in this regard. I convened a workshop on benchmarking reconciliation from a human rights perspective in October 2002 to this end. It was a successful workshop, which illustrated the complexity and difficulty of the issues faced. Follow up workshops on specific issues have been planned for during the course of the coming year. I have also been heartened by the interest of various parliamentary committees, such as the committee inquiring into national progress towards reconciliation, on this issue during the year.

I have also focused on approaches for recognising Indigenous cultural identity as the bedrock for progressing Indigenous issues. This is an issue that underlies the analysis in my Native Title Report each year. I have also looked at this issue in the context of building Indigenous community capacity to be self-determining and in recognising Aboriginal Customary Law (particularly in a community development and criminal justice context).

I have engaged in a number of processes during the year relating to mining and resource exploitation and the recognition of Indigenous identity. In particular, I have promoted discussion of corporate responsibility in the mining industry and have emphasized the point that mining and the recognition of Indigenous human rights and identity are not antagonistic, but should be seen as able to co-exist and form the basis of strong partnerships. During the year I launched a series of principles to guide resource development on Indigenous land, based on human rights standards. The extensive interest and support for these principles has been encouraging.

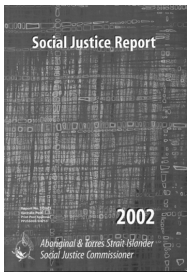
Finally, I have focused on processes for assisting in the development of Indigenous community capacity to articulate and protect the human rights of Indigenous people. During the year, I completed an ambitious training program for Indigenous workers in criminal justice related areas. The National Indigenous Legal Advocacy Courses were accredited by the Queensland Training Accreditation Council on 30 June 2002 and are now available to be taught nationally. The courses replace the National Indigenous Legal Studies Curriculum, previously developed by the Commission. The courses are designed to assist Indigenous people involved in areas as diverse as community justice panels, night patrols and community justice initiatives, to government agencies to Indigenous legal services. The commitment and dedication of representatives of legal services, educators, government agencies and others to developing the courses, and the enthusiasm for implementing them nationally leaves me optimistic that the courses will form a valuable contribution to capacity building and skills development for Indigenous communities.

There remains much work to be done. Indigenous peoples' human rights continue to face grave challenges. There is also a high degree of uncertainty about processes currently underway reviewing fundamental aspects of the relationship of the federal Government with Indigenous peoples (such as the review of ATSIC; the creation of the interim agency, Aboriginal and Torres Strait Islander Services; and mainstreaming of Indigenous service delivery).

The coming year will see a continued focus on these issues by my office. And it will see a continued focus on providing the national and independent perspective on government progress and the action that needs to be taken to fully protect Indigenous peoples' human rights that is so patently needed, as much as it was 10 years ago when the Social Justice Commissioner's position was first established.

Monitoring and reporting

Social Justice Report 2002



Under section 46C(1)(a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), the Aboriginal and Torres Strait Islander 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 *Social Justice Report 2002* is the fourth by Commissioner Jonas. It was transmitted to the Attorney-General on 24 December 2002, and tabled in Parliament on 19 March 2003.

The report commends the following positive developments in Indigenous policy over the reporting year:

- the commitment of governments at all levels to partnerships with Indigenous peoples, including through statements of commitment to negotiate service delivery arrangements with Indigenous organisations and commitments to negotiate justice agreements
- the commitment of the federal Government to principles for the equitable provision of services to Indigenous peoples as part of its response to the Commonwealth Grants Commission's report on Indigenous funding
- recognition by governments of the central importance of capacity building of Indigenous communities and of supporting and developing Indigenous governance structures
- the commitment of the Council of Australian Governments to processes for addressing Indigenous disadvantage, including: the establishment of a framework for reporting on Indigenous disadvantage; the formulation of action plans at the inter-governmental level in specific areas, and; a trial in 10 communities of a whole-of-government approach to service delivery, and
- support of the federal Government at the international level to the effective operation of the newly-created UN Permanent Forum on Indigenous Issues.

Overall, however, the report finds that the past year has been another difficult one for Indigenous peoples:

> In trying to provide a snapshot of the status of Indigenous policy making and achievements by governments over the past year, it is difficult to see any consistent forward trend. There have been marginal improvements in some statistical indicators, but deterioration in others. The policy approaches of governments are ultimately full of inconsistencies, ad hoc developments, and commitments that not only remain unmet but which are not adequately supported by institutional developments.

The report identifies two particularly worrying trends that have been confirmed over the past year at the federal level. The first is a continuation of the antagonistic and adversarial approach to Indigenous policy by the federal Government:

> Substantial bi-partisan support for reconciliation and directions in Indigenous policy has been undermined by the limited focus of the government. Those areas on which there is common ground are relatively few – and basically relate to agreement on the need to overcome Indigenous disadvantage – and there is even less agreement on what are the best ways to address such issues.

The second worrying trend is the relegation of Indigenous issues to a second tier issue for the government. While reconciliation was a priority for the second term of the government, it does not even rate a mention in recent announcements of the government's strategic long term vision for Australian society:

> Indigenous issues are not treated as a national priority, and there are no public commitments to timeframes for achieving results in areas on which there is substantial agreement – such as Indigenous disadvantage.

The report notes that at the state and territory levels there is much goodwill being expressed with extensive commitments to partnerships with Indigenous peoples. These partnerships remain works in progress and it is unfortunate that they have not yet been accompanied by the necessary institutional support or action.

The one true highlight of the past year, as identified in the report, has been the demonstration through a range of processes that Indigenous peoples are not going to sit back and wait for governments' to solve the various problems faced in communities and are actively working for their own solutions.

Chapter 2 – 'Self-determination: the freedom to live well' – examines the core principles which underpin the federal Government's approach to Indigenous affairs. Since 1998, the Government has openly rejected self-determination as the basis of policy formulation. This chapter provides an overview of international developments on Indigenous self-determination and compares this to the way the Government explains its policy approach in order to identify its limitations and considers options for reform.

Chapter 3 – 'National progress towards reconciliation in 2002 – an equitable partnership?' – provides a progress report on reconciliation over the past year. It notes developments at the inter-governmental level, the federal Government's responses to the documents of the Council for Aboriginal Reconciliation and the report of the Commonwealth Grants Commission, and the government's agenda for reconciliation. Ultimately it questions the basis on which the Government seeks to engage with Indigenous peoples, and the lack of equality in the partnerships that it seeks to enter.

Chapter 4 – 'Measuring Indigenous disadvantage' – provides a detailed analysis of current approaches to addressing Indigenous disadvantage. It draws on significant international developments in countering poverty and economic marginalisation, as well as international human rights standards. The chapter also considers in-depth the framework for measuring Indigenous disadvantage that is currently being

prepared for the Council of Australian Governments. There are some clear contrasts between the limiting framework of practical reconciliation and the more focused and accountable approach based on international guidance and standards.

Chapter 5 – 'Indigenous women and the criminal justice system – A landscape of risk' – focuses on Indigenous women and their experiences of contact with criminal justice processes. This chapter paints a disturbing picture of the lack of support provided to Indigenous women in many areas of society and its consequent impact through criminalisation. The lack of attention to these issues by policy makers to date is a matter of great shame.

Chapter 6 – 'International developments in the recognition of the rights of Indigenous peoples' – notes the extensive developments in the recognition of Indigenous rights at the international level. These are considered within two main contexts – the current review taking place within the United Nations of all the existing mechanisms at the UN dealing with Indigenous issues; and the International Decade for the World's Indigenous Peoples, which is now in its final two years. This review illustrates how Australia has moved towards the most conservative end of the spectrum in addressing Indigenous rights.

The report then concludes with an *appendix* which summarises partnerships and agreements that have been entered into between Indigenous peoples and state or territory Governments in recent years.

The report, an executive summary and media pack for the release of the report can be accessed from the Commission's website at www.humanrights.gov.au/social_justice/sjreport_02/

Native Title Report 2002

Under section 209 of the *Native Title Act 1993* (Cth), the 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 2002* is the fourth by Commissioner Jonas, and was transmitted to the Attorney-General on 21 January 2003 and tabled in Parliament on 19 March 2003.

The report considers developments in the law of native title as a result of the High Court decisions of *Yarmirr*, *Miriuwung Gajerrong*, *Wilson v Anderson* and *Yorta Yorta*. These decisions clarify the law with respect to the principles of recognition and extinguishment of native title. The report evaluates these principles against the human rights standards to which Australia is committed under international law. Such an evaluation reveals fundamental shortcomings within the native title system. Reform is necessary to ensure that the law of native title is consistent with international law and while this can occur through legislative amendment at the state or federal level, other approaches, such as agreements, are discussed as providing a means by which Indigenous rights and interests can be recognised and protected.

Chapter 1 – Recognition of Native Title – analyses the principles elaborated in the High Court decisions in *Yarmirr*, *Miriuwung Gajerrong* and *Yorta Yorta* by which the law of native title gives recognition to traditional owners of land. Emerging from these decisions is a concept of recognition as not simply the law providing a vehicle for Indigenous people to enjoy their culture and property rights, but rather one where the law becomes a barrier to their enjoyment and protection. The recent Federal Court decision in *De Rose* also demonstrates this trend towards limiting the recognition of Indigenous relationships to land. These decisions are inconsistent with international law, which requires a state to maintain and protect Indigenous culture, to ensure racial equality and to ensure the effective participation of Indigenous people in decisions that affect them.

Chapter 2 – Extinguishment of Native Title – analyses the law in relation to the extinguishment of native title as clarified in the High Court's decisions in *Miriuwung Gajerrong* and *Wilson v Anderson*. In those decisions the Court made it clear that the primary source for determining the extinguishment of native title is the Native Title Act. Native title is extinguished either completely or partially wherever an inconsistency arises between the enjoyment of rights to land created by the non-Indigenous legal system and the enjoyment of rights over land created by the traditional laws and customs.

Chapter 3 – Discrimination and Native Title – examines the way in which the High Court applies the Racial Discrimination Act to the creation of tenures after 1975 and its effect on native title rights. The High Court made it clear in the *Miriuwung Gajerrong* decision that extinguishment of native title, whereby pre-existing Indigenous interests give way to newly created non-Indigenous interests, is discriminatory. The report concludes that, applying the High Court's own analysis, the extinguishment of native title, both under the Native Title Act and at common law, is not only discriminatory at international law but fails to meet the standards of equality under domestic law.

The Commonwealth has the legislative capacity to limit the extent to which extinguishment affects Indigenous interests in land and to ensure compliance with international and domestic standards of equality, recognition and respect for Indigenous cultural identity and non-discrimination. These standards can be applied to both recognition and extinguishment of native title.

Chapter 4 – Implications of *Miriuwung Gajerrong* and *Wilson v Anderson* – considers the implications of the High Court decisions in *Miriuwung Gajerrong* and *Wilson v Anderson.* These cases result in the extinguishment of native title over a significant area of land. In New South Wales, the finding that perpetual grazing leases completely extinguish native title will affect 15 out of the 20 native title applications lodged in the Western Division. In Western Australia, where eight percent of the state is held within the conservation estate, the extinguishment of native title on nature reserves will affect many Indigenous people. Such findings undermine the exercise and enjoyment of culture under Article 27 of the *International Covenant on Civil and Political Rights* and seriously inhibit the exercise of rights of self determination and effective participation in relation to traditional country. The finding in these cases invites a policy response. In consideration of these issues, the *2002 Native Title*

Report offers a policy framework, supported by key human rights standards, that may assist state Governments and Aboriginal groups in achieving a just and appropriate resolution of this finding.

Chapter 5 – Native Title: the way forward – proposes ways of addressing the shortcomings in the native title system. The clarification of the principles of recognition and extinguishment of native title by the High Court marks the end of the developmental phase of native title law. The *2002 Native Title Report* finds that the law fails to meet the human rights standards required at international law. It is thus appropriate that a process of re-evaluation takes place at the political level.

From a human rights perspective there are two factors which must direct the reform of the native title system. First, all decisions affecting native title must be taken with the free and informed consent of Indigenous people. This requires the establishment of a process for the effective participation of Indigenous people as part of the broader reform process. Where the capacity of Indigenous people to participate is hampered, either through limited resources or limited decision-making structures, provision must be made to address these deficiencies to enable genuine negotiation to take place. Second, the benchmarks for reform must be the human rights of Indigenous people.

The chief mechanism by which the Native Title Act effects both the protection of native title and its extinguishment is through prescribing what state and territory laws are valid and the conditions and effect of their validity. State and territory governments are then authorised to enact legislation which extinguishes native title in accordance with the Native Title Act. Thus there are two legislative tiers by which the extinguishment of native title takes place: first at the level of Commonwealth legislation and the nature of the authority that this legislation gives to state and territory Governments; and second at the level of state and territory legislation and the enactment of legislation that extinguishes native title. There is a third tier by which the extinguishment of native title may take place – through agreements between stakeholders. These three tiers need to be addressed in any reform process.

An executive summary, the full report and a media pack for the release of the report can be accessed from the Commission's website at www.humanrights.gov.au/social_justice/ntreport_02/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.

Benchmarking reconciliation and human rights workshop

The Commissioner convened a workshop on 28–29 November 2002 on human rights approaches to benchmarking reconciliation. The workshop sought to apply human rights principles (relating primarily to economic, social and cultural rights) to domestic policy formulation in relation to addressing Indigenous disadvantage. It particularly sought to respond to the draft framework for measuring Indigenous disadvantage being prepared for the Council of Australian Governments by the Steering Committee for the Review of Commonwealth State Relations.

The workshop was attended by representatives from the Productivity Commission, Aboriginal and Torres Strait Islander Commission, Commonwealth Grants Commission, Department of Education, Science and Technology, Centrelink, as well as academics and representatives of NGOs.

An edited version of the workshop documents were included in the *Social Justice Report 2002* (Chapter 4 – Measuring Indigenous disadvantage). The issues paper prepared for the workshop and report of the workshop are available from the Commission's website at www.humanrights.gov.au/social_justice/benchmarking/report.html.

A follow-up workshop on benchmarking health and human rights has been organized for September 2003 in partnership with the Telethon Institute for Child Health Research in Perth.

Mining Certification Evaluation Project

The Commissioner is participating in a project coordinated by the World Wildlife Fund, aimed at developing auditable performance standards in relation to social and environmental aspects of mine sites. These standards would form the basis for conducting an independent audit of mine sites based on the notion of sustainability, human rights and corporate responsibility. The project utilises multi-stakeholder processes to determine whether criteria can be developed with the consensus of a broad range of stakeholders including industry, government, unions, human rights organisations, non-government organisations, and academics.

The recognition of Aboriginal Customary Law

The Commissioner made a submission to the Northern Territory Law Reform Committee inquiry into the recognition of Aboriginal Customary Law in May 2003. The submission contains:

- an overview of recent developments in Indigenous policy which are relevant to Aboriginal Customary Law and which provide guidance as to how Aboriginal Customary Law might appropriately be recognised
- relevant human rights principles for determining the circumstances in which Aboriginal Customary Law should be recognised formally or informally
- considerations for recognising Aboriginal Customary Law in a manner that protects the rights of Aboriginal women
- the relevance of building Aboriginal community capacity and supporting Indigenous governance mechanisms in order to recognise, strengthen and provide support to Aboriginal Customary Law, particularly within the context of criminal justice and family violence issues
- case studies of capacity building and recognising Customary Law, and
- recommendations for advancing formal and informal recognition of Aboriginal Customary Law in the Northern Territory.

The submission is available from the Commission's website at: www.humanrights.gov.au/social_justice/customary_law/nt_lawreform.html

Inquiry into national progress towards reconciliation

Recommendations 11 and 12 of the *Social Justice Report 2001* recommended that:

- the government formally respond to the annual Social Justice Report each year in Parliament (within 15 sitting days of tabling)
- the Senate to raise a motion of inquiry into matters raised in the annual Social Justice Report if the government does not provide a formal response within 15 sitting days of the report's tabling, and
- the Senate to establish an inquiry into national progress towards reconciliation in light of the Social Justice Commissioner's concerns about the inadequate response of the government to the *Social Justice Report 2000* and to the documents of the Council for Aboriginal Reconciliation.

On 26 August, the 15th sitting day since the *Social Justice Report 2001* was tabled in Parliament, Senator Ridgeway moved a motion which was passed for the establishment of an Inquiry by the Senate Legal and Constitutional References Committee Inquiry into national progress towards reconciliation. The terms of reference for the inquiry included examining the adequacy of the response of the government to the matters raised in the *Social Justice Report 2000* and *Social Justice Report 2001* relating to reconciliation.

On 25 November 2002, the Commissioner made a submission to the Committee. The submission outlined a human rights framework for reconciliation and to ensure government accountability, and a national progress report on reconciliation.

On 4 April 2003, the Commissioner appeared before a public hearing of the Committee in Sydney. The Committee's report will be tabled in the Senate in August 2003. The Commissioner's submission is available online from: www.aph.gov.au/senate/committee/legcon_ctte/reconciliation/submissions/sublist.htm.

Inquiry into capacity building in Indigenous communities

On 4 October 2002, the Commissioner made a submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into capacity building in Indigenous communities. The submission outlined a human rights framework for supporting Indigenous community capacity building and supporting Indigenous governance mechanisms.

The Commissioner appeared before the Committee at a public hearing in Redfern on 8 April 2003. The Commissioner's submission is available online at: www.aph.gov.au/house/committee/atsia/indigenouscommunities/subslist.htm

Inquiry into Impediments to Resource Exploration

On 16 July, the Commissioner made a submission to the Federal Standing Committee on Industry and Resources Inquiry into Impediments into Resource Exploration. The Commissioner also appeared before that Committee on 19 June.

The submission proposes that economic development and human rights are not necessarily antagonistic and that increasingly the market is requiring companies to adopt sustainable and responsible policies to resource development. This means that the human rights of Indigenous people must become an integral part of the economic development of a region, including development of mineral resources.

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 organizations and agencies, particularly international Indigenous organisations.

In accordance with these provisions, Commissioner Jonas visited Canada and New York in May 2003. The Commissioner attended the second session of the United Nations Permanent Forum on Indigenous Issues in New York in May 2003. The Commissioner made three interventions in the forum under the themes of economic and social development, environment and human rights. The interventions highlighted issues of human rights significance in the Forum's interaction with United Nations agencies and setting out key considerations for how the forum should operate from an Australian Indigenous perspective. Information about the permanent forum is available at: www.humanrights.gov.au/social_justice/internat_develop.html.

Commissioner Jonas also met with Indigenous organisations and government agencies in British Columbia, Ontario and Ottawa in May 2003 to discuss Canadian developments on issues relating to Aboriginal community governance, Aboriginal title, treaty making processes and responding to the impact of residential schools.

In March 2003, Commissioner Jonas represented the President of the Commission at an international conference on Indigenous Peoples' rights at Soochow University, Taipei and met with Indigenous organisations. The Commissioner also met with the Hong Kong Human Rights Commission.

In December 2002, the Commissioner made a submission to the United Nations on the review of human rights mechanisms relating to Indigenous issues. The submission noted the under-funding of Indigenous issues at the international level and supported the continued existence of the United Nations Working Group on Indigenous Populations. An edited version of the submission was included as Chapter 6 in the *Social Justice Report 2002*.

In November 2002, the Commissioner submitted a working paper for consideration at the United Nations Commission on Human Rights Working Paper on the Draft Declaration on the Rights of Indigenous Peoples. The focus of the paper was the right of Indigenous peoples to self-determination. The paper is available online at: www.humanrights.gov.au/social_justice/international_docs/self_determination.htm

An International Indigenous issues section has been maintained as part of the Social Justice Commissioner's website during the past year. The website provides simple access to relevant United Nations documents on Indigenous issues and international scrutiny of Australia's Indigenous affairs policies. The site is accessible at: www.humanrights.gov.au/social_justice/internat_develop.html

Research and educational programs

Under section 46C(1)(c), 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.

Principles to Guide Resource Development on Indigenous Land

On 30 May the Commissioner launched a joint publication with Griffith University entitled *Development and Indigenous Land: A Human Rights Approach.* The publication is a booklet comprising principles that were developed by a forum of Indigenous people held in Alice Springs in May 2002 concerning resource development on Indigenous land. The principles are based on the human rights of Indigenous people.

The principles address issues such as recognition and respect, Indigenous involvement in environmental management, cultural heritage protection, and the need for developers to respect the integrity of Indigenous decision-making processes. A central requirement is that developers obtain the prior informed consent of Indigenous

communities affected by any development proposal. A copy of the principles can be accessed from the Commissioner's website at: www.humanrights.gov.au/social_justice/corporateresponsibility/

National Indigenous Legal Advocacy Courses

On 30 June 2003, the Queensland Training Recognition Council accredited the National Indigenous Legal Advocacy Courses until 29 June 2008.

The National Indigenous Legal Advocacy Courses (NILAC) are a series of nationally-accredited training courses which aim to provide Aboriginal and Torres Strait Islander peoples with the competency and skills to work in a legal environment and to understand their human rights.They were developed in response to Recommendation 212 of the Royal Commission into Aboriginal Deaths in Custody and are designed to meet the needs of Indigenous peoples with an interest in criminal justice issues.

The NILAC replaces the National Indigenous Legal Studies Curriculum, which had previously been developed by the Commission and which was reviewed in order that it met revised national accreditation standards.

Three qualifications can be offered to students who enrol in institutions licensed to deliver the courses:

1. *Certificate III in National Indigenous Legal Advocacy*: This provides students with competency in general office and administrative duties in a legal environment.
2. *Certificate IV in National Indigenous Legal Advocacy*: This provides students with the skills to work as Indigenous Legal Advocates or as Field Officers in Aboriginal and Torres Strait Islander legal services.
3. *Diploma of National Indigenous Legal Advocacy*: This provides students with skills in office administration and management, and detailed knowledge of legal matters necessary to work as a Senior Field Officer or Senior Indigenous Legal Advocate in a law-related workplace.

The courses have been developed for the vocational training sector. They can be offered by Institutes of TAFE and Indigenous community-controlled education organisations.

Education providers must obtain a licence from the Commission to deliver the courses, or individual units of competency within the courses.

The NILAC training courses were developed by the Indigenous Studies Product Development Unit of TAFE Queensland on behalf of the Aboriginal and Torres Strait Islander Social Justice Commissioner. Development of the courses was funded by the Commission with assistance from the Aboriginal and Torres Strait Islander Commission ($50 000 grant in 2002–03) and the Australian National Training Authority ($10 000 towards a mapping exercise in 1999).

The development of the NILAC was overseen by a Curriculum Development Advisory Committee comprised of representatives of government, industry, Aboriginal and Torres Strait Islander Legal Services, representatives of anti-discrimination, equal opportunity and human rights commissions, educators and National Indigenous Studies Curriculum course graduates.

The courses will be reviewed after 12 months in order to make any necessary changes to the course structure and content.

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

Speeches

A selection of public addresses made by, or on behalf of, Commissioner Jonas during 2002–03 are listed below and are available online at www.humanrights.gov.au/speeches/social_justice/

Family violence in Indigenous communities – breaking the silence?, University of New South Wales Law Journal Forum, HREOC, Sydney, 25 July 2002.

Recognising Aboriginal sovereignty – implications for the treaty process, Aboriginal and Torres Strait Islander Commission, National Treaty Conference, Canberra, 27 August 2002.

Native Title and the Treaty Dialogue, HREOC and International Law Association treaty seminar, Sydney, 10 September 2002.

The Royal Commission into Aboriginal Deaths in Custody Ten Years On: The Ongoing Role of Government, Victorian Aboriginal Justice Forum, Melbourne, 20 September 2002.

Restoring identity – achieving justice for the stolen generations, launch of Public Interest Advocacy Centre report, Sydney, 27 September 2002.

Launch – Black Lives Government Lies, Brisbane, 12 February 2003

Indigenous Employment and Family Violence in Australia – Issues and Initiatives, Soochow University Taipei, Taiwan, 5 March 2003.

Geography and Human Rights, Geography's New Frontiers Conference, University of New South Wales, Sydney, 22 March 2003.

Development and Indigenous Land: A Human Rights Approach, launch of HREOC/Griffith University publication on corporate responsibility, Sydney, 30 May 2003.

Social Justice The Native Title, Native Title Representative Bodies Conference, Alice Springs, 4 June 2003.

Chapter 5
Disability Rights

Dr Sev Ozdowski, OAM
Acting Disability Discrimination Commissioner

Acting Disability Discrimination Commissioner

Dr Sev Ozdowski OAM commenced duty as Acting Disability Discrimination Commissioner in December 2000 in addition to his duties as Human Rights Commissioner. In April 2003 the Attorney-General announced an extension of this acting position until 3 April 2004.

Statement from the Commissioner

In last year's annual report I noted that we had reached the tenth year of operation of Australia's Disability Discrimination Act (DDA). It would be easy for people with disabilities and their families who may live with daily realities of discrimination and lack of adequate services and support to become discouraged and take the view that little change for the better is occurring. So it seemed important to make this anniversary a focus for promotion of awareness of disability discrimination issues and progress in addressing them.

In March I released *'Don't judge what I can do by what you think I can't'*, a publication outlining achievements using the DDA. An initial launch was held in Sydney on 3 March, with events also held in all other capital cities and Alice Springs. The Attorney-General provided a supportive video message to launch the publication.

In each city, a forum conducted after the launch examining achievements and challenges (with particular focus on the areas of transport and employment), produced very useful discussion. The events were well attended by disability community representatives, as well as people from a range of areas of government and service provision. I particularly appreciated the participation and support of our colleagues from state and territory equal opportunity commissions at these events.

The last year has seen some particularly significant achievements with the entry into force of the first Disability Standards under the DDA, on accessible public transport, and good progress made towards adoption of standards on access to premises and education, as well as agreement in principle (still to be formally announced at the time of writing) to substantial increases in captioning of broadcast television for deaf and

hearing impaired Australians, and progress in work between the insurance industry and mental health sector organisations.

I am very aware that while we have made advances on some issues there remain many more human rights issues facing people with disabilities which require increased attention from government, industry and the community. I hope that current consideration within the United Nations of an international convention on human rights and disability, and consultations within Australia in this context, may provide opportunities for increased attention to and accountability for the rights of people with disabilities.

A focus for discussion of achievements in using the DDA as well as areas where progress has been more limited is being provided by the review currently being conducted by the Productivity Commission on the effectiveness and impacts of the DDA. We have dedicated substantial resources to contributing to this review in recognition of its importance as an opportunity for independent evaluation of strategies in eliminating discrimination, and for directing attention to possible improvements in the legislation and its implementation.

This review has again highlighted equal opportunity in employment as an area of particular concern where leadership and additional resourcing from government may be required. Finding effective strategies in this area will be a continuing priority for the Commission in the coming year in consultation with government, business and the disability community.

Deputy Disability Discrimination Commissioner

Mr Graeme Innes AM continued to serve on a part-time basis throughout 2002–03 as Deputy Disability Discrimination Commissioner. This position was created from funding using internal savings made in the Commission's disability policy area.

Promotion of awareness, understanding and compliance

As noted in the Commissioner's statement, a major focus for work in this area was provided by the tenth anniversary of the DDA and the release and promotion of a publication recognising achievements using the DDA, distributed in print and other formats as well as through our website. Other work has continued to focus on development of accessibility standards in consultation with industry and community representatives as detailed below. Commissioner Ozdowski and staff also undertook more general consultations with disability organisations and relevant industry bodies to ensure they are aware of possibilities for constructive use of the legislation and to discuss suggestions for further projects.

Left to right: Michele Castagna, Dr Sev Ozdowski and Matthew Turner at the launch of *Don't Judge What I Can Do By What You Think I Can't:* ten years of achievements using Australia's Disability Discrimination Act in Alice Springs, March 2003. Photo reproduced with the kind permission of *Alice Springs News*.

Major speeches given during 2002–03 are published on the Commission's website and a list of significant speaking engagements is provided in this report. Public use of the disability rights area of the website continues to increase with 582 093 hits being recorded for the disability rights web pages in this period, compared to just over 400 000 hits in the previous year. A revised information pamphlet on the DDA was made available this year and other publications are also distributed in print and other formats on request.

Research and policy

The Commission undertakes research and policy projects and activities to promote the objects of the Disability Discrimination Act.

Discussion of possible international convention

A working group of the United Nations General Assembly is considering a possible International Convention on Human Rights and Disability. The Commission has participated as part of the Australian delegation to the first and second sessions of this process, which led to a decision in June 2003 to proceed with the preparation of a draft convention. As part of consideration of the proposed convention Commissioner Ozdowski accepted sponsorship from the British Council to attend a workshop for national human rights institutions from Commonwealth and Asia-

Pacific nations in New Delhi, India, in May 2003, which produced agreed resolutions for work by national institutions in support of consideration of a convention.

Productivity Commission Inquiry

On 5 February 2003 the Government announced an Inquiry by the Productivity Commission into the Disability Discrimination Act. The Inquiry is required to report by 5 February 2004 (since extended to 5 April). The Inquiry is to examine the social impacts of the legislation on people with disabilities and on the community as a whole and consider the degree to which the objectives of the legislation (including eliminating discrimination on the grounds of disability) have been achieved. It will also examine the legislation's impact on competition and whether amendments to the legislation are warranted.

The Commission considers this a valuable opportunity to assess the effectiveness of the legislation and to examine possibilities for achieving the objects of the DDA more effectively. We have provided a substantial initial submission and at the time of writing a second submission commenting on issues raised in other submissions was close to being finalised.

Access to electronic commerce

The Commission has continued to assist 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 (ABA). This has included work to review implementation by banks of industry accessibility standards and continuing discussions with the ABA on accessibility in new technology and service areas such as Smart Cards.

Access to tertiary education materials

Following a forum convened by the Commission in May 2002 to discuss provision of study materials in accessible formats (audio, Braille, E-text and large print) for university students with a print disability, we have been participating in work by a steering committee on these issues with the Australian Vice-Chancellors' Committee, the Department of Education, Science and Training, and Blind Citizens Australia. We have also been participating in a specific working group on copyright and publishing issues involving the Attorney-General's Department, Australian Publishers' Association, Copyright Agency Limited and the Australian Copyright Council.

Accessible housing

The Commission provided support in April 2003 to a national Accessible Housing Forum sponsored by the Australian Building Codes Board. The forum brought together representatives from the Australian Network for Universal Housing Design, the housing industry and designers and an agreement was reached on the need to develop a national strategy, including a research program on housing accessibility. The Commission has participated in subsequent discussions on how to move forward on agreed outcomes from the forum.

Assistance animals

A discussion paper to further the consideration of possible legislative or regulatory action to give better definition to rights and responsibilities in this area has been prepared and was due to be released for consultation soon after the time of writing this report.

Television captioning

As a result of a forum chaired by the Commission on captioning of free-to-air television arising from a number of complaints in this area, free-to-air broadcasters have agreed to implement increases in captioning levels over the next five years to 70 percent compared to current levels of around 40 percent. In May 2003, broadcasters applied for, and were granted, a temporary exemption under the DDA in relation to captioning levels on the condition that they implement this proposal and participate in a review of possibilities for further increases.

A similar forum on captioning of pay television services is now making progress with the industry commencing a review of priorities for captioning within existing technical constraints.

Insurance

Cooperative work in which the Commission has been assisting to improve the insurance industry's approach to mental health issues has made progress with the release in February 2003 of a memorandum of understanding between the Investment and Financial Services Association and mental health sector stakeholder organisations (the Mental Health Council of Australia, the AMA and professional bodies for psychiatrists, general practitioners, and psychologists). The memorandum states a shared commitment to improved communication and education; improved complaint resolution; and improved underwriting and claims practice, including release of draft guidance notes due by June 2003.

Sterilisation

The Commission has continued to consult with the Attorney-General's Department and with disability community organisations on actions to follow from the review of developments since the release of the 1997 report on *The Sterilisation of Girls and Young Women in Australia*, commissioned by the Disability Discrimination Commissioner and Sex Discrimination Commissioner and released in April 2001.

Submission to human genetic information Inquiry

The Commission made a submission to the Australian Law Reform Commission's Inquiry on protection of human genetic information, supporting the Inquiry's proposal that genetic discrimination issues should continue to be dealt with within the regime of existing discrimination laws, including the DDA.

Telecommunications

In June 2003, the Commission released a major discussion paper on disability access issues in telecommunications, highlighting gaps in service provision and regulation. The Commission plans to convene a high level forum on telecommunications issues in late 2003 after interested parties have had an opportunity to consider this discussion paper.

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 website or on request.

The Commission views temporary exemption 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 publication online of the Commission's notice of inquiry and details or text of applications, and through publication of submissions from interested parties.

Civil aviation safety

In November 2002, the Commission granted a five-year exemption from sections 19 and 29 of the DDA, and from sections 18 and 26 of the Sex Discrimination Act, to persons acting pursuant to existing Civil Aviation Regulations regarding medical fitness, or pursuant to currently proposed amendments to those regulations. The exemptions apply only where a person's pregnancy (for the purposes of the SDA) or disability (for the purposes of the DDA) prevent the person safely fulfilling the inherent requirements of the role covered by the licence concerned. This decision means that while the DDA and SDA will continue to provide a safety net against overly restrictive decisions or regulations, correct decisions to refuse licences will not be unlawful.

City hall access

An application for exemption regarding Toowoomba City Hall was refused by the Commission in February 2003. The application discussed difficulties and expense in making this venue accessible to people with disabilities. An exemption was sought to ensure that public use of the theatre is lawful pending works at some future point to make it accessible.

The Commission noted that expense and difficulty of providing disability access in the short-term would be available to argue as a possible unjustifiable hardship defence in the event of complaints, but that it is not appropriate to use the exemption power in section 55 of the DDA simply to certify unjustifiable hardship. Clearly the objects of the Disability Discrimination Act may be promoted by granting exemptions

in return for commitments to improve access over time. However, in this instance there was not any definite commitment to providing access within a definite time in return for an exemption.

Broadcast television captioning

A five-year exemption regarding levels of captioning provided was granted in May 2003 to free to air television broadcasters on condition that they implement their proposals for increases in captioning during the exemption period.

Regional aircraft access

An application by AirNorth for exemption regarding carriage on smaller aircraft of passengers requiring wheelchair access was under consideration at the time of writing.

Bus access – unrestrained wheelchairs

An application from Westbus Ltd for temporary exemption regarding carriage on buses of unrestrained and unoccupied wheelchairs (the passenger having transferred to a fixed seat), referred to in the 2001–02 *Annual Report*, was withdrawn. This exemption application sought clarification of relevant safety issues which remain under discussion through the Accessible Public Transport National Advisory Committee.

Action plans under the Disability Discrimination Act

As at 30 June 2003, 276 plans were registered with the Commission (increased from 228 in June 2002), comprising 34 business enterprises, 27 non-government organisations, 31 Australian Government, 37 State and Territory Government, 105 local government organisations, and 42 education providers. The register of Action Plans and those plans provided electronically to the Commission (221 of the total) are available through the Commission's website. This assists other organisations interested in developing their own plans and individuals interested in assessing the effectiveness and implementation of an organisation's Action Plan. A number of organisations have also submitted revised plans or implementation reports during 2002–03.

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 which offer potential to increase certainty and clarity of rights and responsibilities for relevant parties and thereby advance the objects of the Act.

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

Access to premises

The Commission has continued to work intensively with the Australian Building Codes Board, and industry, community and government members of the Building Access Policy Committee (established by the Board), towards the development of a Disability Standard on access to premises. This would permit adoption under the Act of content developed by the mainstream building regulatory regime and would provide industry, local government and other parties with a clearer and more coherent set of rights and responsibilities.

Work on the proposed content for the DDA Premises Standard and new Building Code of Australia is almost complete and work has commenced on the required Regulation Impact Statement (RIS) on the proposed standard. All documentation required for the public comment period scheduled for early 2004 will be completed and made public before the end of 2003. The Commission will be taking every opportunity over the rest of this year to make presentations at relevant conferences and fora on the changes due to take place.

Education

A taskforce of the Ministerial Council on Employment, Education, Training and Youth Affairs have developed draft Disability Standards on education. The Commission has been providing advice to participants in this process. As at June 2003, a decision by the Ministerial Council on whether to proceed with adoption of the standards was pending, following discussions on costs and benefits.

Employment

Development of Disability Standards on employment did not advance significantly during 2002–03, with standards development efforts again being concentrated on the areas of access to premises, public transport and education.

Public transport

Disability Standards for Accessible Public Transport were approved by the Parliament on 23 October 2002. The Commission looks forward to regular reports on implementation being made available through the Australian Transport Council.

Speeches

A selection of public addresses made by Commissioner Ozdowski and Deputy Commissioner Innes during 2002–03 are listed below and are available online at www.humanrights.gov.au/disability_rights/speeches/speeches.html.

Is placement of young people with high support needs in nursing homes a breach of their human rights?: National Conference on young people in nursing homes, Melbourne 17 June 2003.

Promoting the rights of people with disabilities: Towards a new United Nations Convention, International Workshop for National Human Rights Institutions from the Commonwealth and Asia-Pacific Region, New Delhi, India, 26–29 May 2003.

Promoting productive diversity: Telstra/Diversity at Work forum, Melbourne 16 May 2003.

Launch of Telecommunications Industry Ombudsman disability action plan, Melbourne, 14 March 2003.

Disability Discrimination Act tenth anniversary forums and publication launch: Sydney, 3 March; Brisbane, 6 March; Hobart, 13 March; Melbourne, 14 March; Perth, 19 March; Adelaide, 20 March; Alice Springs, 24 March; Darwin, 25 March; Canberra, 28 March.

Enabling access: launch of disability awareness resources for local government, Salisbury, SA, 19 February 2003.

DDA tenth anniversary award: Human Rights Awards ceremony, Sydney, 10 December 2002

The DDA and its impact in education (Deputy Commissioner Innes), Pathways Conference, Sydney, 1 December 2002.

Opening address, 2nd Victorian State Conference for disability direct support workers, Melbourne, 28 November 2002.

Presentation of Municipal Association of Victoria Access Awards (Deputy Commissioner Innes), Melbourne, 22 November 2002.

Disability and human rights: NSW Local Government and Shires Association without prejudice Conference, Sydney, 14 November 2002.

Excellence and inclusion: Seminar on equal opportunity in higher education: University of Southern Queensland, 12 November 2002.

Using the DDA for equal communications access: Deafness Forum of Australia annual general meeting, Sydney, 19 October 2002.

Human rights and people with intellectual disabilities: where to from here? Inclusion International Congress, Melbourne, 24 September 2002.

DDA Standards and Regulation Impact Statements: Context and Process (Deputy Commissioner Innes) Disability Studies and Research Institute Seminar, 19 July 2002

6th National Deafblind Conference, Sydney 12 July 2002.

Launch of Workcover South Australia Disability Action Plan, Adelaide, 4 July 2002.

Chapter 6
Human Rights

Dr Sev Ozdowski, OAM
Human Rights Commissioner

Human Rights Commissioner

Dr Sev Ozdowski OAM was appointed Human Rights Commissioner in December 2000 for a five-year term.

Statement from the Commissioner

In the contemporary world, especially amongst first world economies, the culture of civil liberties, freedoms and non-discrimination are reasonably well established and these precepts have clear links to innovation, creativity and the broader concepts of economic productivity and a well-functioning civil society.

But also in this same contemporary world, especially in countries such as Australia, where human rights has been most advanced and unfettered we are starting to witness some calling for a 'tightening of the human rights belt'. Many people are prepared to accept a more flexible approach to, or even reduction in, civil liberties in order to: defeat terrorism; confront the problems arising from unauthorised people movements, and; combat international crime – drugs, money laundering and people trafficking to name but some key issues.

These reductions are being made by governments of the day, usually with the tacit support of a large segment of the population, at least as measured by focus groups and talk back radio. While a democracy must always be attuned to majority opinion, a human rights commission in a democracy must also be conscious of the dangers that can arise when the values espoused by civil liberties' advocates are drowned out by the roar from the Colosseum.

Decisions may be taken in the heat of the moment (eg following the September 11 terrorist attack or the Bali bombing) without due consideration of human rights principles. This is probably inevitable, but we must not lose sight of the fact that these principles are capable of delivering wisdom and balance, a combination that has served Australians well in the past and could be said to represent the bulwarks of democracy.

In this environment it is all the more puzzling why there is still such a comparative lack of penetration for civil and political rights issues into

heartland Australian communities; despite the fact that the Commission's website received an astonishing 4 372 899 page views during 2002–03.

This state of affairs is in manifest contradistinction to the broader community recognition accorded to the anti-discrimination laws dealing with equality, which enjoy a profile that would be envied by any national mass marketing exercise in 'awareness raising' conducted by one of the consumer retail chains. The manner in which these equality laws have embedded themselves in the national consciousness over the last 20 years in an educative sense is quite remarkable. Therefore, given that the same effort has been put into promoting civil and political rights in that period, why do they currently languish as the 'cinderella' of the Australian human rights story?

One of the more important reasons for this distinction, I believe, lies in the fact that the civil and political menu lacks a 'hook' that could more readily engage the attention of the general populace. Specifically, when discussing human rights concepts, one moves from vast universal themes analogous to a latter-day Homeric epic, to an everyday 'common or garden variety' example of, well, nothing much really. Imagine yourself addressing a community group in a suburban setting anywhere in Australia and the challenge that presents itself is to make civil and political rights relevant to your audience's everyday cares and woes! If you are able to make such a link, the ultimate solution of a report to federal Parliament appears a little tame, compared with the robustness of the court sanctioned disciplines available under the equality provisions.

As I have endeavoured to establish in my work as Human Rights Commissioner, this failure to fully embed human rights in the domestic legal framework in a similar manner to equality rights, may also be unwittingly responsible for subtle community resistance to important social and economic improvements that our political leaders are keen for us to embrace. It is axiomatic that the deregulated economic model, espoused in Australia by governments of all persuasions is here to stay. We, the Australian community have been asked to take at face value the proposition that, if we are going to be competitive in world markets, we must take more individual responsibility for our economic productivity, leaving governments free to concentrate on the basic service provision of health, education, defence and law and order.

But these dramatic changes are occurring against a backdrop of diminishing institutional protections. Trade unions face declining membership and relevance; parliament is dominated by the necessary discipline of 'party line' voting; courts can only work within the framework of the law and the media are ultimately responsible only to their shareholders. Little wonder then that some Australians feel isolated and threatened by the 'new economic order' and sometime exhibit a strong sense of resentment towards their governments.

Arguably, an Australian Bill of Rights, giving rise to legally enforceable outcomes, could restore some sense of balance. If individual Australians were confident that the requirement to become economically more self reliant was underpinned by a safety net of enforceable rights, they might feel more relaxed about their increasingly deregulated world and it could also form the basis of a new 'social contract' with the government.

Of course as I noted at the outset, events such as September 11, Afghanistan, Bali and the war in Iraq have added complexity to this issue. Australians who believe in basic human rights are also naturally concerned about their security. Human rights are fragile things in the face of terror and in the absence of security.

The proposed curtailing of personal freedoms in response to the 'war on terrorism' which is broadly accepted, in my view makes a judicially enforceable Bill of Rights even more essential. In absence of legislated rights, it is difficult to measure what we are being asked to give up, when security measures are proposed. We have no easy way to assess the 'proportionality' of the proposals.

The Australian Government's recent parliamentary experience with the ASIO Bill is a good case in point. My upbringing and experience under a communist regime in Poland has given me a healthy dose of scepticism when it comes to the Executive's use of 'intelligence services'. It therefore came as no surprise to me that some Senators laboured so long and hard to try and establish exactly what the proposed legislation would mean in practice.

And what a difficult task that proved to be. Even so, the Bill that was finally approved with the support of the major opposition party contains a number of challenging features from a human rights perspective. The feature of the ASIO Bill applying to minors aged between 16 and 18, in the Commission's view: "raises issues of Australia's compliance with the *Convention on the Rights of the Child,* which requires that detention of a child (meaning a person under the age of 18) should be used only as a measure of last resort and for the shortest appropriate period of time. Those obligations apply even to children convicted of serious crimes. They apply with more force where, as is the case under the ASIO Act, one is dealing with the detention of unconvicted children, who need not be charged with any offence and may ultimately be found to be innocent of any wrongdoing.

It is also relevant to note that the ASIO Act provides for significantly greater periods of detention than the *Crimes Act 1914* (Cth) which already makes careful and measured provision for the detention and questioning of children arrested on suspicion of having committed a crime. Under the ASIO Act a person aged between 16 and 18 may be detained for periods of up to seven days under any one warrant. In contrast, the Crimes Act provides for a maximum of two hours detention (not including time taken for matters such as consulting legal representatives)".

I am not suggesting that the pre-existence of a Bill of Rights would automatically preclude a government from implementing legislation such as the ASIO Bill. The British Government's experience demonstrated that this is not so when they passed similar laws. The difference is that in Britain the Home Secretary was required formally to suspend the operation of the Human Rights Act in order to implement those sections of the proposed Bills which were contrary to the Human Rights Act. This has the effect of putting the parliament and their constituents 'on notice' that existing 'rights' are under question, thereby concentrating everyone's attention, and most importantly, permitting proper consideration of the vital issue of proportionality.

As Cherie Blair QC, civil rights campaigner and wife of the British Prime Minister noted recently in Australia: "The most significant impact of the Human Rights Act

has been the way in which the language of human rights has begun to permeate the consciousness of individuals and organisations, and thereby to inform the policies and practices of governmental and non-governmental bodies alike".

To "permeate the consciousness of individuals", is at the heart of what I could term 'the holy grail of human rights' in Australia; namely how do we all better infuse our fellow Australians with an understanding of human rights? On this objective I am certainly at one with our Attorney-General, Daryl Williams QC, when introducing *Australian Human Rights Commission Bill 2003* (Cth) said of human rights education that it is designed to "make information on human rights the central focus of the new Commission's functions" and to do that there is a "need to re-order the Commission's sets of powers such that the education/research functions appear first".

However, the Commission is not convinced that the measures outlined in the Bill are the best means of achieving the desired outcome. Nevertheless, I welcome the opportunity the Bill provides to generate a widespread national discussion on the necessary objectives of human rights education.

National Inquiries

Progress report on Inquiry into Children in Immigration Detention

Introduction

It had been anticipated, as indicated in last year's Annual Report, that the Inquiry might have completed a draft report by the end of 2002, which in turn would result in a publicly available final report in the course of 2003. It now appears that this was an overly optimistic assumption and that a publicly available final report will now not be available until 2004. The main reasons behind this timetabling change are twofold; firstly, the Inquiry has assembled a substantial body of evidence and its proper consideration necessitates very careful and time-consuming analysis. This has been the case for both the Inquiry itself and the respondent bodies, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and Australasian Correctional Management (ACM). Secondly, under the provisions of the *Human Rights and Equal Opportunity Act 1986* (HREOCA) empowering this Inquiry, maintenance of the appropriate balance between the Inquiry's capacity to inform itself in any way it sees fit and the requirement to afford DIMIA/ACM with the appropriate standard of common law procedural fairness, requires the Inquiry to proceed with a high degree of diligence.

Nevertheless I remain confident that the final report will, by virtue of its exhaustive processes of examination and analytical rigour, amply compensate for the length of its gestation.

Inquiry Commissioner Dr Sev Ozdowski *(centre)* with Assistant Commissioners, Dr Robyn Sullivan *(right)* and Professor Trang Thomas *(left)*.

It is also proposed to release "A Guide to the Findings and Recommendations of the Inquiry into Children in Immigration Detention" as an explanatory adjunct to the full report. A similar procedure was followed with the *Bringing them home* report.

Background

Since the announcement of the Inquiry in November 2001 the Inquiry has received 341 submissions, including 70 confidential submissions. These submissions have taken a variety of forms including tapes, drawings and poetry, as well as detailed commentary from organisations representing detainees, human rights and legal bodies, members of the public, religious organisations, state government agencies and a range of non-government policy and service providing groups.

Most of the public submissions for which the Inquiry was able to obtain an electronic copy have been placed on the Commission's website. Public hearings have been held during 2002 in: Melbourne 30–31 May; Perth 10 June; Adelaide 1–2 July; Sydney 15–17 July; Brisbane 5 August; Sydney 2–5 December (DIMIA/ACM).

Visits to immigration detention facilities in 2002 included: Christmas Island, January; Cocos (Keeling) Islands, January; Woomera, January, end June and September; Maribyrnong, May; Perth, Port Hedland and Curtin, June; Villawood, August and Baxter; December.

Focus groups with former detainees now living in the Australian community were held in: Adelaide – eight focus groups; Brisbane – two focus groups; Perth – five focus groups; Melbourne – 10 focus groups and Sydney – five focus groups.

The Inquiry Commissioner was assisted in his work by two Assistant Commissioners: Dr Robyn Sullivan, Queensland Commissioner for Children and Young People and Professor Trang Thomas, Professor of Psychology at RMIT in Victoria.

Submissions to federal Parliament

An important part of a Commissioner's work within the structure of the Commission involves formal interaction with federal Parliament. This may take the form of tabling reports via the Attorney-General, appearing before parliamentary committees or making written submissions. In 2002–03, the Commissioner was involved in all three exercises.

In late-July 2002, the Commissioner made a written submission to the Senate Legal and Constitutional References Committee into their Inquiry into the proposed *Migration Legislation Amendment (Further Border Protection) Bill 2002*. The submission recommended that parliament should not approve the Bill. The committee's report was tabled in October 2002 and also recommended against approving the Bill. In the course of its report, the committee made favourable reference to the Commission's submission in relation to Australia's non-refoulement obligations and the fact that reliance on a non-compellable ministerial discretion, waiving the prohibition on visa application, is an inadequate recognition of Australia's human rights obligations.

In mid-August 2002, the Commissioner appeared before the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. The subject matter of the sub-committee's Inquiry was 'Aspects of HREOC's Annual Report 2000–01 concerning immigration detention centres'. The Commissioner responded to a variety of different questions from the members of the sub-committee concerning conditions in immigration detention centres (IDCs), especially as they related to mental health and children. As the Commissioner had extensively visited all IDCs in the course of both his '2001 Report on IDCs' and the National Inquiry into Children in Immigration Detention, the exchanges between himself and members of the sub-committee were particularly informative.

In mid-October 2002, the Attorney-General effected parliamentary tabling of the Commissioner's 'Report on visits to Immigration Detention Facilities by the Human Rights Commissioner – 2001'. This allowed for public release of the report and distribution of copies to a broad spectrum of NGOs and relevant individuals. The details of the report were extensively foreshadowed in last year's Annual Report. The Commissioner intends this report to be a regular feature of his work.

In late-June 2003, the Commissioner made a supplementary submission to the 'Inquiry into human rights and good governance education, in the Asia-Pacific region', conducted by the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. This submission was preceded with an appearance by the Commission before the sub-committee, as a result the Commission undertook to respond to a number of additional questions, the answers to which also assumed the status of a supplementary submission. The Commissioner's supplementary submission focussed on the paradox of the relatively high educative profile enjoyed by the equality provisions of HREOCA, compared to the human rights provisions. The Commissioner's submission suggested that this was largely attributable to the fact that human rights' breaches in Australia are not subject to judicial oversight and sanction when so proven.

Human rights education

A key function of the Commission is to "promote an understanding and acceptance, and the public discussion, of human rights in Australia". Within the context of his National Human Rights Dialogue, the Commissioner has continued to meet with a wide cross-section of the Australian community by attending meetings, seminars and workshops where discussion occurred on topics such as:

- What are international human rights?
- Which rights are most valuable to us?
- Is there a hierarchy of rights?
- What rights are well protected in Australia?
- Which rights need better protection?
- What happens when rights conflict?

In order to illuminate these discussions, the Commissioner has found it useful to deal with an issue which is familiar to most Australians, such as long-term immigration detention and mental health, as a practical example of human rights challenges that confront us on our own doorstep. Within this general concept, he has delivered 11 major addresses in the year under review to conferences throughout Australia. These talks have been in diverse locations such as Bathurst and Tweed Heads in regional New South Wales to major capital cities including Brisbane, Adelaide, Sydney and Melbourne.

This context has been occasioned by the Commissioner's many visits to remote location detention centres, which have enabled him to accurately gauge the deleterious effects of long-term detention on the mental health of particular individuals. From this he has developed human rights themes, such as the role of international conventions like the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention on the Rights of the Child* (CRC), and their intersection with our domestic law, embodied in this case in of the *Migration Act 1958* (Cth). This naturally leads to consideration of security issues in a post 9/11, Bali, Iraq War world and the challenge of balancing these, and concepts of border protection and national sovereignty, with human rights principles.

The Commissioner does not think it is coincidental that recent community polling reveals that currently 70–75 percent of those sampled believe that children should be released from immigration detention, compared to the view 'post-Tampa', where 75 percent of those sampled approved of the government's action. Many educative factors are clearly at work here, but one of the outcomes is undoubtedly a heightened level of understanding about human rights in the Australian community.

One notable offshoot of the Commissioner's discussions about mental health in detention and its link with human rights, has been a number of requests to revisit the 1993 *Report of the National Inquiry into the Human Rights of People with Mental Illness*, colloquially known as the "Burdekin Report". At the conclusion of the Inquiry into Children in Immigration Detention, the Commissioner will decide whether he has anything additional to offer in the area of mental health that has not already been the subject of examination by other bodies.

Finally, as alluded to in his opening statement, the Commissioner has been assiduous in arguing for the introduction of an Australian Bill of Rights, as a practical tool to demonstrate how human rights could have a practical, day-to-day effect on average Australians' lives. In the course of the last year he delivered another four major addresses on this topic, as well as speaking on it less formally to many community gatherings.

International activities

Meeting of the International Coordinating Committee of National Institutions for the promotion and protection of Human Rights (ICC); and the 59th Session of the UN Commission on Human Rights

In April 2003, the Commissioner attended (as the Commission's representative) the above meetings in Geneva. The ICC comprises 16 members, four each from the regions of Europe, Asia Pacific, the Americas and Africa. Australia is currently one of the Asia Pacific delegates to the ICC.

The ICC meeting focused once again on the status of National Institutions (NI) that complied with the Paris Principles against those that did not.

Canada, on behalf of Australia and France, presented to the ICC as previously requested a preliminary analysis of options for enhancement of the role of NIs at the UN's Economic and Social Council (ECOSOC). Canada noted that this issue involves questions of substance and process. Substance relates to the status of NIs, how to distinguish those that complied with the Paris Principles from those that do not, and whether NIs should for example, push to speak under all/any agenda items, make written statements or seek to intervene after the high level stage of the Commission for Human Rights (CHR).

Any solutions would also need to consider issues such as, participation in other functional Commissions and the Commission on the Status of Women for instance. In that light there is no question that the easiest solution would be by way of amendment to the ECOSOC rules, however this outcome will not be readily achieved.

The meeting then agreed to the request of the working party that further work be done and reported on at the next ICC meeting. Accordingly, Canada will provide another draft paper to Australia and France for comment.

Other issues covered included:

- a Danish paper on technical cooperation between NIs
- developments concerning UN treaty bodies and the capacity for NIs to input
- the credentialing of 16 NIs
- agreement as to composition of the next credentialing committee.

59th Session of the UN Commission on Human Rights (CHR)

Under agenda item 18(b) which concerns NIs, the Commissioner gave the permitted four-minute address on the work of the Commission over the last year.

The Sino-Australian Seminar on Alternate Dispute Resolution and the Modern Rule of Law

In mid-November 2002, the Commissioner attended the above seminar in Beijing which was organised to implement a Memorandum of Understanding between the Chinese Ministry of Justice and the University of Victoria. It was sponsored by the Department of Judicial Assistance and Foreign Affairs, the Judicial Research Institute and the Department of Guiding Grass-Root Work of the Ministry of Justice and the Victorian University. The sponsorship extended to support of the Commissioner's participation in the seminar.

The seminar was given high official status in Beijing (reported in official press) and involved many senior officials from both sides.

The seminar focused on the role of law in modern society and issues associated with alternative dispute resolution (ADR). In particular, papers were presented that dealt with:

- dispute resolution of commercial litigation in the international arena – this was of particular relevance to China's recent membership to the WTO
- history of alternative dispute resolution in China and Australia
- the proper balance between the courts and ADR – this dealt with the issues of the rule of law, the role and efficiency of courts vis-a-vis ADR, governments' involvement in ADR and sanctioning of its outcomes and possible extension of ADR to criminal law
- different models and procedures used in dispute resolution.

The Commissioner delivered a paper on "The Australian Experience with Tribunals, Commissions and Ombudsmen", which focused on the complaint handling function of the Commission.

Attendance at the 1st International Congress on Child Migration

In late-October 2002, the Commissioner visited New Orleans to deliver a keynote address to the above congress. In the speech he concentrated on international trends in child movement, both voluntary and involuntary, and the need for international cooperation. The congress called upon the UN to establish an international day of Child Migration.

The Commissioner was also invited to join the Scientific Committee responsible for assessing the proposed papers and overseeing the format of the congress.

Speeches

A selection of public addresses made by the Human Rights Commissioner during 2002–03 are listed below and are available online at www.humanrights.gov.au/speeches/human_rights/

Statement by Dr Sev Ozdowski, 59th Session of the Commission on Human Rights, Geneva, Switzerland, 14–17 April 2003.

Long-term detention and mental health, 2nd Public Health Association of Australia "Incarceration Conference", 2 April 2003 at the Mercure Hotel, Brisbane.

A Charter of Citizen's Rights – Will this benefit Multiculturalism in Australia?, 2002 FECCA National Conference on Setting the Agenda for a Multicultural Australia, 5–7 December 2002, Canberra.

The Australian Experience with Tribunals, Commissions and Ombudsmen, Sino-Australian Seminar on Alternative Dispute Resolution and The Modern Rule of Law, hosted by the Chinese Ministry of Justice in Beijing, PRC, 20–22 November 2002.

The rights of the child and international human rights law, 1st International Congress on Child Migration, Hyatt Regency, New Orleans, 29 October 2002.

Long-term detention and mental health, 1st iMHLP International Mental Health Development Conference: 'Developing Leadership for Mental Health', Rydges Hotel, Victoria, 18 October 2002.

The human rights of vulnerable children in Australia, 9th National Conference of the Association for the Welfare of Child Health: "Healthy Justice for Children and Young People", All Seasons Premier Menzies Hotel, Sydney, 10 October 2002.

Waverley Council's Refugee Week, Waverley Library Theatrette, Sydney, 9 October 2002.

Asylum Seekers, meeting of the Great Lakes Rural Australians for Refugees Group, Forster High School, Forster, NSW, 2 October 2002.

Lessons from the UN Special Session on Children, Association of Children's Welfare Agencies Conference, Swiss Grand Hotel, Bondi, NSW, 3 September 2002.

Chapter 7
Race Discrimination

Dr William Jonas, AM
Acting Race Discrimination Commissioner

Acting Race Discrimination Commissioner

Dr William Jonas AM commenced duty as acting Race Discrimination Commissioner in September 1999 in addition to his duties as Aboriginal and Torres Strait Islander Social Justice Commissioner.

Statement from the Commissioner

As Race Discrimination Commissioner I have been very disturbed by two significant trends during the past year. The first is the widespread demonisation of Australian Arabs and Muslims. The second is the exclusion of Indigenous people, principally by means of local laws, from public spaces in many Australian cities and towns.

Demonisation of Australian Arabs and Muslims

Since 11 September 2001, Arabic and Islamic community organisations have reported increased levels of anti-Arab and anti-Muslim prejudice, discrimination and vilification. Community leaders have told us that the reported incidents are just a small part of what is happening. Fear and isolation have made many people reluctant to come forward and speak out or complain.

During our *Isma – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians*, I have heard horrific stories of verbal threats and physical violence, often targeting girls and women in public places. The alacrity with which some in the community have vented their aggression and racism on Arab and Muslim Australians is alarming.

> I think there is no doubt that after September 11 there has been a rise in terms of the perception that you are a danger. From a woman's perspective, if you wear the veil then you are seen as a fundamentalist – you are a danger. (Meeting with Muslim Lawyers Group, Melbourne, 27 May 2003)

Of particular concern is the language in which Australian political leaders and the media discuss and describe Muslims and Arabs both within Australia and overseas. For example, asylum seekers have been labelled 'illegals' and portrayed as manipulative, inhuman and uncaring.

The description of 'terrorists' is almost always linked with the religion 'Muslim', as if Islam is a cause of terrorism. Such language is readily interpreted as encouraging aggression and racism against Australian Arabs and Muslims. It amounts to the demonisation of a significant community of Australians, putting them at greatly increased risk of discrimination, harassment and even violence.

This analysis has frequently been outlined in presentations at Isma? consultations.

> Where does the discrimination come from except first and foremost from the government, politicians and other departments? They are racist and their policies are discriminatory. Others will of course be the same as they are led by example. Whatever the government says, the people say and it goes on… [Meeting with Iraqi refugees, rural Victoria, 30 May 2003]

> The government projects fear and there is a lack of understanding. It is not projecting an image of acceptance and inclusiveness. This reinforces negative difference and otherness. (Islamic Council of NSW meeting, Sydney, 10 June 2003)

At the Hobart consultation participants complained that the media too often do not take the time to find the 'facts'. Media report only the negative aspects of Africa, for example, instead of informing people that Africans coming to Tasmania come from many different ethnic groups, languages and cultures.

In Victoria, participants were also critical of the Australian media and felt that it unfairly links Islam with terrorism blaming all Muslims for the events of 11 September 2001. One participant refused to accept such blame.

> It's as if all Muslims should pay the price for someone else's actions. I'm not prepared to pay the price of anyone else's actions, especially someone whose actions we don't agree with . . . Islam is peace. Islam has nothing to do with terrorism and never will . . . (Meeting with Iraqi refugees, rural Victoria, 30 May 2003)

One aim of our Isma? project is to recommend strategies to reduce the demonisation of Australian Arabs and Muslims by increasing positive public awareness about them, their cultures and their religions, by improving official responses to discrimination and by enhancing the appreciation among all Australians of the very positive benefits of cultural diversity.

Exclusion of Indigenous Australians from public spaces

During the year the trend has continued of State and local governments resurrecting old policies of segregating and excluding Aboriginal people from public places. These laws and policies in theory apply to everyone, but in practice target Aboriginal people.

In Adelaide, the state Government, at the request of the City Council, extended a dry area trial for a second 12-month period despite the fact that, in the first 12 months, the support services required by the state Government itself had not been provided. The purpose of establishing the dry area was to prevent people drinking outdoors in city squares, predominantly Aboriginal people.

I advised Adelaide's Mayor that a substantially disproportionate impact on Indigenous people would only be tolerated under the federal *Racial Discrimination Act 1975* if the dry area declaration was reasonable. In deciding what is reasonable, community amenity and safety are relevant factors as is the aim of reducing substance abuse by Indigenous people. At the same time, it is also relevant to ask whether Indigenous people's enjoyment of their culture and traditions is affected; whether the effect of moving them away from the central city area is that they have substantially less access to welfare and support services, and; whether their reduced "visibility" also makes them more vulnerable to assaults and less accessible to protective services such as the police.

In Perth, the state Government introduced a night-time curfew for children and young people in the restaurant and nightclub district of Northbridge. Unaccompanied children aged 12 and younger must be out of Northbridge by dark, while 13–15 year olds must be off the streets by 10pm. At least 80 percent of young people removed from Northbridge by police under the curfew have been Aboriginal.

In NSW, Moree, Coonamble, Orange and Ballina have all introduced child at risk removal powers under the *Children (Protection and Parental Responsibility) Act 1997* (NSW). The children (15 years and younger) being removed from public places are predominantly Aboriginal, and in Moree and Coonamble almost exclusively so.

Curfews can violate the rights of children and young people to equality of access to public space and to freedom of association. Enforcement of curfews imposes on children and young people all the risks associated with contact with police (including the risk of provoked offences such as offensive language) and with police custody (including the risk of self-harm).

In Darwin, the City Council by-law prohibiting outdoor camping and sleeping is said principally to affect Aboriginal people – those who sleep outdoors for cultural reasons and those who do so because they are homeless.

In Townsville, the City Council has hired a private security firm to enforce a by-law prohibiting the possession or consumption of alcohol in the city's parks by putting together a photographic dossier of park-users and confiscating any alcohol found. Once again, most of those affected are Aboriginal people, many of them homeless or without accommodation in the city. Further, the City Council has applied to have all public streets and parks declared as move-on areas under the *Police Powers and Responsibilities Act 2000* (Qld). If approved, police would be empowered to order a person to move on and stay away for up to 24 hours if, for example, he or she is "causing anxiety" to another person by being in a public place.

Exclusionary laws such as these are a return to the old segregation days. They are based on paternalistic notions about the relationship between government and Indigenous people and attempt to impose assimilation as a pre-condition to their acceptance as full members of society. They come close to violating the citizenship rights of Aboriginal people. They also ignore the history of Aboriginal exclusion and disadvantage. They impact on the poorest, most isolated and most disadvantaged. Aboriginal people are grossly over-represented among those afflicted by ill-health

(including alcohol addiction), poor living conditions and homelessness. It is frankly disingenuous to claim that such laws target behaviour pure and simple, without any racial component.

It is essential to evaluate these exclusionary trends in light of recent history as well. The key recommendations of the Royal Commission into Aboriginal Deaths in Custody aimed to reduce Indigenous people's contact with police and their rates of incarceration. Giving police more powers to approach, remove and detain Aboriginal people runs directly counter to those recommendations.

These two significant issues will continue to be a focus of my activities in the coming year.

Education and promotion

Cyber-racism

The internet has emerged as a significant forum for the dissemination of ideas based on racial superiority and hatred. The Commission's cyber-racism project aimed to raise awareness of this potential of the internet, evaluate existing legal avenues for challenging racist sites and develop partnerships with industry, government and community stakeholders. Through these methods, the project aims to improve the regulation of the internet so it is consistent with community standards which balance the right to freedom of expression with the right to freedom from incitement to racial hatred and violence, and from offensive speech based on race.

Several international and Australian developments form the backdrop to the Commission's work in this area. The *Programme of Action* adopted by the World Conference Against Racism in 2001 proposed several strategies to combat the proliferation of racism on the internet and the Council of Europe's additional protocol on racism and xenophobia on the internet as an extension to its Convention on Cybercrime (2001, not yet in force).

In Australia in September 2002, the Federal Court found for the first time that an Australian website that denied the Holocaust and vilified Jewish people was unlawful under the provisions of the *Racial Discrimination Act 1975* dealing with offensive behaviour based on race (*Jones v Toben* [2002] FCA 1150).

The Commissioner convened a symposium on cyber-racism in Sydney on 22 October 2002 to share information on emerging technological innovations, to evaluate the potential of legal regulation and to discuss ways to improve the effectiveness of both regulatory and emerging non-regulatory mechanisms. Before an invited audience, an expert panel made up of representatives from industry, government, non-government and legal organisations was facilitated by Dr Gregory Tillett.

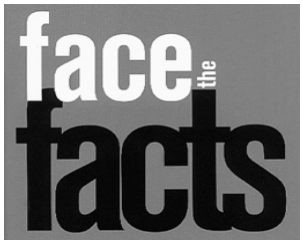
Professor Henrik Kaspersen, Director of the Computer Law Institute at the University of Amsterdam, also joined the panel. Professor Kaspersen had chaired the drafting committee for the Council of Europe's Additional Protocol on Racism and Xenophobia on the Internet and outlined the provisions of the protocol in his keynote address.

The background paper prepared for the symposium was illustrated with examples of racist content published in Australia on Australian-based websites as well as computer games and music available on or through the internet. This paper is available online at www.humanrights.gov.au/racial_discrimination/cyberracism/report.html.

The paper also outlined existing regulatory mechanisms, including the Racial Discrimination Act, state and territory racial vilification legislation and the Broadcasting Services Act.

The symposium identified several issues requiring further analysis and a range of policy options being evaluated by the Commission. More significantly, it sparked a considerable degree of interest among industry and government stakeholders best placed to regulate and limit cyber-racism. The Commission looks forward to supporting future initiatives as they are developed by these stakeholders.

The cyber-racism project is detailed on the Commission's website at: www.humanrights.gov.au/racial_discrimination/cyberracism/.



Face the Facts

Face the Facts was first published in 1997 at a time of heated debate over race issues in Australia. Recent events including escalating politicisation of Australia's response to refugees and asylum seekers, increased anti-Arab and anti-Muslim prejudice after 11 September 2001, the stalled Aboriginal reconciliation process and the rejection of native title applications by the courts have all fanned the flames of this debate. Race and racism remain burning issues in Australian society. The 2003 edition of *Face the Facts* aims to reduce unfounded prejudices in public debates about 'race' by addressing prevailing myths about refugees and asylum seekers, migrants and Indigenous people with factual information in readily-accessible formats.

Unique to the 2003 edition is an expanded on-line version. This on-line version is a multi-layered resource designed specifically for use by teachers and students. Embedded links and drop down menus enable users to access a wealth of detailed statistical information and further reading sources to explore specific topics in significantly greater depth. To assist teachers to navigate this information, the Commission has developed a teaching resource module to demonstrate ways of using *Face the Facts* in the classroom to progress key learning outcomes. The activities link with a range of key learning areas for secondary school students across all states and territories. Teaching notes, student activities and worksheets are provided, as well as a range of additional on-line resources and further reading.

Face the Facts is published on the Commission's website at: www.humanrights.gov.au/racial_discrimination/face_facts/.

Kalgoorlie community relations strategy

A joint visit to Kalgoorlie in May 2002 by the Commission and the West Australian Equal Opportunity Commission in response to allegations of racism made two principal findings.

1. There is a significant lack of accurate information in the community on relevant matters, in particular about legal rights and obligations, other cultures, especially Indigenous culture and history, and about the roles and responsibilities of relevant agencies.

2. Community leaders are not consulting as fully and effectively as they should with Indigenous people on issues and decisions which materially affect them and their well-being.

The Commissioner visited the city in July 2002 to deliver and discuss his recommendations, which were:

1. *Indigenous capacity-building* – That the WA Equal Opportunity Commission and this Commission jointly develop and deliver human rights training to Indigenous people in key positions to enhance their knowledge of their rights and anti-discrimination legislation and to equip them to create and implement effective strategies to combat racism, racial discrimination and racial vilification which is contrary to law.
2. *Anti-racism training* – That the WA Equal Opportunity Commission and this Commission jointly develop and deliver anti-racism and diversity training for key government and business sectors which come into contact with Indigenous people as employees, clients or customers.
3. *Consultation* – That an experienced mediator or facilitator be engaged by the WA Department for Indigenous Affairs in collaboration with ATSIC and the City of Kalgoorlie-Boulder to assist in the development of an agreed protocol on how government agencies and others are to consult with local Indigenous people on issues affecting them.

The strategy was well-received by both Indigenous and government stakeholders and a strong commitment was made on the part of the Department of Indigenous Affairs, the City of Kalgoorlie-Boulder, the then Wongatha Regional Council of ATSIC and others to participate actively in its implementation.

In November 2002, the WA Equal Opportunity Commission provided a week's intensive training to seven Indigenous people who became Ngali-Ba Wangka ('we all talking') advocates for equal opportunity and social justice. This training was funded by this Commission. Their roles include providing appropriate referrals under state and federal anti-discrimination law, discussing options for dealing with allegations of discrimination, assisting concerned individuals to make contact with the Equal Opportunity Commission and, in appropriate cases, assisting in complaint preparation.

In December 2002, the advocates assisted the WA Commission, again with funding from this Commission, to deliver human rights training in two separate workshops to some 27 Indigenous people from a range of agencies and departments working in the city. One aim of this training was to equip participants with basic information on human rights to enable them to contribute effectively and confidently to the proposed negotiations for an Indigenous consultation protocol.

In March 2003, the WA Department of Indigenous Affairs announced the appointment of two mediators, Tim Muirhead and Kim Bridge, to assist in the development of the proposed consultation protocol. This project is due for

completion in September 2003. The Commission is awaiting the outcome of this project before proceeding with the proposed anti-racism training element of its strategy.

The WA Department of Indigenous Affairs and the Commission have engaged a research team led by Associate Professor Mark Rapley from the Centre for Social and Community Research at Murdoch University in Perth to evaluate the extent to which the strategy achieves its objectives. The evaluation report will inform other cities and towns about the strategy with a view to its replication, with modifications as appropriate. The Commission is aware of many other locations in regional Australia where similar conditions exist.

Research and policy

Erace forum

The Commissioner's Erace forum is an internet forum for publishing Commission research on race discrimination issues and raising policy questions for public comment. It contains a bulletin board to which comments, arguments and analysis submitted by email are posted. Visit the Erace forum online at www.humanrights.gov.au/racial_discrimination/Erace/.

The Erace forum was launched on 14 October 2002 with two papers on temporary protection visas. The first paper described the operation of these visas in comparison with permanent visas and the second was a legal evaluation of the consistency of temporary visas with the federal Racial Discrimination Act and the International Convention on the Elimination of All Forms of Racial Discrimination on which the Act is based.

The Commissioner introduced these papers with the comment:

> Today, over 8,000 refugees in Australia hold temporary protection visas. They have no right to access many of the settlement supports available to other refugees in Australia and they cannot apply to bring family members to Australia. These restrictions impact on the long-term settlement prospects of these refugees, most of whom are from Iraq and Afghanistan.

The second topic, published on 5 February 2003, explored the interpretation of the term 'ethnic origin' (one of the grounds covered by the Racial Discrimination Act), and posed the question whether Muslims could constitute an ethnic group in a way similar to Jews and Sikhs. As the law is currently interpreted, Muslims are defined by their common religion but not a common ethnic origin. It should be noted, however, that the issue has yet to come before an Australian court for a definitive ruling. The failure of federal law to make discrimination on the ground of religion unlawful in all areas of public life has also been highlighted by the Isma? project detailed below.

Alcohol restrictions

The Commissioner continues to support Indigenous communities wishing to regulate access to alcohol by community members in the interests of community well-being and individual health and safety. Several isolated communities have negotiated agreements with local liquor licensees to restrict alcohol availability, in some cases imposing a total ban on the sale of alcohol to community members and their visitors.

The Commissioner supports these agreements by issuing 'special measures exemption certificates', expressing his opinion that compliance with such agreements will not violate the Racial Discrimination Act because they amount to special measures taken for the sole purpose of securing adequate advancement for the communities affected in order to ensure their equal enjoyment and exercise of human rights and fundamental freedoms.

In 2002–03, the Commissioner issued a certificate in support of alcohol restrictions agreed between the Irrungadji Aboriginal Community at Nullagine, WA, and the licensee of the sole hotel in that town, which was endorsed by the WA Director of Liquor Licensing. He also issued a certificate in support of alcohol restrictions applicable in the WA town of Wiluna.

In April 2002, the Queensland Government announced several proposals to address alcohol-related violence in Indigenous communities in that state including:

1. Transferring liquor licenses from elected community councils to Community Canteen Management Boards appointed by the government;
2. Imposing strict conditions on hotels and roadhouses near Indigenous communities;
3. Strengthening and expanding Community Justice Groups to give them, for the first time, legislative backing and protection;
4. Creating economic development and employment opportunities in Indigenous communities.

These reforms responded to two significant reports undertaken in Queensland: *The Cape York Justice Study* and the *Women's Task Force on Violence*.

The Commission undertook a preliminary evaluation of the consistency of these reforms with the Racial Discrimination Act and is monitoring their implementation.

Consultations

Community and media members at the launch of *Isma? – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians*, March 2003.

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

During 2002 the Commission continued to liaise with representatives of the Arabic and Muslim communities in Sydney and Melbourne to provide support and assistance to them in monitoring and addressing Islamophobia and anti-Arab prejudice which had escalated in the weeks following 11 September 2001. The Commissioner initiated national consultations in March 2003 to explore in more detail the experiences of these communities, their responses to government and other strategies to reduce prejudice and their views on what additional or improved strategies are needed.

With the assistance of an Arabic-speaking community liaison officer, the Commission convened or attended more than 40 consultations in Alice Springs, Brisbane, Canberra, Melbourne, Perth, Adelaide, Sydney and two locations in rural Victoria to the end of June 2003. The consultations have included small meetings with members of professional organisations, meetings specifically for young people, women or refugees and large public meetings. In addition, many meetings have been held with federal, state and territory government officers responsible for anti-racism and related strategies and programs.

Empirical research on experiences of racial or religious discrimination, vilification, abuse or violence and experiences of formally reporting such incidents has been commissioned from a research team led by Associate Professor Scott Poynting at the Centre for Cultural Research, University of Western Sydney.

The Commission has also mapped strategies and programs implemented federally, and in all states and territories, in response to increased prejudice after 11 September 2001, with the objectives of making cross-jurisdiction comparisons and identifying gaps and shortfalls.

The Isma consultations have been strongly supported by state and territory equal opportunity agencies, government multicultural affairs advisory and other departments and agencies, non-government support organisations such as those working with refugees and torture victims, as well as numerous Muslim and Arab community organisations, many of them with very limited resources.

A summary of the consultations will be published early in 2004. The Commissioner will present his recommendations as well as outlining strategies to be pursued by the Commission.

The Isma project together with names of the reference group members is detailed on the Commission's website at: www.humanrights.gov.au/racial_discrimination/isma/.

Race relations in Townsville, Queensland

The Queensland Anti-Discrimination Commissioner, Susan Booth, drew the Commission's attention to concerns about race relations in Townsville in early April 2003. She reported a high degree of racial intolerance against Indigenous people and specifically public drinkers, punitive policies and practices by the City Council and allegations that local laws (ie by-laws) about public drinking and possession of alcohol in public places were being discriminatorily implemented and enforced.

Commissioners Booth and Jonas made a joint visit to Townsville on 17 June 2003 and met with Indigenous and City Council representatives. They issued a joint media release at the conclusion of their visit in which Commissioner Jonas stated:

> It seems the treatment of Indigenous people who live in public spaces around the city and local government efforts to exclude them from these areas, have given a licence to some people in the community to harass, threaten and even assault them.
>
> The fact is all Indigenous people in Townsville are put at risk by this prevailing attitude, which is very worrying.

Commissioners Booth and Jonas continue to monitor the situation in Townsville.

Adelaide dry area trial extended

Late in September 2002 Commissioner Jonas was alerted to Adelaide City Council's plans to apply for the dry area trial, covering the entire central city, to be extended for another 12 months to enable promised services for Indigenous and other public drinkers to be established and a full evaluation of the trial to be conducted. The Commissioner took the view that the detrimental impacts on Indigenous people would be serious and that the dry area was potentially in breach of the federal prohibition of indirect race discrimination. He argued that the trial should be postponed until the services intended to mitigate its impacts are in place. Regrettably, Council went ahead with the application and State Cabinet gave approval for the trial to be extended for a further 12 months.

Speeches

A selection of public addresses made by the acting Race Discrimination Commissioner during 2002–03 are listed below and are available online at www.humanrights.gov.au/speeches/race/.

Challenges for national human rights institutions: human rights education, media and racism, Asia Pacific Forum of National Human Rights Institutions regional workshop on National Human Rights Institutions, Human Rights Education, Media and Racism, Sydney, 15 July 2002.

Racial vilification and the limits of free expression, Asia Pacific Forum of National Human Rights Institutions regional workshop on *National Human Rights Institutions, Human Rights Education, Media and Racism*, Sydney, 15 July 2002.

Toward an anti-racism strategy for Western Australia – Insights from the national perspective, meeting of the Anti-Racism Strategy Steering Committee, Perth, 12 August 2002.

Racism and the fourth estate: free speech at what cost?, public forum organised by the WA Office of Multicultural Interests, Perth, 12 August 2002.

A multicultural cocktail! Is Australia on the rocks?, Newcastle and Hunter Region Ethnic Communities Council public forum, Newcastle, 29 September 2002.

Anti-racism strategies – a national framework for crisis interventions?, Anti-racism strategies information share forum, Sydney, 10 October 2002.

Race in cyberspace, Cyber-racism Symposium, Sydney, 22 October 2002.

Race in cyberspace, Cyberspace Law and Policy Centre seminar on *International Dimensions of Internet and e-Commerce Regulation*, Sydney, 24 October 2002.

Geography and human rights, Institute of Australian Geographers conference on *Geography's New Frontiers,* Sydney, 21 March 2003.

Launch of Isma?: Listen – national consultations on eliminating prejudice against Arab and Muslim Australians, HREOC, Sydney, 21 March 2003.

Isma?: Listen – national consultations on eliminating prejudice against Arab and Muslim Australians, Victorian Equal Opportunity Commission, Melbourne, 30 April 2003.

Isma?: Listen – national consultations on eliminating prejudice against Arab and Muslim Australians, Anti-Discrimination Commission Queensland, Brisbane, 16 June 2003.

Chapter 8
Sex Discrimination

Ms Pru Goward
Sex Discrimination Commissioner

Sex Discrimination Commissioner

Commissioner Pru Goward's appointment to the position of Sex Discrimination Commissioner was announced on 29 June 2001. She commenced her term on 30 July 2001.

Statement from the Commissioner

My work over the past 12 months has ranged across a number of issues but has been dominated by the issue of paid maternity leave. In a nation with an array of mandated paid personal leave industrial arrangements (such as sick leave and annual leave), the absence of a national and mandatory paid maternity leave scheme could arguably be construed as a matter of sex discrimination. However, there is no argument about its usefulness as a positive measure in promoting gender equality. Child birth and child rearing are undoubtedly the greatest sources of economic inequality between men and women today and paid maternity leave goes some way to addressing this. For this reason, it is identified as a necessary step towards equality in the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW), a United Nations treaty which Australia ratified in 1983. At the time Australia entered two reservations to the treaty, one being the absence of maternity leave with pay or with comparable social benefits. This reservation remains unchanged to this day. It was on the basis of these arguments that I have pursued this issue as federal Sex Discrimination Commissioner.

Following the release of my interim discussion paper, Valuing Parenthood, I embarked on an ambitious series of consultations with employers, unions, community and women's groups and parents to consider the nature of a national approach. Submissions were sought from the community, and in particular, child development and health and welfare professional groups were invited to provide input. The Commission received 257 submissions. This was the largest number of submissions ever received by the Sex Discrimination Unit for any of its Inquiries or investigations, all the more remarkable given the closely-defined nature of a single public policy proposal.

My final discussion paper, A Time to Value, was released in December 2002. The paper canvassed the limited capacity of the industrial relations system to address the current inequities in the availability of paid maternity leave and the failure of current government payments to meet this need. The paper outlined the benefits of a national scheme of paid maternity leave, such as assisting in ensuring the health and well-being of women and their children, promoting equality, eliminating discrimination, contributing to the maintenance of Australia's fertility rate and assisting with the maintenance of Australia's human capital.

The final discussion paper recommended that women who had been in paid work for 40 of the past 52 weeks be entitled to 14 weeks of paid leave, up to the level of the Federal Minimum Wage (the paper also recommended that the Government consider providing two weeks paid paternity leave). The payment would be Government funded. Women receiving the benefit would not be entitled to Family Tax Benefit A and B for those weeks, would not be entitled to the first 12 months of the Baby Bonus or to the Maternity Allowance. For this reason some women might choose not to take the payment. The payment would not be available to women once they returned to work within those 14 weeks. It was estimated that this scheme would support 82 000 women currently in work at the time of their child's birth and enable them to afford to stay at home for the first three months of the baby's life.

Many aspects of this proposal were contentious – employers and unions both had points of difference with aspects of the proposal, as did some women's groups and professional health groups. In part, my final proposal was driven by my belief that the introduction of paid maternity leave, for so long resisted by Australia and Australian governments, would only be possible if it began modestly. In order for the principle of paid leave to be adopted, it was important that the decision was not complicated by affordability. The National Centre for Social and Economic Modelling (NATSEM) was commissioned to provide costings of the proposed model. NATSEM estimated that the net cost of such a scheme would be $213 million each year, once the offsets outlined and reductions in other government payments and increases in tax were included. It is not unusual for governments to introduce policy measures of this order of cost in an ad hoc way and without offsets or even much public discussion.

The government has yet to formally respond to the discussion paper or to adopt any of its recommendations. The paper did, and continues to, generate considerable community and media debate in which political parties have been enthusiastic participants. That has established broad cross-sectional recognition of the struggles of working families to have sufficient time together, in addition to the rights of women in paid work to rest and recover after birth and the importance of enabling them to establish bonds with their children. I am continually invited to speak about the proposal and humbled to find there is broad community support for it, sometimes in unexpected quarters. Sadly, I am unable to provide any comfort to those many young women who ask when the scheme will be starting, although delighted to hear so many of them say support for the proposal and the acceptance of working motherhood attached to it has made them feel more confident about their capacity to combine paid work and family responsibilities. In time we will look back on the

paid maternity leave debate as Australia turning the corner, but introducing it may also prove to be easy compared with other aspects of ensuring paid work and family responsibilities can be more readily met by Australians.

If only the same could be said of the horrors of trafficking in women. Australia signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime, but has yet to comprehensively respond to its obligations to deal with trafficked women as the victims of crime. Indeed, since legislation was enacted in 1999 regarding slavery and sexual servitude, there has not been a single successful prosecution of a trafficker. Little is known about the extent of trafficking in Australia, but that does not mean that slavery and sexual servitude are not serious crimes. The tragic nature of it was highlighted during the inquest of Puonthong Simaplee – a young Thai sex worker, who claimed that she had been trafficked into Australia when she was found working in a brothel without any visa. She died three days later in an immigration detention centre. The government has responded to rising public disquiet by seeking to develop an interagency and cross jurisdictional approach to trafficking, which is to be commended. The Sex Discrimination Unit and I have been pleased to be a part of that process.

Likewise, I provided a submission to the Northern Territory Law Reform Committee's Inquiry into the recognition of Aboriginal Customary Law. My submission was based on consultations with a variety of Indigenous women's groups and activists in the Northern Territory and identified a number of principles they believed should guide the Committee's deliberations. In particular, it was the strong wish of Indigenous women to have crimes of violence treated within the Territory's criminal justice system and that any further recognition of traditional law reflects the views of women as well as men and is tailored to the needs and structure of individual communities. The consultations also reflected my concern to engage in projects for the protection and promotion of the rights of Indigenous women, who remain the most disadvantaged group of women in Australia.

The importance of developing sound jurisprudence in sex discrimination law has driven the Commission to seek leave to intervene or appear as amicus curiae in a number of cases. I sought, and was granted, leave to appear as amicus curiae in Gardner v All Australia Netball Association Ltd. My submissions argued that Ms Gardner had been discriminated against by the respondent's imposition of an interim ban preventing pregnant women from playing netball in the national tournament the respondent administered. Ms Gardner was pregnant when the ban was imposed and was prevented from playing in several netball matches. The Federal Magistrate found that Ms Gardner had been discriminated against on the basis of pregnancy pursuant to section 7 in the provision of services under section 22 of the *Sex Discrimination Act 1984* (Cth) and the respondent was ordered to pay $6 750 in damages to Ms Gardner for loss of income. My submissions to the Court are cited extensively in the decision of the Federal Magistrate.

It is important that the Commission continues to intervene in cases involving the Sex Discrimination Act and that I continue to seek opportunities to be *amicus curiae*. I see the development of comprehensive case law as vital to the acceptance of

human rights and equal opportunity in Australia and intend to play as active a role in legal forums as possible. In addition, this work also highlights areas where legislative amendment might be necessary.

Equal opportunity, the promotion of choice and equal rights for women, as the debate about paid maternity leave so amply demonstrates, is about improving the lives of all Australians. There are close connections between the rights of women, economic growth and social harmony and progress. Communities that ignore change and fail to make these connections, do so at their peril. It is my task to ensure that these issues remain at the forefront and to be vigilant and persistent in my pursuit of equality that is embraced and enjoyed by all of us.

Research and policy

A Time to Value: Proposal for a National Paid Maternity Leave Scheme

Australia at present does not have legislation in place that deals with the provision of universal paid parental or maternity leave at either the national or state or territory level. Australia retains its reservation to article 11(1) of the *Convention on the Elimination of All Forms of Discrimination Against Women* concerning paid maternity leave.

The Sex Discrimination Commissioner's options paper on the issue, outlining options for the introduction of a national scheme of paid maternity leave: *Valuing Parenthood, Options for Paid Maternity Leave*, was launched in Sydney on 18 April 2002.

Following the preparation of the interim paper, receipt of submissions and consultations, the Sex Discrimination Commissioner launched a final paper: *A Time to Value: Proposal for a National Paid Maternity Leave Scheme* in Sydney on 11 December 2002.

The proposal makes 15 recommendations for a national paid maternity leave scheme, with consideration given to aspects of funding, coverage, eligibility, duration, payment level and payment mechanism.

Amy Shoemark, Year 12 student at William Clarke College (NSW), interviews Sex Discrimination Commissioner, Pru Goward on paid maternity leave; discrimination issues in schools; and equal opportunity in the workforce.

Additionally, the paper annexes a report by the National Centre for Social and Economic Modelling (NATSEM) costing the paid maternity leave proposal. The report from NATSEM concluded that the Commissioner's proposal would cost $213 million (net) in its first year.

The paper has generated significant interest within government, the media and the community. The federal Government's Budget in May 2003 did not include provision for a paid maternity leave scheme, however, the government has indicated publicly that paid maternity leave is one of a number of options being considered as part of a taskforce on work and family. The Sex Discrimination Commissioner has met with the chair of that taskforce on three occasions.

Sexual harassment project

In January 2003, the Sex Discrimination Unit (SDU) commenced a research project into the nature and incidence of sexual harassment in employment in Australia. In collaboration with the Complaints Section of the Commission, SDU analysed 152 sexual harassment complaints finalised in 2002. The SDU also commissioned Gallup to conduct a telephone survey on the nature and incidence of sexual harassment in the workplace. This research will enable estimation of unreported sexual harassment.

A package of information, including public awareness materials, will be launched later in 2003.

Trafficking in women

The Sex Discrimination Commissioner and the SDU have been monitoring the situation in relation to trafficking of women in Australia. In early April 2003, *The Australian* newspaper published a series of articles on the issue, particularly focusing on the report of the inquest into the death of a young Thai woman in Villawood Immigration Detention Centre who had allegedly been trafficked into Australia. Following these events, the Minister for Justice and Customs formed an interdepartmental committee to examine appropriate approaches to the issue of trafficking in women from a whole of government perspective.

The Sex Discrimination Commissioner, the SDU Director and a member of the Legal Section, attended a meeting with the Minister for Justice and Customs to discuss the issue. The Sex Discrimination Commissioner also wrote to the chair of the inter departmental committee on 19 May 2003 outlining recommendations for approaching the problem of trafficking in a manner that takes account of the human rights of those who are suspected of being trafficked.

The Sex Discrimination Commissioner and Director are in regular contact with government and community organisations to monitor the issue of trafficking.

International projects

The Sex Discrimination Commissioner and an SDU staff member travelled to China to participate and present at the second Workshop on Family Violence in Minority Areas, held in Xining City, Qinghai Province in July 2002, as part of the China-Australia Human Rights Technical Cooperation Program.

As a member of the Asia Pacific Forum of National Human Rights Institutions, representatives of the Commission attended the seventh Annual Meeting held in New Delhi, India, from 11–13 November 2002. The Director of the Sex Discrimination Unit was invited to participate as a specialist in the area of trafficking in women.

The Sex Discrimination Commissioner was invited by the Department of Foreign Affairs and Trade to travel to Taipei, Shanghai and Hong Kong to deliver a number of speeches for International Women's Day 2003, and to deliver a keynote address at the Faculty of Law, University of Hong Kong, on the role of the Commission in Australia. These visits took place between 6–12 March 2003.

As part of the Australian Government delegation, the Commissioner and the SDU Director attended the 47th session of the Commission on the Status of Women at the United Nations in New York, between 3–14 March 2003.

The Commissioner and the SDU Director attended and presented at a county level training course on trafficking in women in Chengdu City, Sichuan Province, China between 30 March and 4 April 2003, as part of the China Human Rights Technical Cooperation Program.

Submissions

Comment on Australia's 4th and 5th Reports on *Convention on the Elimination of All Forms of Discrimination Against All Women* (CEDAW)

The Commission was asked to comment on Australia's draft CEDAW report. A full list of the Commission's publications aimed at raising awareness of women's rights was supplied, along with updates of legislative amendments to the *Sex Discrimination Act 1984* (Cth) and the *Human Rights and Equal Opportunity Act 1986* (Cth).

Comments on Australia's Report under Equal Remuneration Convention 1951 (ILO 100)

The Commission's contribution to Australia's Report under ILO 100 outlined work on the Pregnancy Guidelines, the Paid Maternity Leave project and the preparation of several submissions, including:

- the Commission's intervention in *Gunn and Taylor Pty Ltd v AMWU* AIRC, 4 June 2002 [PR918573] (an appeal before the Full Bench of the Australian Industrial Relations Commission)
- the Commission's submission to the NSW Government Task Force set up to inquire into the Labour Hire Industry, and
- the Commission's intervention into the Australian Council of Trade Union's test case on parental leave for casual workers.

In response to the Committee of Experts' direct requests, the Commission provided information on the range of publications it produces relevant to pay equity issues and on the outcomes of the National Pregnancy and Work Inquiry.

Submission to the Northern Territory Law Reform Committee Inquiry into the Recognition of Aboriginal Customary Law in the Northern Territory

The Sex Discrimination Commissioner, on behalf of the Commission, lodged a submission to 'Towards Mutual Benefit: An Inquiry into Aboriginal Customary Law in the Northern Territory' on 14 May 2003. This Inquiry is being conducted by a sub-committee of the Northern Territory Law Reform Committee and will report to the Northern Territory Government. The submission focused on the interaction of gender, human rights and Customary Law, with particular emphasis on Indigenous

women's experience of violence. The submission drew on consultations held with Indigenous women on Groote Eylandt, Darwin and Alice Springs in the Northern Territory. An accompanying submission was prepared by the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Sex Discrimination Act exemption applications

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) lodged a request for an extension to its temporary exemption from the *Sex Discrimination Act 1984* (Cth) (SDA) on 7 August 2002 in relation to its Residential Housing Project. The Woomera Residential Housing Project (WRHP) enables some women and their children to live in family-style accommodation away from the Immigration Reception Processing Centre (IRPC), while remaining in immigration detention. Following a visit to the WRHP and IRPC by the Sex Discrimination Commissioner and Human Rights Commissioner and staff, a Notice of Exemption was granted on 14 October 2002 for a further 12 months, subject to the condition that DIMIA permit the Commission to monitor the operation of the project.

On 29 July 2002, the Civil Aviation Safety Authority lodged an application for exemption under both the SDA and the *Disability Discrimination Act 1992*, to allow discrimination on the grounds of pregnancy or disability where this prevents a person from safely fulfilling the inherent requirements of the role covered by the licence concerned. Submissions were sought from the public on this matter and a total of 11 submissions were received. The Commission granted an exemption on 26 November 2002 for the duration of five years.

On 30 August 2002, the Catholic Education Office, Archdiocese of Sydney, applied for an exemption under the SDA in relation to proposed scholarships for male trainee primary school teachers. The Commission received 11 submissions in response to a public notice of inquiry. A notice of the decision declining to grant the exemption was issued on 27 February 2003. The Catholic Education Office has lodged an application seeking to have that decision reviewed by the Administrative Appeals Tribunal.

Interventions and *amicus curiae* functions

The Commission has the power, under both the Human Rights and Equal Opportunity Commission Act and the SDA, to intervene with the leave of the court in court proceedings that involve human rights or discrimination issues. In addition, section 46PV of the Human Rights and Equal Opportunity Commission Act confers on the special purpose Commissioners, including the Sex Discrimination Commissioner, the function of assisting the Federal Court and the Federal Magistrates Service in certain cases as *amicus curiae* (or friend of the Court).

With the assistance of the Sex Discrimination Unit, the Legal Section monitors and intervenes in appropriate matters concerning discrimination based on sex.

Speeches

A selection of the 87 public addresses made by the Sex Discrimination Commissioner during 2002–03 are listed below. Further speeches can be accessed on the Commission's website at www.humanrights.gov.au/speeches/sex_discrim/.

Work and Life: Today's Issue, Work Life Issue Conference, Melbourne, 5 July 2002.

Paid Maternity Leave: Working for Women, 14th Women, Management, and Employment Relations Conference, Sydney, 26 July 2002.

A Good Beginning: Women and Work, Good Beginnings and Macquarie Bank National Awards, Sydney, 20 August 2002.

Sexually Permeated Workplaces: They Don't Work for Women, National Association of Women in Construction Conference, Melbourne, 15 August 2002.

Human Rights, Democracy and Women's Choices, Hunter Valley Research Foundation Series, Newcastle, 3 September 2002.

Tomorrow Today, 21st Century Solutions, National Work and Family Conference, Sydney, 4 September 2002.

Sex Discrimination and Women's Human Rights, University of Technology Law School, Sydney, 23 September 2002.

Defence and Discrimination, Australian Defence Force Intelligence Group, Canberra, 30 September 2002.

Innovation and Social Policy: How Social Policy Works in the New Economy, Canberra Business Council, Canberra, 17 October 2002.

Both Sides of the Thin Blue Line, Women and Policing Globally Conference, Canberra, 20 October 2002.

Bearing the Burden of Culture, UNIFEM Australia Reception, Brisbane, 24 October 2002.

Without Gender Prejudice, Without Prejudice Forum, Sydney, 15 November 2002.

Professional Women: Choice and Challenge, Second National Conference on Women in Science, Technology and Engineering, Sydney, 29 November 2002.

Today's Changes, Tomorrow's Challenges, Australian Mines and Metals Association Conference, 27 February 2003.

Women's Rights, Human Rights and Economic Development, Australian Consulate General in Shanghai International Women's Day Luncheon, China, 10 March 2003.

All Aboard the 'Mummy Track', VIVE Magazine Working Mothers Forum, Sydney, 8 May 2003.

Women In Sport: The Current Playing Field, Australian Sport Commission Women and Sport Forum, Sydney, 20 May 2003.

Changes in Population and Lifestyle – Impacts on Workplace Practice, Committee for Economic Development of Australia, Adelaide, 23 May 2003.

Discrimination, Harassment and Equal Opportunity: "Insights" Launch, Clayton Utz Solicitors, Sydney, 11 June 2003.

Chapter 9
International Activities

In 2002–03, 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 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: all of the Commission's costs are met; the program is clearly capable of achieving its goals, and; it does not detract in any way from the Commission's domestic work.

China

The Commission's most substantial international program involvement is with the China-Australia Human Rights Technical Cooperation Program (HRTC), which is an integral part of the annual Dialogue on Human Rights with China. The Commission participated in this year's Dialogue meetings held in Canberra on 13–14 August 2002.

The HRTC program encompasses three principal themes: protection of the rights of women and children, protection of ethnic minority rights, and; reform of the legal system. Each year HRTC undertakes a series of activities intended to assist China to promote and protect human rights. In 2002–03, the program included providing scholarships for Chinese officials to study human rights in Australia and workshops on subjects such as measures to combat trafficking in women and children. The Commission has hosted visits to Australia by Chinese officials working in areas relevant to human rights protection to work with their Australian counterparts. This has included Chinese judges, officials of the prison system and officials involved in development of educational policies for minority groups. The project supported the translation into Chinese and

subsequent publication of four seminal texts dealing with mass communication and the right to freedom of expression.

The 2002–03 HRTC was affected by Severe Acute Respiratory Syndrome (SARS), which resulted in some activities being postponed at the request of the Chinese authorities. Those activities, which involve workshops with Chinese judges and prosecutors, have since been re-scheduled to later in 2003.

The program has had 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.

Indonesia

During 2002–03 the Commission continued to work with the Indonesian National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia, commonly known as Komnas HAM), although the formal program of cooperation concluded in May 2002.

The Commission hosted a visit by the newly-appointed Secretary-General of Komnas HAM in December 2002. In June 2003, Commission staff visited Jakarta to provide input into the development of Komnas HAM's long-term cooperation plan.

South Africa

The Commission continued its assistance to the South African Commission on Gender Equality. This year's program focused mainly on initiatives to strengthen the organisation's capacity to manage sex discrimination complaints and undertake policy development work on sex discrimination issues.

Vietnam

The Commission participated in the second session of the annual Australia-Vietnam Dialogue on International Organisations and Legal Issues, held in Canberra on 27 June 2003. The Dialogue included discussion of human rights issues. As part of the Dialogue, the Commission hosted a study visit by officials of the Government of Vietnam on 29 June – 4 July 2003. The study visit examined Australian systems for the protection of human rights and their relevance to Vietnamese priorities and explored options for a longer term program of technical cooperation.

Iran

The Commission participated in the inaugural session of the Iran-Australia Human Rights Dialogue, held in Tehran on 8–10 December 2002. As part of the Dialogue, the Commission will host a visit to Australia on 9–17 August 2003 by officials of the Islamic Human Rights Commission of Iran.

Other countries

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).

In addition to these bilateral programs, during 2002–03 the Commission participated in the preparatory stages of a project of regional cooperation to prevent trafficking in people, involving a number of countries in South East Asia. The initial stages included a consultation and design visit by the project team to countries in the region.

Appendices

Appendix 1

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

Human Rights and Equal Opportunity Commission Act

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

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

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

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

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

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

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

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

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

- race
- colour
- sex
- religion
- political opinion
- national extraction
- social origin
- age
- medical record
- criminal record
- sexual preference
- trade union activity
- marital status
- nationality
- disability (whether physical, intellectual, psychiatric or mental)
- impairment (including HIV/AIDS status).

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

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

Racial Discrimination Act

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

Sex Discrimination Act

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

Appendix 2

Commission publications released during 2002–03

General

Human Rights and Equal Opportunity Commission *Annual Report 2001–02* (tabled report)

The Complaint Guide: An introduction for people considering making a complaint, or responding to a complaint before the Human Rights and Equal Opportunity Commission (updated)

Indigenous Complaints Guide: *Discrimination - Know Your Rights*

Change and Continuity: Review of the Federal Unlawful Discrimination Jurisdiction

Review of Changes to the Administration of Federal Anti-Discrimination law: Reflections on the initial period of operation of the Human Rights Legislation Amendment Act (No.1) 1999 (Cth)

2002 Human Rights Award and Medals brochure

Aboriginal and Torres Strait Islander Social Justice

Social Justice Report 2002 (tabled report)

Native Title Report 2002 (tabled report)

Development and Indigenous Land: A Human Rights Approach

Native Title and Human Rights – General Pamphlet about Native Title

Benchmarking Reconciliation and Human Rights – Workshop report, November 2002

Disability Rights

Don't Judge What I Can Do By What You Think I Can't: Ten years of achievements using Australia's Disability Discrimination Act

Human Rights

A report on visits to immigration detention facilities by the Human Rights Commissioner (2001)

HREOC Report *No. 19 – Report of inquiries into complaints of discrimination in employment on the basis of criminal record – Mr Mark Hall v NSW Thoroughbred Racing Board* (2002)

HREOC Report *No. 20 – Report of inquiries into complaints of discrimination in employment on the basis of criminal record – Ms Renai Christensen v Adelaide Casino Pty Ltd* (2002)

HREOC Report *No. 21 – Report of an inquiry into a complaint by six asylum seekers concerning their transfer from immigration detention centres to State prisons and their detention in those prisons* (2002)

HREOC Report *No. 22 – Report of an inquiry into a complaint by Mr XY concerning his continuing detention despite having completed his criminal sentence* (2002)

HREOC Report *No. 23 – Report of an inquiry into a complaint by Mr Hassan Ghomwari concerning his immigration detention and the adequacy of the medical treatment he received while detained* (2002)

HREOC Report *No. 24 – Report of an inquiry into complaints by five asylum seekers concerning their detention in the separation and management block at the Port Hedland Immigration Reception and Processing Centre* (2002)

HREOC Report *No. 25 – Report of an inquiry into a complaint by Mr Mohammed Badraie on behalf of his son Shayan regarding acts or practices of the Commonwealth of Australia (the Department of Immigration, Multicultural and Indigenous Affairs)* (2002)

Racial Discrimination

Isma newsletters - No. 1 (May 2003) and No. 2 (June 2003).

Race Discrimination Fact Sheets

Erace forum papers (online)

Cyber-racism background paper (online)

Symposium report (online)

Sex Discrimination

A Time to Value: Proposal for a Paid Maternity Leave scheme

Appendix 3

Freedom of Information

The Freedom of Information Act gives the general public legal access to government documents.

Freedom of Information statistics

During 2002–03, the Commission received 13 requests for access to documents under the Freedom of Information Act:

- All requests for access to documents related to complaints.
- Two of the requests were discontinued.

A total of nine applications were processed.

Categories of documents

Documents held by the Commission relate to:

- administration matters, including personnel, recruitment, accounts, purchasing, registers, registry, library records and indices;
- complaint handling matters, including the investigation, clarification and resolution of complaints;
- legal matters, including legal documents, opinion, advice and representations;
- research matters, including research papers in relation to complaints, existing or proposed legislative practices, public education, national inquiries and other relevant issues;
- policy matters, including minutes of Commission meetings, administrative and operational guidelines;
- operational matters, including files on formal inquiries; and
- reference materials, including press clippings, survey and research materials, documents relating to conferences, seminars and those contained in the library.

Freedom of Information procedures

Initial inquiries about access to Commission documents should be directed to the Freedom of Information Officer by either telephoning (02) 9284 9600 or by writing to:

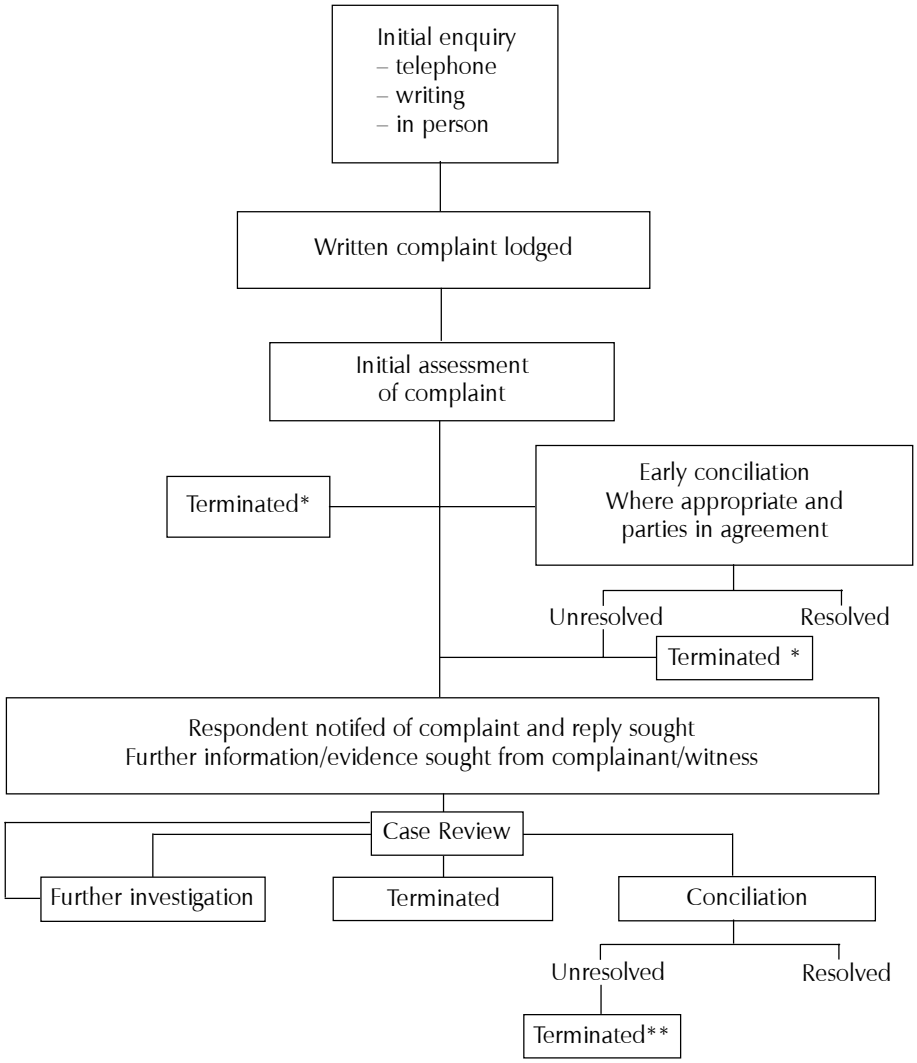
Freedom of Information Officer
Human Rights and Equal Opportunity Commission
GPO Box 5218
Sydney, NSW 1042

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
- Be processed within 30 days of receipt.

Appendix 4

The complaint handling process



* When complaints under the Racial, Sex and Disability Discrimination Acts are terminated, the complainant may apply to have the allegations heard and determined by the Federal Court or the Federal Magistrates Service.

** Complaints under the Human Rights and Equal Opportunity Commission Act concerning discrimination in employment or a breach of human rights, which cannot be conciliated, cannot be taken to the Federal Court. If the President is satisfied that the subject matter of the complaint constitutes discrimination or a breach of human rights these findings are reported to the Attorney-General for tabling in Parliament.

Appendix 5

Human resources and administrative services

Performance management and staff development

The Commission's Performance Management Scheme provides a framework to manage and develop our staff to achieve our corporate objectives. The scheme provides regular and formal assessment of an employee's work performance and allows for access to training and skill development.

The Commission's Certified Agreement recognises the need to provide adequate training for staff to support workplace changes. This is especially relevant with changes in the information technology area where staff are provided with relevant and ongoing computer training.

As part of the Commission's staff development strategy, staff are provided with support under our Studies Assistance policy. The policy provides for access to study leave where study is relevant to the work of the Commission, an individual's work responsibilities and where it assists with career development.

Workplace diversity and equal employment opportunity

The Commission recognises that diversity in our staff is one of our greatest strengths and assets and is committed to valuing and promoting the principles of workplace diversity through our work practices. The Commission's *Workplace Diversity Plan* has been in operation since September 1999 and was reviewed in 2002–03 by the Workplace Diversity Committee, which assessed that the majority of performance indicators were being met. In the latter part of 2003 the Committee will develop a new *Workplace Diversity Plan*. Committee members attended a workshop on the retention and recruitment of Indigenous staff and will develop strategies for the plan.

Cultural awareness training was held for all Commission staff in July 2002 and staff also celebrated NAIDOC week and the International Day for People with Disabilities during the year. The Commission again supported an Indigenous trainee under a 12-month training program as part of the Commission's Indigenous employment strategy to assist in the employment and development of Indigenous staff. Other strategies under the plan include supporting staff with family responsibilities, such as: part-time work and supporting employment opportunities for people with disabilities.

Occupational health and safety

The Commission's Health and Safety Committee includes a staff health and safety representative and four corporate support staff who met regularly through the year. A hazards survey was conducted in November 2002 and no major problems were identified. The Committee monitor any OH&S issues that arise and personnel staff attend COMCARE forums. 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, confidential service for staff and their families which provides counselling on personal and work-related problems if required.

Workplace relations and employment

Staff at the Commission are employed under section 22 of the *Public Service Act 1999*. The Commission's current Agreement was certified by the Australian Industrial Relations Commission on 19 December 2002 and is in operation until 15 July 2005. The Agreement is comprehensive and was certified under section 170LJ of the *Workplace Relations Act 1976*.

The number of Commission employees covered by the Agreement as at 30 June 2002 was 109, including both ongoing and non-ongoing staff. Productivity savings funded a 12 percent salary increase to staff, delivered in three instalments over the life of the Agreement. Redundancy benefits were changed, with a reduction to the retention periods from 13 and seven months to three months and an early separation payment in lieu of notice periods. Travelling allowances were aligned to the Australian Taxation Office's rulings on reasonable daily travel allowance and a private non-commercial rate for travelling allowance was introduced. The Agreement maintains core employment conditions and supports family friendly policies. Staff are able to purchase additional leave and access further benefits such as salary packaging and cashing out five days recreation leave (subject to conditions). Salary progression within classification levels is subject to performance assessment. Salary ranges are reflected in the table below. The Commission has five staff covered by Australian Workplace Agreements, including one Senior Executive level staff member.

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.

Staffing overview

The Commission's average staffing level for 2002–03 was 95 staff with a turnover of 14 percent for ongoing staff. This was a similar turnover to the two previous financial years. In order to meet some short-term staffing needs for the year additional non-ongoing staff were employed. An overview of the Commission's staffing profile as at 30 June 2003 is summarised in the table below.

Classification	Male	Female	Full-time	Part-time	Total Ongoing	Total Non-ongoing
Statutory Office Holder	3	1	3	1		4
SES Band 2		1	1		1	
SES Band 1						
EL2 above the barrier ($87 025)		2	1	1	2	
EL 2 ($72 425 – $83 412)	9	10	17	2	18	1
EL 1 ($62 796 – $68 863)	6	10	12	4	13	3
APS 6 ($50 202 – $56 268)	5	22	26	1	21	6
APS 5 ($45 352 – $48 984)	4	3	6	1	3	4
APS 4 ($40 661 – $44 149)	0	10	9	1	5	5
APS 3 ($36 483 – $39 376)	2	12	10	4	9	5
APS 2 ($32 913 – $35 519)	1	4	4	1	4	1
APS 1 ($28 303 – $31 280)	2	2	1	3	2	2
TOTAL	**32**	**77**	**90**	**19**	**78**	**31**

Consultancy services

During 2002–03 the Commission used a range of consultancy services where there was, for example, a need for rapid access to latest technology and experience in its application; lack of in-house resources; the need for independent study; or a need for a change agent or facilitator. There were _____ consultants under engagement during the financial year and total payments of $_____ were made to consultants. A full listing of the names and amounts is available on the Commission website at www.humanrights.gov.au.

Purchasing

The Commission's purchasing procedures are based on the Commonwealth Procurement Guidelines issued by the Department of Finance and Administration. The procedures address a wide range of purchasing situations, allowing managers to be flexible when making purchasing decisions whilst complying with the Commonwealth's core principle of value for money.

Ecologically sustainable development and environmental performance

The Commission uses energy saving methods in its operations and endeavours to make the best use of resources.

The Commission has implemented a number of environmental initiatives to ensure issues of environmental impact are addressed. Waste paper, cardboard, printer cartridges and other recyclable materials are recycled subject to the availability of appropriate recycling schemes. Preference is given to environmentally sound products when purchasing office supplies. Purchase and/or leasing of "Energy Star" rated office machines and equipment is encouraged, as are machines with 'power save' features.

Fraud control

The Commission has prepared a fraud risk assessment and fraud control plan and has procedures and processes in place to assist in the process of fraud prevention, detection, investigation and reporting in line with the Commonwealth Fraud Control Guidelines. The Fraud Control Plan is made available electronically to all Commission staff.

Commonwealth Disability Strategy

The Commission along with all other Australian Government agencies reports against the CDS performance framework annually. Full details on the CDS can be found on the Department of Family and Community Services website at www.facs.gov.au/disability/cds.

Through the CDS, the government seeks to ensure its policies, programs and services are as accessible to people with disabilities as they are to all other Australians. This of course is integral to the work of the Commission and evident in the work we do. The CDS identifies five core roles that may be relevant to the agency. The Commission's primary roles are that of policy adviser, service provider and employer. Full details on the policies and services highlighted in the appendices can be found within the relevant section of the Annual Report.

The Commission's last Disability Action Plan was reviewed in 2001 and this can be found on the Commission's website. The Commission is in the process of developing a new action plan. The Commission is committed to implementing best practices in providing and improving access to its services for people with disabilities. In particular, our Complaint Handling processes, online access to our services, website and education material, and consultation with disability groups provide examples of what we are doing to achieve this. Further details of these can be found within the Annual Report.

COMMONWEALTH DISABILITY STRATEGY PERFORMANCE REPORTING JUNE 2003

Further details on programs and policies outlined against the performance indicators can be found in the relevant section of the annual report.

Policy Advisor Role

Performance Indicator 1:

New or revised policy/program 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.

Current level of performance 2002–03

- Commission public inquiries and exemption applications target people with disabilities to seek views on the issue before finalisation. In the Disability Discrimination Unit (DDU) compliance is 100 percent.

- National peak disability groups and selected regional groups are consulted on new projects in development phase to seek their views on impact. In the DDU compliance is 100 percent.

  All submissions to inquiries are taken in a range of formats, including verbal/audio (transcribed by the Commission), email, and handwritten letters.

  All new initiatives are made available publicly through the Commission's website and key disability organisations are informed of developments through the Commission' mailing lists.

  Views on Commission projects are sought through extensive use of e-based, networks including disability specific discussion groups and bulletin boards.

  Disability-related email discussion lists are monitored for relevant policy issues and are used to announce calls for submissions.

  100 percent compliance in the DDU.

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 2002–03

- Where consultation on any DDU policy/program occurs the views of people with disabilities are sought through direct contact with representative organisations and through invitation to respond through the Commissions website. Examples include the development of the *Standard on Access to Premises* and the *Agreement with TV Broadcasters to Increased Captioning*. Full details can be found in the Annual Report.
- Public consultation events all occur in accessible venues with hearing augmentation and sign language interpreters available.
- 100 percent compliance.

Performance Indicator 3:

Public announcements of new, revised or proposed policy/program initiatives are available in accessible formats for people with disabilities in a timely manner

Performance measure

- Percentage of new, revised or proposed policy/program announcements available in a range of accessible formats.
- Time taken in providing announcements in accessible formats.

Current level of performance 2002–03

- All information about new Commission initiatives is available on a W3C/WAI compliant website simultaneous with public release. For more information on accessibility compliance refer to http://www.w3c.org. Performance measure for web release = 100 percent.
- 100 percent of announcements and information material available in accessible electronic format.
- 100 percent available in standard print, large print, audio and Braille on request.
- Time taken to produce in other than electronic format varies according to size of document, but generally within seven days.
- E-mail lists deliver information and links to several thousand subscribers. All national disability peak organisations subscribe to this list.

Provider Role

Further details on the Commission's Complaint Handling function, with a full description of its services and relevant statistics can be found in the Complaint Handling Section of the Annual Report.

Performance Indicator 1:

Complaints information service provides information about complaint handling service to people with disabilities

Performance measure

- Complaints information service accessible to people with disabilities.
- Number of calls/e-mails/visits to complaints information service related to disability issues.
- Number of groups that attended Complaint Handling information session, or were visited by the Complaint Handling Section (CHS) during regional and interstate visits included disability advocacy and disability legal services.

Current level of performance 2002–03

- Commission complaints information is available in electronic and alternative formats. E-mail facility and accessible online complaint form for the lodgement of complaints is available. Telephone and TTY facilities are available with a national 1300 number at local call cost.
- All Complaint Handling brochures and publications are available on the Commission website in accessible electronic format and are available in alternative formats on request. Information about

the complaints process and legislation is available in plain English format on the Commission's website. The website is updated regularly. .

- 21 percent of phone/email/written enquiries to the CIS related to disability issues.
- 172 groups attended a CHS session or were visited by CHS staff.
- A Complaints information referral list is updated regularly to ensure callers with disabilities can be referred to appropriate advocacy groups and other appropriate services.

Goals 2003–04

- Increase targeted community education and liaison to disability groups and advocacy organisations in all states in particular regional areas.
- Development of an easy English information sheet about the complaint process for use by people with intellectual disabilities.

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 2002–03

- 492 complaints were received under DDA legislation for 2002–03. 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. 52 percent of responses to a demographics question indicated the complainant had a disability.
- 53 requests for assistance were recorded, including assistance with language interpreters and sign language interpreters, TTY, and assistance with writing.
- There were no formal complaints received regarding accessibility of the Commission complaint handling service or premises. Performance measure = 100 percent.
- The Commission's premises are accessible. Premises used for remote conciliations conferences are accessible. Performance measure = 100%.

- The Complaint Handling Section (CHS) Access Committee reviews access to the CHS service by the community, including specific focus on people with disabilities. Further details are available in the Annual Report.

Performance Indicator 3:

Staff training and development, includes training related to people with disabilities

Performance measure

- Percentage of training programs that include information regarding people with disabilities and relevance to complaint handling processes.

Current level of performance 2002–03

- CHS investigation and conciliation training courses include specific training on accommodating people with disabilities in the complaint handling investigation and conciliation processes. Performance measure = 100 percent.
- Ad hoc CHS training sessions specifically address relevance to people with disabilities who use complaint handling services. Performance measure = 100 percent.
- CHS Complaint Handling Manual advises staff to consider reasonable accommodation for people with disabilities is provided during the investigation and conciliation process, such as provision of Auslan interpreters, use of TTY, use of alternative formats for information. Performance measure = 100 percent.

Performance Indicator 4:

Complaint mechanism in place to address concerns raised about service and addresses requirements of people with disabilities

Performance measure

- Established complaint/grievance mechanism in operation. Detailed in Charter of service which is provided to all parties to a complaint and available on website. Provided in alternative format on request.

Current level of performance 2002–03

- Charter of Service addresses roles and responsibilities of HREOC and parties.
- One complaints about accessibility of service or disability related issues were received under the Charter in the year.
- Performance measure = 99 percent.

Employer Role

Performance Indicator 1:

Employment policies, procedures and practices comply with the requirements of the *Disability Discrimination Act 1992*

Performance Measure

- Number of employment policies, procedures and practices that meet the requirements of the *Disability Discrimination Act 1992*.

Current level of performance 2002–03

- The Corporate Plan includes reference to APS values and social justice principles to ensure access to the Commission's services.
- The Commission's *Certified Agreement 2002–2005* contains reference to Workplace Diversity principles. Most of the Commission's policies on employment are contained within the Certified Agreement.
- The *Workplace Diversity Plan* (WDP) outlines strategies to maximise employment opportunities for people with disabilities. All new staff on induction are provided with a copy of the WDP.
- The E-mail/internet policy is reviewed annually. It specifically refers to the inappropriate use of emails that may demean people with disabilities.
- No formal complaints/grievances made by staff with disabilities with regard to current work practices.
- Reasonable adjustment principles are adhered to in the modification of an employees duties in the workplace. Two employees have been provided with special voice activated software to enable them to undertake their duties.

Performance Indicator 2:

Recruitment information for potential job applicants is available in accessible formats on request

Performance measure

- Percentage of recruitment information requested and provided in alternate electronic formats and accessible formats other than electronic.
- Average time taken to provide accessible information in electronic formats and formats other than electronic.

Current level of performance 2002–03

- Performance in providing accessible formats for recruitment material = 100 percent.

- Applicants are advised on the Commission's website that recruitment information is able to be provided in any format. All recruitment material is on the Commission's website and available by download simultaneously as advertising in the press. Advertisements in the press advise that information is available at contact phone no, by TTY phone and on the Commission's website. The Commission website meets the criteria for accessibility as outlined in the Government Online Strategy. The Jobs page at www.humanrights.gov.au/jobs/index.html received approx 49 265 page views during the period 1 July 2002 – 30 June 2003.
- There were no requests for Braille during 2002–03. The Commission is able to supply any requests within three to seven days.

Actions for 2002–03

- Monitor use of the website and requests for alternate formats.

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 2002–03

- Selection guidelines include information on reasonable adjustment and guidelines for interviewing staff with disabilities.
- Recruitment action is managed internally and not outsourced and all committees are provided with selection information on reasonable adjustment.

Performance Indicator 4:

Training and development programs consider the needs of staff with disabilities

Performance measure

- Percentage of training and development programs that consider the needs of staff with disabilities.

Current level of performance 2002–03

- Due to the small number of staff in the Agency, training is co-ordinated by each of the unit managers under the Commission's Performance Management scheme. The majority of training is provided off-site with external providers. Any in-house training programs recognise the needs of people with disabilities.

- Training nomination forms include specific requirements that may be needed such as:
  - wheelchair access
  - accessible toilets/parking
  - a hearing device
  - sign language interpreter
  - an attendant
  - a support person
  - information in Braille, audio cassette, large print, ASCII format.

Performance Indicator 5:

Training and development programs include information on disability issues as they relate to the content of the program

Performance measure

- Percentage of training and development programs that include information on disability issues as they relate to the program.

Current level of performance 2002–03

- As noted, above training is coordinated by each individual section.
- Induction includes information on Workplace Diversity and relevant legislation that the Commission administers, including the Disability Discrimination Act.
- The Complaint Handling section conducts training and information on disability issues for staff.
- Commission staff observed International Day of People with Disabilities in December 2002 as an activity under the Commission's *Workplace Diversity Plan* and awareness raising for staff.

Actions 2003–04

- An in-house session on disability awareness is planned for staff.

Performance Indicator 6:

Complaint/grievance mechanism, including access to external mechanisms, in place to address issues and concerns by staff

Performance measure

- Established complaints/grievance mechanisms, including access to external mechanisms in operation.

Current level of performance 2002–03

- There is an established process in the HREOC *Certified Agreement 2002–2005* for complaints grievances, which includes access to external review through the Australian Public Service Commission.

- All staff are advised of access to the Commission's Employee Assistance Program and encouraged to use this service when needed. This free service provides counselling and support for staff and their families.
- Provision of access to complaints/grievance mechanisms = 100 percent.

Note: Accessible electronic formats include ASCII or text files and html for the web. Non-electronic accessible formats include Braille, audio cassette, large print and easy English. Other ways of making information available include: video captioning and Auslan interpreters.

Financial Statements

Australian National
Audit Office

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 2003. The financial statements comprise:

- Statement by the President;
- Statements of Financial Performance, Financial Position and Cash Flows; and
- Notes to and forming part of the Financial Statements.

The Commission's 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 Accounting Standards and other mandatory professional reporting requirements in Australia and statutory requirements so as to present a view which is consistent with my understanding of the Commission's financial position, its financial performance and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

PO Box A456 Sydney South NSW 1235
130 Elizabeth Street
SYDNEY NSW
Phone (02) 9367 7100 Fax (02) 9367 7102

Audit Opinion

In my opinion the financial statements:

(i) have been prepared in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and

(ii) give a true and fair view, in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia and the Finance Minister's Orders, of the financial position of the Human Rights and Equal Opportunity Commission as at 30 June 2003, and its financial performance and cash flows for the year then ended.

Australian National Audit Office

P Hinchey
Senior Director
Delegate of the Auditor-General

Sydney
24 September 2003

Human Rights and Equal Opportunity Commission
Statement by the President

In my opinion, the attached financial statements for the year ended 30 June 2003 give a true and fair view of the matters required by the *Finance Minister's Orders* made under the *Financial Management and Accountability Act 1997.*

John von Doussa, QC
President

23 September 2003

Human Rights and Equal Opportunity Commission
Statement of Financial Performance
for the year ended 30 June 2003

	Notes	**2003** **$**	2002 $
Revenues from ordinary activities			
Revenues from government	3.1	**11,172,000**	10,765,000
Sales of goods and services	3.2	**2,878,238**	4,081,732
Interest	3.3	**41,613**	98,561
Proceeds from sale of assets	3.4	**218**	432
Revenues from ordinary activities		**14,092,069**	14,945,725
Expenses from ordinary activities			
Employees	4.1	**7,518,635**	7,485,375
Suppliers	4.2	**5,382,439**	5,900,137
Depreciation and amortisation	4.3	**570,093**	765,240
Book value of assets disposed	3.4	**5,660**	7,556
Write-down of assets	4.4	**-**	514,348
Expenses from ordinary activities		**13,476,827**	14,672,654
Net surplus		**615,242**	273,069
Net debit to asset revaluation reserve		**-**	(5,996)
Total revenues, expenses and valuation adjustments attributable to the Commonwealth Government and recognised directly in equity		**-**	(5,996)
Total changes in equity other than those resulting from transactions with owners as owners		**615,242**	267,073

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 2003

	Notes	**2003** **$**	2002 $
ASSETS			
Financial assets			
Cash	5.1	**2,500,017**	1,917,346
Receivables	5.2	**554,619**	987,415
Total financial assets		**3,054,636**	2,904,761
Non-financial assets			
Infrastructure, plant and equipment	6.1,6.3,6.4	**805,257**	1,059,664
Intangibles	6.2,6.3	**89,599**	82,894
Other	6.5	**93,328**	236,223
Total non-financial assets		**988,184**	1,378,781
TOTAL ASSETS		**4,042,820**	4,283,542
LIABILITIES			
Non-interest bearing liabilities			
Lease Incentives	7	**782,706**	1,565,409
Total non-interest bearing liabilities		**782,706**	1,565,409
Provisions			
Capital use charge	8.1	**-**	29,359
Employees	8.2	**1,924,573**	1,816,147
Total provisions		**1,924,573**	1,845,506
Payables			
Suppliers	9.1	**256,206**	372,557
Other	9.2	**-**	35,977
Total payables		**256,206**	408,534
TOTAL LIABILITIES		**2,963,485**	3,819,449
NET ASSETS		**1,079,335**	464,093
EQUITY			
Contributed equity	10	**1,006,000**	1,006,000
Reserves	10	**49,596**	49,596
Accumulated surplus/(deficits)	10	**23,739**	(591,503)
TOTAL EQUITY		**1,079,335**	464,093
Current assets		**3,147,964**	3,140,984
Non-current assets		**894,856**	1,142,559
Current liabilities		**1,994,676**	2,130,896
Non-current liabilities		**968,809**	1,688,553

The above statement should be read in conjunction with the accompanying notes.

Human Rights and Equal Opportunity Commission
Statement of Cash Flows
for the year ended 30 June 2003

	Notes	**2003** **$**	2002 $
OPERATING ACTIVITIES			
Cash received			
Goods and services		**3,408,467**	4,094,873
Appropriations for outputs		**11,137,000**	10,730,000
Interest		**53,000**	91,635
GST received from ATO		**427,958**	340,657
Total cash received		**15,026,425**	15,257,165
Cash used			
Employees		**7,360,298**	7,148,664
Suppliers		**6,720,623**	8,070,706
Total cash used		**14,080,921**	15,219,370
Net cash from operating activities	11	**945,504**	37,795
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		**218**	432
Total cash received		**218**	432
Cash used			
Purchase of property, plant and equipment		**275,513**	282,840
Purchase of intangibles		**52,538**	12,050
Total cash used		**328,051**	294,890
Net cash (used by) investing activities		**(327,833)**	(294,458)
FINANCING ACTIVITIES			
Cash used			
Capital Use charge paid		**35,000**	63,000
Total cash used		**35,000**	63,000
Net cash (used by) financing activities		**(35,000)**	(63,000)
Net increase / (decrease) in cash held		**582,671**	(319,663)
Cash at the beginning of the reporting period		**1,917,346**	2,237,009
Cash at the end of the reporting period	5.1	**2,500,017**	1,917,346

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 2003

	2003 $	2002 $
BY TYPE		
Other Commitments		
Operating leases[1]	**15,726,306**	3,756,268
Other commitments[2]	**3,454,397**	992,706
Total other commitments	**19,180,703**	4,748,974
Commitments receivable	**(5,236,201)**	(2,216,794)
Net commitments	**13,944,502**	2,532,180
BY MATURITY		
Operating Lease Commitments		
One year or less	**1,548,911**	1,916,334
From one to five years	**6,230,280**	1,839,934
Over five years	**5,368,712**	-
Other Net Commitments		
One year or less	**(414,261)**	(597,705)
From one to five years	**959,358**	(626,383)
Over five years	**251,502**	-
Net Commitments by maturity	**13,944,502**	2,532,180

NB: Commitments are GST inclusive where relevant.

Note	*Nature of lease*	*General descrition of leasing arrangement*
1	Leases for office accommodation	The Commission has signed a heads of agreement document. The agreement allows annual fixed rental increases. There are no options to renew.
1	Agreements for the provision of motor vehicles to senior executive officers	No contingent rentals exist. There are no renewal or purchase options available to HREOC.
1	A lease in relation to desktop computer equipment	The lessor provides all desktop computer equipment and software. The contract allows for variations to the duration of the rental and to the equipment rented.
2	Other commitments	Consisting of agreements with other entities for services, outgoings and AEPUs.

Human Rights and Equal Opportunity Commission
Schedule of Contingencies
as at 30 June 2003

Contingent liabilities	-	-
Contingent assets	-	-
Net contingent liabilities	-	-

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or considered remote, are disclosed in Note 12: Contingent Liabilities and Assets.

The above schedules should be read in conjunction with the accompanying notes.

Note 1 - Summary of significant accounting policies

1.1 Objectives of the Human Rights and Equal Opportunity Commission

The Commission has one outcome:
"An Australian society in which the human rights of all are respected, protected and promoted".

The Commission's objective is to ensure that Australians:
- have access to independent human rights complaint handling and public inquiries processes; and
- benefit from human rights education, promotion, monitoring and compliance activities.

1.2 Basis of accounting

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general purpose financial report.

The statements have been prepared in accordance with:

- Finance Minister's Orders (or FMOs, being the *Financial Management* and Accountability (Financial Statements for reporting periods ending on or after 30 June 2003) Orders);

- Australian Accounting Standards and Accounting Interpretations issued by the Australian Accounting Standards Board; and

- Consensus Views of the Urgent Issues Group.

The Statements of Financial Performance and Financial Position have been prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets, which, as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

Assets and liabilities are recognised in the Commission's Statement of Financial Position when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionally unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets which are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies (other than unquantifiable or remote contingencies, which are reported at Note 12).

Revenues and expenses are recognised in the Statement of Financial Performance when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

The continued existence of the Commission in its present form, and with its present functions, is dependent on Government policy and on continuing appropriations by Parliament for the Commission's administration and functions.

1.3 Changes in accounting policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 2001-02, except in respect of;

- the accounting for output appropriations (refer to Note 1.4),
- the recognition of equity injections (refer to Note 1.5),
- measurement of certain employee benefits at nominal amounts (refer to Note 1.6);
- the initial revaluation of property, plant and equipment on a fair value basis (refer to Note 1.11);
- A reduction in the asset threshold value from $2,000 to $1,500 (refer to Note 1.11); and
- the imposition of an impairment test for non-current assets carried at cost (refer to Note 1.12).

1.4 Revenue

Revenues from Government

Departmental outputs appropriations for the year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised as revenue, except for certain amounts which relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Resources received free of charge

Services received free of charge are recognised as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised at their fair value when the asset qualifies for recognition, unless received from another government agency as a consequence of a restructuring of administrative arrangements (refer to Note 1.10).

Other revenue

Revenue from the sale of goods is recognised upon delivery of goods to customers.

Revenue from the rendering of a service is recognised by reference to the stage of completion of contracts or other agreements to provide services. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

Revenue from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

1.5 Transactions with the Government as Owner

Equity injections

From 1 July 2002, the FMOs require that amounts of appropriations designated as 'equity injections' (less any savings offered up in Portfolio Additional Estimates Statements) are recognised directly in Contributed Equity as at July 1 or later date of effect of the appropriation.

This is a change of accounting policy from 2001-02 to the extent any part of an equity injection that was dependent on specific future events occuring was not recognised until the appropriation was drawn down.

The change in policy has no financial effect in 2002-03.

Capital Use Charge

A Capital Use Charge of 11% (2002: 11%) is imposed by the Government on the departmental net assets of the Commission at year end. The net assets figure is adjusted to take account of asset gifts and revaluation increments during the financial year. The Charge is accounted for as a dividend to Government.

In accordance with the recommendations of a review of Budget Estimates and Framework, the Government has decided that the Charge will not operate after June 2003.

1.6 Employee benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for wages and salaries (including non-monetary benefits) and annual leave are measured at their nominal amounts. Other employee benefits expected to settle within 12 months of the reporting date are also measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability. This is a change in accounting policy from last year required by an initial application of a new Accounting Standard AASB 1028 from 1 July 2002. As the Commission's certified agreement raises pay rates in January each year, the financial effect of this change is not material.

All other employee benefit liabilities are measured as the present value of the estimated cash outflows to be made in respect of services provided by employees up to the reporting date.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Commission is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

Separation and redundancy

Provision is made for separation and redundancy payments in circumstances where the Commission has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

Superannuation

Staff of the Commission are members of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. The liability for their superannuation benefits is recognised in the financial statements of the Commonwealth and is settled by the Commonwealth in due course.

The Commission makes employer contributions to the Commonwealth at rates determined by an actuary to be sufficient to meet the cost to the Commonwealth of the superannuation entitlements of the Commission's employees.

The liability for superannuation recognised as at 30 June represent outstanding contributions for the percentage of pay 1 in the 2004 financial year that related to duties performed in the 2003 financial year.

1.7 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.

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. Non-current assets that are recognised are depreciated over the term of the lease.

1.8 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution.

1.9 Financial instruments

Accounting policies for financial instruments are stated at Note 17.

1.10 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.

1.11 Infrastructure, plant and equipment

Asset recognition threshold

Purchases of infrastructure, plant and equipment are recognised initially at cost in the Statement of Financial position, except for purchases costing less than $1,500 (2002: $2,000), which are expensed in the year of acquisition (other than where they form a part of a group of similar items which are significant in total). In the 2003 financial year the effect of this was an increase in the gross assets of $14,633.

Revaluations

Basis

Infrastructure, plant and equipment are carried at valuation. Revaluations undertaken up to 30 June 2002 were done on a deprival basis. The deprival value of all assets as at 30 June 2002 was deemed to be their fair value at 1 July 2002. The financial effect of the change is given by the difference between the carrying amounts at 30 June 2002 of these assets and their fair value as at 1 July 2002 and thus there is no financial effect arising from the adoption of fair value.

Under both deprival and fair value, assets which are surplus to requirements are measured at their net realisable value. At 30 June 2003, the Commission had no assets in this situation.

Frequency

Infrastructure, plant and equipment are revalued progressively in successive 3-year cycles, so that no asset has a value greater than three years old. All assets were revalued in 2001-02 on a deprival basis.

Conduct

All valuations are conducted by an independent, qualified valuer.

Depreciation and amortisation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight-line method of depreciation. Leasehold improvements are depreciated on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Residual values are re-estimated for a change in prices only when assets are revalued.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2003	2002
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.

Recoverable amount test

From 1 July 2002, the Schedule 1 no longer requires the application of the recoverable amount test in Australian Accounting Standard *AAS 10 Recoverable Amount of Non-Current Assets* to the assets of agencies when the primary purpose of the asset is not the generation of net cash inflows.

No property plant and equipment assets have been written down to recoverable amount per AAS 10. Accordingly, the change in policy has had no financial effect.

1.12 Intangibles

The Commission's intangibles comprise internally-developed software and are carried at cost.

The carrying amount of each non-current intangible asset is reviewed to determine whether it is in excess of the asset's recoverable amount. If an excess exists as at reporting date, the asset is written down to its recoverable amount immediately. In assessing recoverable amounts, the relevant cash flows, including the expected cash flows from future appropriations by the Parliament, have been discounted to their present value.

No write-down to recoverable amount has been made in 2002-03.

All software assets were assessed for impairment as at 30 June 2003. None were found to be impaired.

Intangible assets are amortised on a straight-line basis over their anticipated useful lives.

Useful lives are:	**2003**	2002
Internally developed software	**2 to 5 years**	2 to 5 years

1.13 Taxation

The Commission is exempt from all forms of taxation except fringe benefits tax and the goods and services tax (GST);

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

1.14 Foreign currency

Transactions denominated in a foreign currency are converted at the exchange rate at the date of the transaction. Foreign currency receivables and payables are translated at the exchange rates current as at balance date. Associated currency gains and losses are not material.

1.15 Insurance

The Commission has insured for risks through the Government's insurable risk managed fund, called 'Comcover'. Workers compensation is insured through the Government's Comcare Australia.

1.16 Agency and Administered Items

The Commission has no administered items.

Note 2 - Events occurring after balance date

The Commission is not aware of any significant events that have occurred since balance date which warrant disclosure in these statements.

		2003	2002
		$	$
Note 3 - Operating revenues			
3.1	Revenues from Government		
	Appropriations for outputs	**11,137,000**	10,730,000
	Resources received free of charge	**35,000**	35,000
	Total revenues from government	**11,172,000**	10,765,000
3.2	Goods and Services		
	Goods	**146,218**	14,223
	Services	**2,732,020**	4,067,509
	Total sales of goods and services	**2,878,238**	4,081,732
	Provision of goods to:		
	Related entities	**27,259**	3,584
	External entities	**118,959**	10,639
	Total sales of goods	**146,218**	14,223
	Rendering of services to:		
	Related entities	**1,723,377**	2,757,771
	External entities	**1,008,643**	1,309,738
	Total rendering of services	**2,732,020**	4,067,509
	Cost of goods sold	**146,218**	14,223
3.3	Interest revenue		
	Interest on deposits	**41,613**	98,561

		2003 $	2002 $
3.4	Net gains from sale of assets		
	Infrastructure, plant and equipment:		
	Proceeds from disposal	**218**	432
	Net book value of assets disposed	**(5,660)**	(7,556)
	Net loss from disposal of infrastructure, plant and equipment	**(5,442)**	(7,124)
	TOTAL proceeds from disposals	**218**	432
	TOTAL value of assets disposed	**(5,660)**	(7,556)
	TOTAL net loss from disposal of assets	**(5,442)**	(7,124)

Note 4 - Operating expenses

4.1	Employee expenses		
	Wages and Salary	**6,340,570**	6,153,959
	Superannuation	**833,717**	828,673
	Leave and other benefits	**250,178**	349,660
	Other employee expenses	**61,917**	131,813
	Total employee benefits expense	**7,486,380**	7,464,103
	Workers compensation premiums	**32,254**	21,272
	Total employee expenses	**7,518,635**	7,485,375
4.2	Supplier expenses		
	Goods from related entities	**75,794**	27,965
	Goods from external entities	**411,659**	293,894
	Services from related entities	**436,009**	412,675
	Services from external entities	**3,213,235**	4,080,571
	Operating lease rentals*	**1,245,742**	1,085,033
	Total supplier expenses	**5,382,439**	5,900,138
	* These comprise minimum lease payments only		
4.3	Depreciation and amortisation		
	Depreciation		
	Other infrastructure, plant and equipment	**524,261**	722,830
	Total Depreciation	**524,261**	722,830
	Amortisation		
	Intangibles - Computer Software	**45,832**	42,410
	Total depreciation and amortisation	**570,093**	765,240

		2003 $	2002 $
	The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable assets are as follows:		
	Leasehold improvements	**316,712**	-
	Plant and equipment	**207,549**	722,830
	Intangibles	**45,832**	42,410
	Total depreciation and amortisation	**570,093**	765,240
	No depreciation or amortisation was allocated to the carrying amounts of other assets.		
4.4	Write down of assets		
	Financial assets		
	Bad and doubtful debts expense	**-**	16,966
	Non-financial assets		
	Plant and equipment - revaluation decrement	**-**	478,058
	Plant and equipment - write off	**-**	19,324
	Total write-down of assets	**-**	514,348

Note 5 - Financial assets

5.1	Cash		
	Cash on hand:		
	Departmental (other than special accounts)	**2,500,017**	1,917,346
	Total cash	**2,500,017**	1,917,346
5.2	Receivables		
	Goods and services	**504,885**	879,385
	GST receivable from the Australian Taxation Office	**49,734**	96,643
	Interest receivable	**-**	11,387
	Total receivables (net)	**554,619**	987,415
	All receivables are current assets		
	Receivables (gross) are aged as follows:		
	Not overdue	**537,223**	771,685
	Overdue by:		
	Less than 30 days	**4,004**	61,124
	30 days to 60 days	**-**	154,606
	60 to 90 days	**-**	-
	more than 90 days	**13,392**	-
	Total receivables (gross)	**554,619**	987,415

		2003 $	2002 $
Note 6 - Non-financial assets			
6.1	Infrastructure, Plant and equipment		
	Plant and equipment		
	- at cost	**245,526**	-
	- Accumulated depreciation	**(23,599)**	-
		221,927	-
	- at valuation	**824,139**	833,607
	- Accumulated depreciation	**(559,074)**	(378,932)
		265,065	454,675
	Total plant and equipment	**486,992**	454,675
	Leasehold improvements		
	- at cost	**29,988**	-
	- Accumulated depreciation	**(1,694)**	-
		28,294	-
	- at valuation	**3,149,999**	3,149,999
	- Accumulated amortisation	**(2,860,028)**	(2,545,010)
		289,971	604,989
	Total leasehold improvements	**318,265**	604,989
	Total Infrastructure, Plant and equipment	**805,257**	1,059,664
6.2	Intangibles		
	Computer software:		
	Internally developed - in use	**409,782**	357,244
	Accumulated amortisation	**(320,183)**	(274,350)
	Total intangibles	**89,599**	82,894

6.3 Analysis of Infrastructure, Plant, Equipment and Intangibles

TABLE A: Reconciliation of the opening & closing balances of property, plant & equipment and intangibles

Item	Infrastructure, Plant & Equipment	Computer software - total intangibles	Total
	$	$	$
As at 1 July 2002			
Gross book value	3,983,605	357,244	4,340,849
Accumulated Depreciation/Amortisation	(2,923,941)	(274,350)	(3,198,291)
Net book value	1,059,664	82,894	1,142,558
Additions			
by purchase	275,514	52,538	328,051
Net revaluation increment/(decrement)			
Depreciation/amortisation expense	(524,261)	(45,833)	(570,093)
Recoverable amount write-downs			
Disposals			
From disposal of operations			
Other disposals	(5,660)	-	(5,660)
As at 30 June 2003			
Gross book value	4,253,459	409,782	4,663,241
Accumulated Depreciation/Amortisation	(3,448,202)	(320,183)	(3,768,385)
Net book value	805,257	89,599	894,856

6.4 Analysis of Infrastructure, Plant, Equipment and Intangibles

TABLE B: Assets at valuation

Item	Infrastructure, Plant & Equipment	Total
	$	$
As at 30 June 2003		
Gross Value	3,974,139	3,974,139
Accumulated Depreciation/Amortisation	(3,419,102)	(3,419,102)
Net book value	555,037	555,037
As at 30 June 2002		
Gross Value	3,983,605	3,983,605
Accumulated Depreciation/Amortisation	(2,923,942)	(2,923,942)
Net book value	1,059,663	1,059,663

	2003	2002
	$	$
6.5 Other non-financial assets		
Prepayments		
Rent	**-**	93,440
Other	**93,328**	142,783
Total other non-financial assets	**93,328**	236,223

All other non-financial assets are current assets

		2003 $	2002 $
Note 7 - Non-interest bearing liabilities			
	Lease incentives	**782,706**	1,565,409
	Other non-interest bearing liabilities are represented by:		
	Current	**782,706**	782,704
	Non-current	**-**	782,705
Note 8 - Provisions			
8.1	Capital use charge provision		
	Capital use charge provision	**-**	29,359
	Balance owing 1 July	**29,359**	35,000
	Capital use charge provided for during the period	**5,641**	57,359
	Capital use charge paid	**(35,000)**	(63,000)
	Balance owing 30 June	-	29,359
8.2	Employee provisions		
	Salaries and wages	**186,024**	196,149
	Leave	**1,705,136**	1,586,909
	Superannuation	**33,413**	33,089
	Aggregate employee benefit liability	**1,924,573**	1,816,147
	Current	**955,764**	910,299
	Non-current	**968,809**	905,848
Note 9 - Payables			
9.1	Supplier payables		
	Trade creditors	**256,206**	372,557
	Operating lease rentals	**-**	-
	Total supplier payables	**256,206**	372,557
	Supplier payables are represented by;		
	Current	**256,206**	372,557
	Non-current	**-**	-
9.2	Other payables		
	Unearned Revenue	**-**	35,977
	Total other payables	**-**	35,977

Note 10 - Equity

Item	Accumulated Results		*Asset revaluation reserve*		Contributed Equity		TOTAL EQUITY	
	2003	2002	**2003**	2002	**2003**	2002	**2003**	2002
	$	$	**$**	$	**$**	$	**$**	$
Opening Balance as at 1 July	**(591,503)**	(807,213)	**49,596**	55,592	**1,006,000**	1,006,000	**464,093**	254,379
Net surplus	**615,242**	273,069	**-**	-	**-**	-	**615,242**	273,069
Net revaluation decrement	**-**	-	**-**	(5,996)	**-**	-	**-**	(5,996)
Decrease in retained surpluses on application of transitional provisions in accounting standard AASB 1041 *Revaluation of Non-current Assets*								
Transactions with owner:								
Distributions to owner:								
Return on Capital								
Capital Use Charge	**-**	(57,359)	**-**	-	**-**	-	**-**	(57,359)
Contributions by owner:								
Restructuring								
Restructuring transfers	**-**	-	**-**	-			**-**	-
Closing Balance as at 30 June	**23,739**	(591,503)	**49,596**	49,596	**1,006,000**	1,006,000	**1,079,335**	464,093
Total equity attributable to the Commonwealth	**23,739**	(591,503)	**49,596**	49,596	**1,006,000**	1,006,000	**1,079,335**	464,093

Note 11 - Cash flow reconciliation

	2003	2002
	$	$
Reconciliation of cash per Statement of Financial Position to Statement of Cash Flows		
Cash at year end per Statement of Cash Flows	**2,500,017**	1,917,346
Statement of Financial Position items comprising above cash: 'Financial Asset -Cash'	**2,500,017**	1,917,346
Reconciliation of net surplus to net cash from operating activities:		
Net surplus (deficit)	**615,242**	273,069
Depreciation and Amortisation	**570,093**	765,240
Net write-down of non-financial assets	**-**	497,382
Loss on disposal of assets	**5,441**	7,124
Capital Use Charge	**5,641**	-
(Increase)/Decrease in net receivables	**436,468**	(513,780)
(Increase)/Decrease in prepayments	**142,897**	30,355
Increase/(Decrease) in employee provision	**108,426**	409,654
Increase/(Decrease) in supplier payables	**(120,022)**	13,948
Increase/(Decrease) in Other payables	**(35,977)**	(696,548)
Increase/(Decrease) in Non Int. Bearing Liabilities	**(782,705)**	(748,648)
Net cash from operating activities	**945,504**	37,795

Note 12 - Contingent liabilities and assets

Unquantifiable contingencies

As at 30 June 2003, the Commission (or officers of the Commission) were named as the respondent in fourteen applications before the High Court, the Federal Court and Administrative Appeals Tribunal. It is not possible to estimate the amounts of the eventual payments that may be required in relation to these claims, though it is not common for costs to be awarded against the Commission (or its officers) in these matters.

There are two intervention matters before the courts. It is unlikely that a costs order will be made against the Commission.

Note 13 - Executive remuneration

The number of Executives who received or were due to receive total remuneration of $100,000 or more:	**2003 Number**	2002 Number
$180,000-$189,999	**-**	1
$190,000-$199,999	**-**	2
$200,000-$209,999	**1**	1
$210,000-$219,999	**1**	1
$220,000-$229,999	**1**	-
$230,000-$239,999	**1**	-
$250,000-$259,999	**1**	-
$300,000-$309,999	**-**	1
The aggregate amount of total remuneration of executives shown above:	**$ 1,132,041**	$ 1,111,384

Note 14 - Remuneration of auditors

	2003 $	2002 $
Financial statement audit services are provided free of charge to the Commission		
The fair value of the services provided was:	**35,000**	35,000
Other services		
Amount paid in relation to a special purpose audit	**3,500**	-
Total	**38,500**	35,000

Note 15 - Average staffing levels	2003 Number	2002 Number
The average staffing levels for the Commission during the year were:	**95**	95

	2003 $	2002 $
Note 16 - Act of Grace Payments, Waivers and Defective Administration Scheme		
No 'Act of Grace' payment was made during the reporting period.	**-**	**-**
No payments were made under the 'Defective Administration Scheme' during the reporting period.	**-**	-
There was one waiver of an amount owing to the Commonwealth made in 2002/03 pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997.	**59,958**	-

Note 17 - Financial instruments

17.1 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	5.1	Cash is recognised at its nominal amount. Interest on cash at bank is credited to revenue as it accrues	The Agency Banking Incentive Scheme was terminated in 2002. FMA agencies are no longer able to earn interest on deposits.
Receivables for goods and services	5.2	These receivables are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely.	All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (2002: 30 days)
Interest receivable	5.2	Interest is accrued as it is earned	
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.
Trade creditors	9.1	Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced)	All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days.

17.2 Interest rate risk

Financial instrument	Notes	Floating interest rate		Fixed interest rate		Non-interest bearing		Total		Weighted average effective interest rate	
		2003	2002	**2003**	2002	**2003**	2002	**2003**	2002	**2003**	2002
		$	$	**$**	$	**$**	$	**$**	$		
Financial Assets											
Cash at bank	5.1	-	1,917,346	-	-	**2,500,017**	-	**2,500,017**	1,917,346	**2.0%**	4.5%
Receivables for goods and services (gross)	5.2	-	-	-	-	**504,885**	879,385	**504,885**	879,385	**n/a**	n/a
Interest receivable	5.2	-	-	-	-	-	11,387	-	11,387	**n/a**	n/a
Total		-	1,917,346	-	-	**3,004,902**	890,772	**3,004,902**	2,808,118		
Total Assets								**4,042,820**	4,283,542		
Financial Liabilities											
Lease incentives	7	-	-	-	-	**782,706**	1,565,409	**782,706**	1,565,409	**n/a**	n/a
Trade creditors	9.1	-	-	-	-	**256,206**	372,557	**256,206**	372,557	**n/a**	n/a
Total		-	-	-	-	**1,038,912**	1,937,966	**1,038,912**	1,937,966		
Total Liabilities								**2,963,485**	3,819,449		

17.3 Net fair values of financial assets and liabilities

	Notes	2003		2002	
		Total Carrying amount	**Aggregate Net Fair value**	Total Carrying amount	Aggregate Net Fair value
		$	**$**	$	$
Agency Financial Assets					
Cash at bank	5.1	**2,500,017**	**2,500,017**	1,917,346	1,917,346
Receivables for goods and services (net)	5.2	**504,885**	**504,885**	879,385	879,385
Interest receivable	5.2	**-**	**-**	11,387	11,387
Total Financial Assets		**3,004,901**	**3,004,901**	2,808,118	2,808,118
Financial Liabilities (Recognised)					
Lease incentives	7	**782,706**	**782,706**	1,565,409	1,565,409
Capital Use Charge Payable	8.1			29,359	29,359
Trade Creditors	9.1	**256,206**	**256,206**	372,557	372,557
Total Financial Liabilities (Recognised)		**1,038,912**	**1,038,912**	1,967,325	1,967,325

The net fair values of cash and non-interest bearing monetary financial assets approximate their carrying amounts.

The net fair values for trade creditors are approximated by their carrying amounts.

17.4 Credit risk exposures

The Commission's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Financial Position.

The Commission has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

Note 18 - Appropriations

Cash basis acquittal of appropriations from Acts 1 and 3

Particulars	Departmental Output
Year ended 30 June 2003	**$**
Balance carried from previous year	1,917,346
Appropriations for reporting period (Act 1)	11,137,000
Appropriations for reporting period (Act 3)	-
Adjustments by the Finance Minister	-
Amounts from Advance to the Finance Minister	-
Refunds credited (FMA s 30)	-
GST Credits (FMA s 30A)	427,958
Annotations to 'net appropriations' (FMA s 31)	3,461,467
Transfers to/from other agencies (FMA s 32)	-
Administered appropriation lapsed	-
Available for payments	16,943,771
Payments made	14,443,754
Appropriations credited to Special Accounts	-
Balance carried to next year	2,500,017
Represented by:	
Cash	2,500,017
Add: Appropriations receivable	-
Add: Receivables - Goods and Services - GST receivable from customers	-
Add: Return of contributed equity	-
Less: Other payables - Net GST payable to the ATO	-
Less: Payable - Suppliers - GST portion	-
Add: Savings in Portfolio Additional Estimates Statement	-
Total	2,500,017

Particulars	Departmental Output
Year ended 30 June 2002	**$**
Balance carried from previous year	2,237,009
Total annual appropriation	15,257,597
Available for payments	17,494,606
Payments made	15,577,260
Appropriations credited to Special Accounts	-
Balance carried to next year	1,917,346
Represented by:	
Cash	1,917,346
Add: Appropriations receivable	-
Add: Receivables - Goods and Services - GST receivable from customers	-
Add: Investment in term deposit	-
Add: Receivables - Net GST receivable from the ATO	-
Less: Payable - Suppliers - GST portion	-
Total	1,917,346

Note 19 - Reporting of outcomes	2003 $	2002 $
The Commission has one outcome: *"An Australian society in which the human rights of all are respected, protected and promoted".*		
19.1 Net cost of outcome delivery		
Total departmental expenses	**13,476,827**	14,672,654
Total departmental costs recovered from the non-government sector	**1,127,602**	1,320,377
Other departmental external revenues		
Interest	**41,613**	98,561
Goods and services from related entities	**1,750,636**	2,761,355
Total Other departmental external revenues	**1,792,249**	2,859,916
Net cost of outcome	**10,556,976**	**10,492,362**
19.2 Major classes of departmental revenues and expenses by output groups and outputs		
The Commission has one output (1.1): *"Australians have access to independent human rights complaint handling and public enquiries procesess and benefit from human rights education, promotion and monitoring, and compliance activities."*		
Departmental expenses		
Employees	**7,518,635**	7,485,375
Suppliers	**5,382,439**	5,900,137
Depreciation and amortisation	**570,093**	765,240
Other expenses	**5,660**	521,904
Total Departmental expenses	**13,476,827**	14,672,654
Funded by:		
Revenues from government	**11,172,000**	10,765,000
Sales of goods and services	**2,878,238**	4,081,732
Other non-taxation revenues	**41,831**	98,993
Total Departmental revenues	**14,092,069**	14,945,725