

**HUMAN RIGHTS AND EQUAL
OPPORTUNITY COMMISSION**

**ANNUAL REPORT
1993/1994**

**Australian Government Publishing Service
Canberra**

© Commonwealth of Australia 1994

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Australian Government Publishing Service. Requests and inquiries concerning reproduction rights should be directed to the Manager, Commonwealth Information Services, Australian Government Publishing Service, GPO Box 84, Canberra ACT 2601.

ISBN 1031-5098

Produced by the Australian Government Publishing Service

Human Rights Australia

President

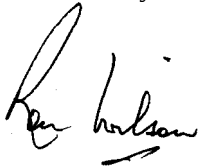
'7 October 1994

The Hon Michael Lavarch MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney

I have pleasure in presenting the Annual Report of the Human Rights and Equal Opportunity Commission for the period ended 30 June 1994, pursuant to s.45 of the *Human Rights and Equal Opportunity Commission Act 1986*. The report has been prepared in accordance with the requirements of sub-sections 25(6) and (7) of the *Public Service Act 1922*.

Yours sincerely

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

Ronald Wilson
President

TABLE OF CONTENTS

List of Tables	
List of Figures	vi
INTRODUCTION	
Introduction	3
Statement from the President	3
The Role of the Commission	5
The Commissioners	6
The Legislation Implemented by the Commission	7
Functions and Powers of the Commission	11
The Minister	13
AN OVERVIEW OF THE COMMISSION	
Organisational Structure and Management	17
Corporate Overview for July 1993-June 1994	17
THE YEAR IN REVIEW: Complaint Handling and Legal Interventions	
Overview of Complaint Handling	29
Interventions	38
HUMAN RIGHTS	
The Human Rights Commissioner	45
Major Projects for 1 993/1 994	48
Complaint Investigation	56
Education and Promotional Activities	60
SEX DISCRIMINATION	
The Sex Discrimination Commissioner	69
Major Projects for 1993/1994	71
Complaint Investigation	80
Referrals to Inquiry	85
Education and Promotional Activities	89
DISABILITY DISCRIMINATION	
The Disability Discrimination Commissioner	95
Major Projects for 1 993/1 994	98
Complaint Investigation	104
Referrals to Inquiry	109
Education and Promotional Activities	110

ABORIGINAL AND TORRES STRAIT ISLANDER SOCIAL JUSTICE

The Aboriginal and Torres Strait Islander Social Justice Commissioner	• 119
Powers, Functions and Responsibilities	122
Major Projects for 1993/1994	124
Education and Promotional Activities	129

RACE DISCRIMINATION

The Race Discrimination Commissioner	135
Major Projects for 1993/1994	137
Complaint Investigation	140
Referrals to Inquiry	144
Education and Promotional Activities	148

PRIVACY

The Privacy Commissioner	155
Major Projects for 1993/1994	156
Compliance Activities	160
Monitoring the Data-Matching Program	161
Complaint Investigation	162
Education and Promotional Activities	164

THE YEAR IN REVIEW: Regional Offices

Queensland	169
Australian Capital Territory	179
Northern Territory	185
Tasmania	188

APPENDICES

Appendix One: Staffing Overview	193
Appendix Two: Financial Statements	196
Appendix Three: List of Publications	215
Appendix Four: Contact Details for Further Information	217

ATTACHMENTS

Attachment One: Information on Specific Statutory Provisions	219
Attachment Two: Financial and Staffing Resources Summary	225
Attachment Three: Additional Information on Specific Statutory Provisions	229
List of Abbreviations	252
Compliance Index	253
Alphabetical Index	255

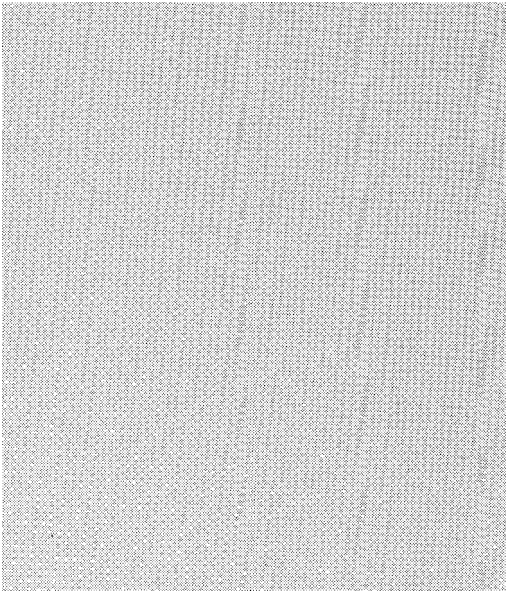
LIST OF TABLES

Table 1 Complaints received by State/Territory and Act	30
Table 2 All complaints closed 1 July 1993 to 30 June 1994	31
Table 3 Outcome of complaints closed or referred for hearing under Commonwealth legislation by Act 1 July 1993 to 30 June 1994 .	31
Table 4 Outcome of complaints closed under Commonwealth legislation by geographical location	33
Table 5 Written, personal and telephone inquiries received by Central and regional Commission offices 1 July 1993 to 30 June 1994	33
Table 5a Breakdown of matters received in writing by Commission offices and not covered by the legislation 1 July 1993 to 30 June 1994	34
Table 6 Complaints lodged under the HREOC Act 1 July 1993 to 30 June 1994	57
Table 7 Grounds of complaint under ILO 111 1 July 1993 to 30 June 1994 .	58
Table 8 Outcome of complaints closed under the HREOC Act 1 July 1993 to 30 June 1994	59
Table 9 Complaints lodged under the SDA by ground of complaint 1 July 1993 to 30 June 1994	80
Table 10 Complaints lodged under the SDA by area of complaint 1 July 1993 to 30 June 1994	81
Table 11 Complaints lodged under the SDA by category of complainant and respondent 1 July 1993 to 30 June 1994	81
Table 12 Outcome of complaints closed or referred for hearing under the SDA 1 July 1993 to 30 June 1994	82
Table 13 SDA matters determined or referred to inquiry 1 July 1993 to 30 June 1994	85
Table 14 Complaints lodged under the DDA by type of disability 1 July 1993 to 30 June 1994	104
Table 15 Complaints lodged under the DDA by area of complaint 1 July 1993 to 30 June 1994	105
Table 16 Complaints lodged under the DDA by category of complainant and respondent 1 July 1993 to 30 June 1994	105
Table 17 Outcome of complaints closed or referred for hearing under the DDA 1 July 1993 to 30 June 1994	106
Table 18 DDA matters determined or referred to inquiry 1 July 1993 to 30 June 1994	109
Table 19 Complaints lodged under the RDA by grounds of complaint and location 1 July 1993 to 30 June 1994	141

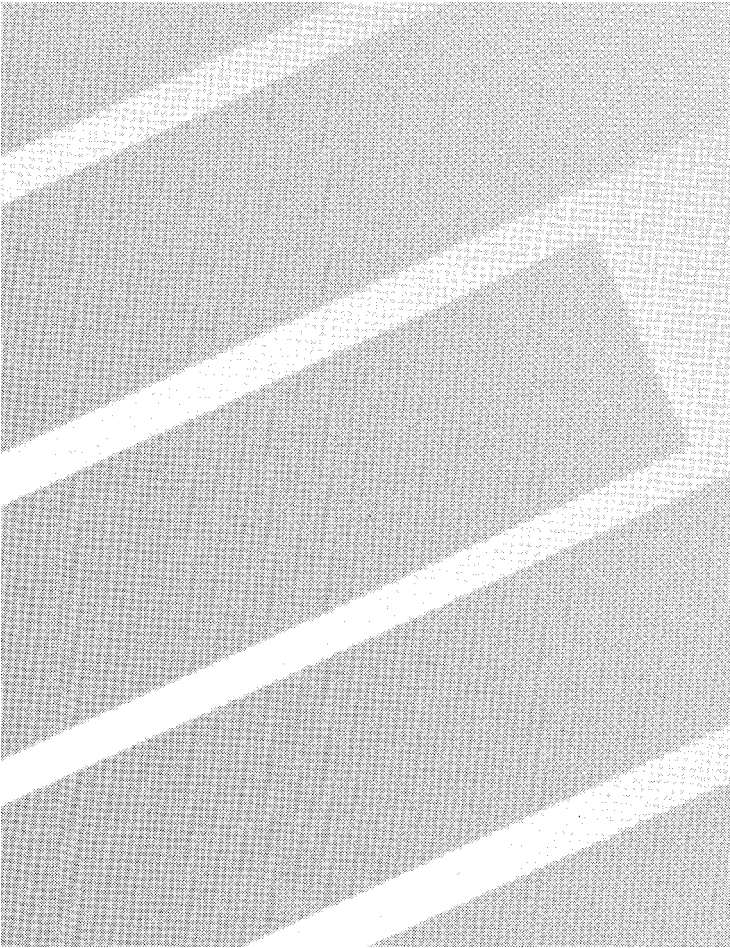
Table 20 Complaints lodged under the RDA by ethnicity of complainant 1 July 1993 to 30 June 1994	141
Table 21 Complaints lodged under the RDA by category of complainant and respondent 1 July 1993 to 30 June 1994	142
Table 22 Outcome of complaints closed or referred for hearing under the RDA 1 July 1993 to 30 June 1994	142
Table 23 RDA matters determined or referred to inquiry 1 July 1993 to 30 June 1994	144
Table 24 Outcome of complaints closed under the Privacy Act 1 July 1993 to 30 June 1994	163
Table 25 Complaints lodged under the Queensland Anti-discrimination Act by area and ground of complaint 1 July 1993 to 30 June 1994	172
Table 26 Complaints lodged under the Queensland Anti-discrimination Act by category of complainant and respondent 1 July 1993 to 30 June 1994 .	173
Table 27 Outcome of complaints closed or referred for hearing under the Queensland Anti-discrimination Act 1 July 1993 to 30 June 1994	173
Table 28 Complaints lodged under the ACT Discrimination Act by area and ground of complaint 1 July 1993 to 30 June 1994	181
Table 29 Complaints lodged under the ACT Discrimination Act by category of complainant and respondent 1 July 1993 to 30 June 1994	181
Table 30 Outcome of complaints closed under the ACT Discrimination Act 1 July 1993 to 30 June 1994	182
Table 31 Commission's staffing profile within classification levels	194
Table 32 Financial and staffing resource summary (all programs)	227
Table 33 Representation of EEO groups within classification levels	233
Table 34 Participation of EEO groups, by office, in training expressed in terms of person days of training	238
Table 35 Summary table of major purposes, number and cost of consultants	245
Table 36 Vehicles leased by the Commission 1993/1994	250

LIST OF FIGURES

Figure 1 Management structure of the Commission as at June 1994	18
Figure 2 Percentage of complaints lodged under each Act	30



INTRODUCTION



INTRODUCTION

The 1993/1994 Annual Report of the Human Rights and Equal Opportunity Commission provides an overview of the work of the organisation during the period July 1993 to June 1994.

In the initial section of the report the legislative base, role and functions of the Commission are described. Organisational achievements for the period under review are also highlighted. The report goes on to describe the work of each of the Commissioners and their research and policy units. The report provides an overview of complaint handling, legal interventions and the work of regional and State/Territory offices. Information is also provided on a range of financial, staffing and administrative matters.

The report has been prepared in compliance with the requirements for Annual Reports as outlined by the Department of Prime Minister and Cabinet (March 1994).

To assist the reader, a list of abbreviations is provided on page 252.

For further information about the work of the Commission, the reader can consult the 1993-1995 Corporate Plan. For an overview of the history of the Commission, reference can be made to the 1989-1990 Annual Report (pp 11-14). For additional information on the work of the Privacy Commissioner, the reader can consult the *Sixth Annual Report on the Operation of the Privacy Act*. For additional information on the work of the Aboriginal and Torres Strait Islander Social Justice Commissioner, the reader can consult his *First Report 1993*. All these publications are available in the Commission library, which is open to members of the public by appointment.

A complete list of Commission publications for 1993/1994 appears in Appendix 3.

For information about obtaining additional copies of the 1993/1994 Annual Report, or for more information about the work of the Commission, please refer to the contact details in Appendix Four. Copies of this report are also available in alternative formats, including audio tape, computer disc, braille and large print.

STATEMENT FROM THE PRESIDENT

Sir Ronald Wilson AC, KBE, CMG, QC, a former justice of the High Court of Australia, is the current President of the Human Rights and Equal Opportunity Commission.

I first mention two events of particular importance that occurred this year and then, as is fitting in my final annual statement, reflect on some issues of significance for the Commission as a human rights institution.

Enactment of the *Native Title Act 1993* by the Commonwealth Parliament is a milestone in the advance of human rights in Australia. We cannot hope to claim that as a nation we are sustaining the basic rights of Australians until we have redressed the injustice of the dispossession of our indigenous peoples. The important role of reporting on the operation of the *Native Title Act* will be a major contribution by the Commission to the fuller expression of the law declared by the High Court in *Mabo v Queensland*.

In November 1993 the Commission hosted a consultative forum attended by representatives of more than 80 non-government human rights organisations. This was a day that I had keenly anticipated because, although I have long been involved with non-government organisations in various contexts, recent events have brought home to me the importance of their contribution and the need for a close and cooperative relationship with them. The World Conference on Human Rights, held at Vienna in June 1993, officially recognised the role of non-government organisations in the promotion of human rights and humanitarian activities at regional, national and international levels. Our forum in November 1993 drew together a range of groups, most of which had a history of contact with particular program areas of the Commission. All Commissioners and some key staff attended the forum. I hope it marks the strengthening relationship between the Commission as a whole and the grass-roots human rights movement.

As I mentioned at the outset, this is my last contribution as President to a Commission annual report. My term expires in February 1995.

The Human Rights and Equal Opportunity Commission is now at a crucial stage of its development. Having grown in size and complexity as new functions and responsibilities have been conferred upon it by the Parliament, the Commission is now challenged more than ever to express the common purpose of its diverse elements. This inevitably throws a heavy burden on management and staff, who must cope with all the responsibilities of efficiently managing a public sector organisation whilst also ensuring that our effectiveness in advancing human rights is maintained and enhanced. The first stage of the review of the Commission, announced by the Attorney-General in August 1993, is nearing completion. It will highlight the fact that the Commission and senior management structure established in 1987, when there were four Commission members and 41 staff, is not appropriate in 1994 when we have seven Commission members and 190 staff. I hope that the review will enable this issue to be addressed. Over the last five years I have had the good fortune to work in the Commission with people of exceptional calibre. We have found ourselves at the cutting edge of many complex social issues that admit no easy solutions. To make progress in promoting and protecting human rights requires not only skill but personal dedication, a quality that my colleagues the Commissioners

and their staff display in full measure. I sincerely thank them all for their work and friendship.

The six Commissioners and the President are in many ways the public faces of the Commission. We come from a variety of backgrounds but would not claim that, in so small a membership, we reflect the full diversity of Australian society. Indeed, rather than represent particular groups, the program structure of the Commission reveals some major themes which are the concern of the entire Australian community. It is the concern of the whole community that Australia meets its international obligations to uphold human rights; that other nations be encouraged to establish national, independent institutions committed to the promotion and protection of human rights; that we remove unfair discrimination on the grounds of race, sex and disability; that Aboriginal and Torres Strait Islander peoples be accorded social justice; and that rights to privacy of personal information be respected. In pursuing each of these objectives the fact that our work in one area overlaps that in all the others points to a deep conceptual unity. The task for the Commission now is to take strength from the unity underlying the diversity of its achievements and programs. It must direct its energies purposefully to the attainment of common ends, social justice ends that underlie all the different functions conferred upon the Commission and Commissioners. It was not for nothing that the Vienna World Conference reaffirmed that human rights are universal, indivisible and interdependent.

The goal for Australia as a nation is to achieve a just and peaceful community where all people can live in harmony and with respect for one another's human dignity and for their rights and responsibilities. I wish the members of the Commission and their dedicated staff every success in contributing to this great cause.

THE ROLE OF THE COMMISSION

The Human Rights and Equal Opportunity Commission has as its broad objective the promotion of respect for, and observance of, the human rights of all people in Australia and their access to equal opportunity (Corporate Plan 1993-1995).

The Commission is responsible for implementing four Acts of Federal Parliament:

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

The Privacy Commissioner is also a member of the Commission and is responsible for the implementation of the

- *Privacy Act 1988*

As well as performing functions under the *Human Rights and Equal Opportunity Commission Act*, the Aboriginal and Torres Strait Islander Social Justice Commissioner performs a number of separate functions given to him by the

- *Native Title Act 1993*.

All of these Acts give force to the international instruments to which Australia has committed itself.

THE COMMISSIONERS

The Commission as a body corporate is comprised of a part time President and six full time Commissioners.

The President:

Sir Ronald Wilson appointed until February 1995

Human Rights Commissioner:

Mr Brian Burdekin appointed until December 1994

Race Discrimination Commissioner:

Ms Irene Moss appointed until December 1994

Disability Discrimination Commissioner

Ms Elizabeth Hastings appointed until February 1998

Sex Discrimination Commissioner:

Ms Sue Walpole appointed until February 1998

Privacy Commissioner:

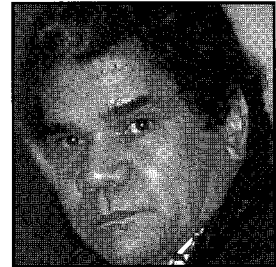
Mr Kevin O'Connor appointed until December 1994

Aboriginal and Torres Strait Islander Social Justice Commissioner:

Mr Michael Dodson appointed until April 1998.

In December 1993, the Human Rights Commissioner, Privacy Commissioner and Race Discrimination Commissioner all had their original terms extended until December 1994.

The Race Discrimination Commissioner subsequently resigned in June 1994.



The President and Commissioners of the Human Rights and Equal Opportunity Commission: *(Above) Left to right: Sir Ronald Wilson; Elizabeth Hastings; Kevin O'Connor; Sue Walpole; (Top right) Brian Burdekin; (Middle right) Irene Moss; (Bottom right) Michael Dodson.*

THE LEGISLATION IMPLEMENTED BY THE COMMISSION

Human Rights And Equal Opportunity Commission Act

The *Human Rights and Equal Opportunity Commission Act 1986* establishes the Commission, provides for its administration and gives effect to seven international instruments to which Australia is party.

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

- freedom from torture or cruel and inhumane punishment
- equality before the law
- humane treatment if deprived of liberty
- freedom of thought, conscience and religion
- peaceful assembly
- vote and be elected by equal suffrage
- marriage and family
- The **Declaration of the Rights of the Child** provides that every child has the right to:
  - a name and nationality
  - adequate nutrition, housing and medical services
  - education
  - special treatment, education and care if the child has a disability
  - adequate care, affection and security
  - protection from neglect, cruelty and exploitation.
- The **Declaration on the Rights of Disabled Persons** provides that people with disabilities have the right to:
  - respect and dignity
  - assistance to enable them to become as self-reliant as possible
  - education, training and work
  - family and social life
  - protection from discriminatory treatment.
- The **Declaration on the Rights of Mentally Retarded Persons** provides that people with a mental disability have the right to:
  - proper medical care and therapy
  - protection from exploitation, abuse and degrading treatment
  - a decent standard of living
  - education, training and work
  - due process of law
  - review of procedures which may deny them these rights.
- **International Labour Organisation (ILO) Convention 111** is concerned with discrimination in employment and occupation. Australian adherence to this Convention provides that all people have the right to equal treatment in employment and occupation without discrimination on the basis of:
  - race
  - colour
  - sex
  - religion
  - political opinion

- national 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)
- **Convention on the Rights of the Child** confirms that children are entitled to the full range of human rights recognised in international law (subject to limitations relating to their capacity to exercise these rights and to the responsibilities of families). The Convention also recognises a range of rights relating to the special needs of children. It seeks to ensure that the protection of these rights in law and practice is improved.
- **Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief** became part of the definition of human rights for the purposes of the *Human Rights and Equal Opportunity Act 1986* on 24 February, 1994. The Declaration recognises the right to the protection of freedom of religion. The only limitation to this right are those limits which are prescribed by law and which are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

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 major objectives are:

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

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 ILO 156. Its major objectives are:

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

Disability Discrimination Act

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

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

Privacy Act

The *Privacy Act 1988* gives effect to the Organisation for Economic Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data and the International Covenant on Civil and Political Rights (Article 17).

The OECD guidelines cover the collection of personal information, its use, access to and alteration of the information.

The Act has three spheres of operation in which the OECD Guidelines are given specific effect in the form of legally binding standards:

- Information Privacy Principles — to protect personal information which is collected by Federal Government departments or agencies. There are strict privacy safeguards which agencies must observe in collecting, storing and using information.
- Tax File Numbers — to ensure that Tax File Numbers are collected and used only for tax related or assistance agency purposes (Tax File Number Guidelines).

- Consumer Credit Reporting — privacy protection for consumer credit information, including the type of information that can be collected and the use and disclosure of this information.

FUNCTIONS AND POWERS OF THE COMMISSION

The major functions of the Commission are outlined in:

- section 11(1) and 46C(1) of the *Human Rights and Equal Opportunity Commission Act 1986*;
- section 20(1) of the *Racial Discrimination Act 1975*;
- section 48(1) of the *Sex Discrimination Act 1984*;
- section 67(1) of the *Disability Discrimination Act 1992*.

Sections 27(1), 28(1), 28A(1) of the *Privacy Act 1988* confer functions on the Privacy Commissioner, as do several Commonwealth statutes.

Section 209 of the *Native Title Act 1993* confers additional functions on the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Broad Functions of the Commission

The Commission inquires into acts or practices that may infringe human rights or that may be discriminatory. In the event that infringements are identified, the Commission recommends action to remove them. The Commission fosters public discussion and also undertakes and coordinates research and educational programs to promote human rights and eliminate discrimination.

The Commission both advises on legislation relating to human rights and monitors its implementation. It reviews existing and proposed legislation for any inconsistency with human rights or for any discriminatory provision which impairs equality of opportunity or treatment in employment or occupation. It examines any new international instruments relevant to human rights in order to advise the federal government on their consistency with other international treaties or existing Australian law. The Commission may also propose laws or suggest actions that the Government should take on matters relating to human rights and discrimination.

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

- conduct inquiries into individual complaints, either on its own initiative or as the Attorney-General may request, with a view to conciliation;
- require individuals to produce information or documents or appear before the Commission to give evidence;
- report to the Government on any matters arising in the course of its functions;
- establish advisory committees;
- formulate guidelines which ensure Governments act in conformity with human rights rules;
- intervene in court proceedings involving human rights matters;
- conduct national inquiries into issues of major importance.

Specific Functions of Commissioners

In addition to the broad functions outlined above, a number of Commissioners have specific responsibilities. These include:

- the Sex Discrimination Commissioner may receive and consider applications for and, where appropriate, grant exemptions from certain parts of the *Sex Discrimination Act*. She may also deal with matters which may be referred to the Australian Industrial Relations Commission;
- the Race Discrimination Commissioner may receive and consider applications for and, where appropriate, grant exemptions from certain parts of the *Racial Discrimination Act*;
- the Disability Discrimination Commissioner has additional responsibilities to develop standards/codes of conduct, monitor the operation of standards/compliance with guidelines and receive action plans from service providers;
- the Privacy Commissioner has several specific functions relating to guidelines, standards, codes of conduct, compliance and audits, and has a number of responsibilities in the specialised areas of credit information and tax file number information. The Privacy Commissioner also performs functions under the following legislation:
  - Part VIIC of the *Crimes Act 1914* gives the Privacy Commissioner responsibility for assessing and make recommendations to the Attorney-General about applications from organisations for exclusions from meeting requirements safeguarding the disclosure of individuals' spent convictions.
  - *Data-matching Program (Assistance and Tax) Act 1990* which regulates a program of data-matching between the Tax Office and

four Assistance Agencies to detect overpayments, ineligibility for assistance and tax evasion. The Commissioner has particular responsibilities in the areas of issuing guidelines, investigating complaints and monitoring agency compliance.

o *National Health Amendment Act 1993* provides for the Commissioner to issue guidelines which cover the storage, use, disclosure and retention of individuals' claims information under the Pharmaceutical Benefits Scheme and the Medicare program.

- the Aboriginal and Torres Strait Islander Social Justice Commissioner prepares an annual report on Aboriginal and Torres Strait Islander social justice issues. He also undertakes social justice educational and promotional activities. The Commissioner has no power to receive complaints.

The Aboriginal and Torres Strait Islander Social Justice Commissioner also has separate functions under the *Native Title Act 1993*. Under this Act, the Commissioner has responsibility for preparing an annual report on the operation of the Act and its effect on the exercise and enjoyment of human rights of Aboriginal and Torres Strait Islander peoples. The Minister can also request the Commissioner to prepare a report on any matter relating to the rights of indigenous people under the Act.

THE MINISTER

The Attorney-General, the Honourable Michael Lavarch MP, is the Minister responsible in the Federal Parliament for the Commission. He has the following powers under the *Human Rights and Equal Opportunity Act*:

- to make, vary or revoke an arrangement with the States 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 and, at his request, to report to him on Australia's compliance with ILO Convention 111 and to advise him in regard to national policies relating to equality of opportunity and treatment in employment and occupation.

The Attorney-General also has the power to request the Commission to report to him on certain matters and to issue to the Commission a certificate that the disclosure

of certain information or the contents of certain documents would not be in the public interest.

Further, under the *Racial Discrimination Act*, the *Sex Discrimination Act*, and the *Disability Discrimination Act*, the Attorney-General may:

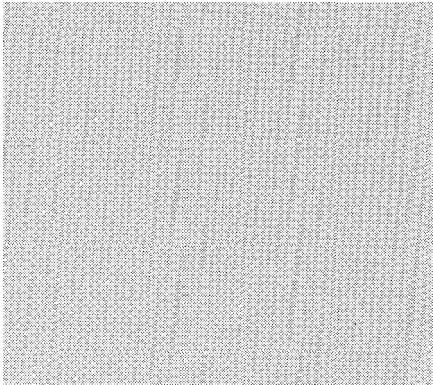
- appoint people to participate in inquiries and determine the terms and conditions of such appointments including their termination
- refer any matter to the Commission for inquiry as a complaint
- under certain circumstances authorise financial assistance to people who are parties to proceedings before the Commission.

Under the *Disability Discrimination Act* the Minister may establish 'disability standards' which, subject to approval or amendment by the Parliament, it is unlawful to contravene.

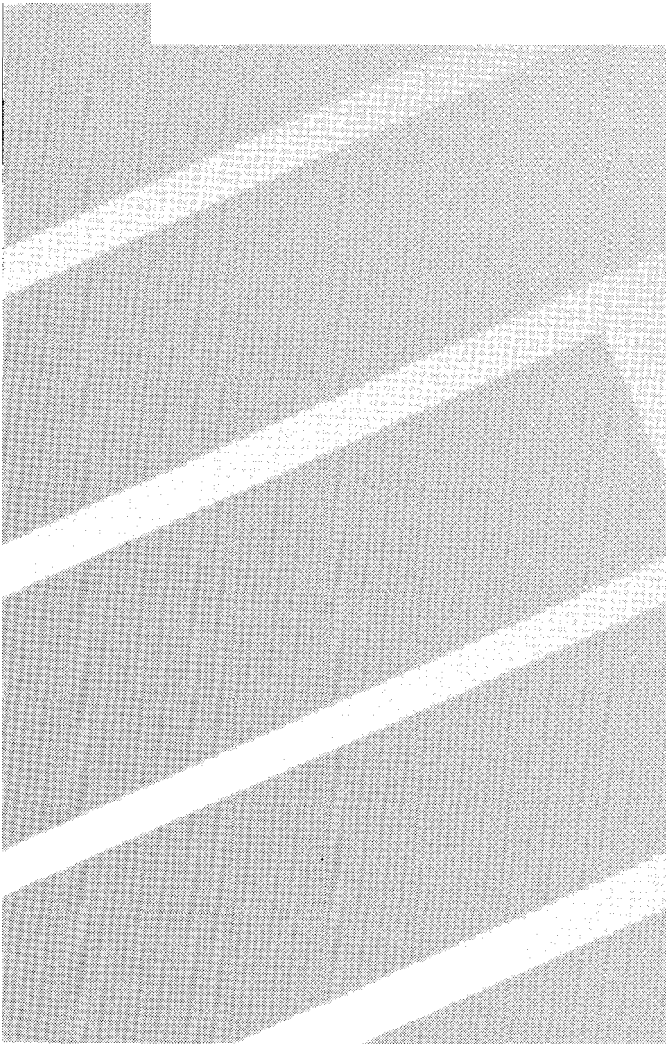
The Minister also has a role under the *Privacy Act*, to receive the Privacy Commissioner's reports about interferences with privacy or about proposed federal legislation that may interfere with privacy.

The Minister can also consider applications for financial assistance and can issue certificates which prevent the disclosure of certain matters in the public interest.

During the year the Minister was required to exercise his statutory powers in respect of arrangements with the States for the performance of functions relating to human rights and the appointment of part time Hearing Commissioners in respect of referred matters.



AN OVERVIEW OF THE COMMISSION



ORGANISATIONAL STRUCTURE AND MANAGEMENT

Program Structure

The Human Rights and Equal Opportunity Commission appears as a sub-program of the Community Affairs program within the Attorney-General's portfolio.

The Commission is organised into the following program elements:

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

A number of functions are organised to operate across all program areas. These include complaint handling (with the exception of privacy complaints), legal services, internal audit, corporate policy, planning and evaluation, education, promotion and media services and a range of operational services (eg. finance, human resources, administrative support services).

The management structure of the Commission is outlined in Figure 1.

CORPORATE OVERVIEW FOR JULY 1993 —JUNE 1994

During the twelve months since July 1993 the Commission has undertaken a wide range of activities aimed at achieving systemic change in the areas of human rights and anti-discrimination as well as fulfilling its responsibilities to handle individual complaints of discrimination. In delivering services to the community, the Commission has continued to place great emphasis on promoting equal and equitable access to its services. Examples of this commitment are provided throughout this section.

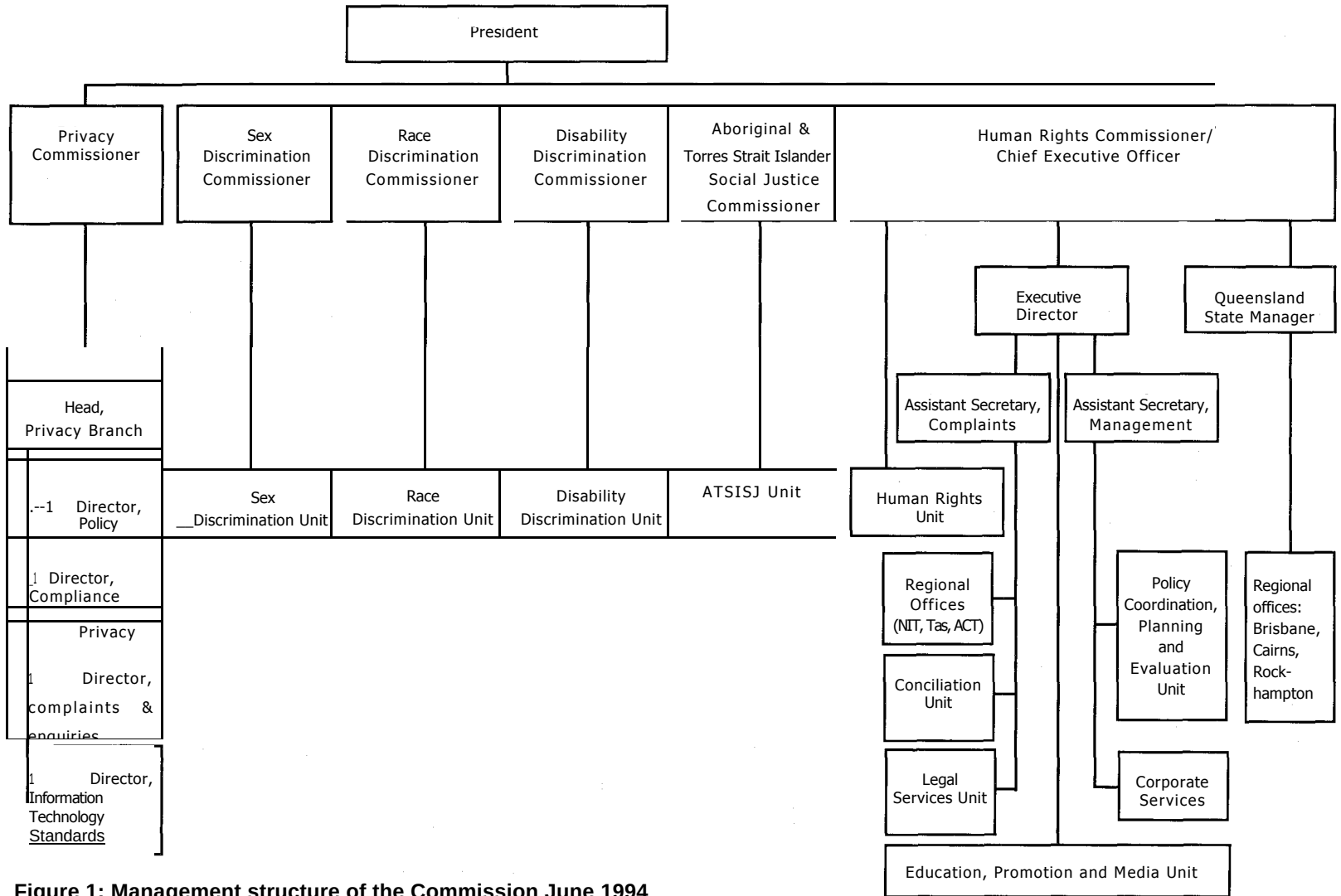


Figure 1: Management structure of the Commission June 1994

The Joint Review

Consistent with a focus on promoting the quality and responsiveness of its operations, the Commission has been the subject of a major review process. On 17 August 1993 the Attorney-General announced that the Department of Finance, the Attorney-General's Department and the Commission would conduct a joint review of the role, functions, efficiency and effectiveness of the Human Rights and Equal Opportunity Commission.

The terms of reference for the Review were:

- to examine the appropriate role and function of the Commission and its relationship to other bodies;
- to consider the appropriate structure and operating arrangements for the Commission and Commissioners taking into account the efficiency and effectiveness of the Commission's performance of its work to date and its performance in relation to financial and resource management.

Following extensive consultation and background research, the report of the Review considering the structure and performance of the Commission will be forwarded to the Attorney-General in September 1994. Cooperative arrangements with States and Territories will be the focus of a supplementary report in late 1994.

Highlights of 1993/1994

Corporate Goal One: Administering its legislation effectively

The Commission's public inquiries continue to place significant human rights issues on the political and public agenda. In October 1993, the Human Rights Commissioner publicly released the *Report of the National Inquiry into the Human Rights of People with Mental Illness*. The findings of the report received extensive media coverage and strong endorsement from service providers and consumers of mental health services. Several substantial responses to the findings and recommendations of the reports have been made by governments and these are detailed elsewhere in this report.

Ensuring Access to Services and Enjoyment of Basic Rights

The Commission is committed to contributing to the development of policies and strategies aimed at addressing barriers to the full participation of people in the life of the Australian community.

In terms of a focus on access to basic rights, in May 1994, the Race Discrimination Commissioner released a report on the problems of inadequate water and sanitation services provided to many Aboriginal and Torres Strait Islander communities. *The Water Report* made a number of recommendations highlighting the broader social and political context of many of the problems encountered, and that long term solutions rely on indigenous control of decision making and resource management. Follow up of these recommendations will be an important focus for the Race Discrimination Commissioner in the coming year.

An example of the work of the Commission in promoting equitable access to its legislation was the production of a resource manual on the *Disability Discrimination Act* (DDA) by the Disability Discrimination Commissioner. Developed in conjunction with the Office of Legal Aid and Family Services and specialist DDA legal advocacy services, the manual will assist these legal services to provide appropriate information and support to people wishing to make a complaint under the Act.

Promoting Awareness of Human Rights and Discrimination Issues

As part of its work of increasing community understanding of human rights the Commission, in conjunction with the Education and Training Foundation (NSW), developed a number of training packages to promote awareness of discrimination issues in the workplace. In May, a particular highlight was the launch of *Diversity Makes Good Business*, a training package for managers and supervisors on managing cultural diversity in the workplace.

The Northern Territory office has initiated an outreach project, which aims to promote access to complaint handling services, and provide relevant information on human rights and anti discrimination issues. This involves staff travelling to regional centres throughout the Northern Territory, offering locally based 'drop in' information and advice services to potential complainants. During 1993/1994, staff have visited Alice Springs, Katherine and Tennant Creek. Each visit has been preceded by liaison and discussion with local groups/media to ensure that local residents are aware of the visit. Such visits have been very successful in responding to the needs of Aboriginal and Torres Strait Islander peoples and isolated communities and, more broadly, raising awareness of the role and functions of the Commission.

In the ACT a Human Rights Community bus was launched. The bus, which operates on a neighbourhood route, was decorated to highlight the rights of individuals under the *ACT Discrimination Act*.

The Commission, in partnership with the Victorian Council for Civil Liberties (VCCL), has been active in a project aiming to promote understanding of human rights issues amongst school students in Victoria. A series of discussion papers and a

video are being developed for use by teachers. These resources will form the basis of a training program to be run by the VCCL.

Ensuring Effective Implementation of Legislation and Relevance of Services

The Sex Discrimination Commissioner has undertaken a number of projects to assist unions in contributing to the development of non-discriminatory work places. In conjunction with the Australian Council of Trade Unions (ACTU), this has included the development of a manual and leaflets for trade union officials and delegates on the *Sex Discrimination Act* and the development of manuals for trade unions and managers to assist them in efforts to develop non-discriminatory enterprise agreements.

In September 1993 the Sex Discrimination Commissioner made her first intervention in a National Wage Case. The submission was made on the basis of her responsibility to eliminate discrimination in employment, and her new responsibilities in terms of the elimination of discrimination in new federal industrial awards and agreements.

In August 1993 the Privacy Commissioner and the Victorian Public Advocate launched a joint report on the privacy needs and concerns of people with disabilities. The report, *Private Lives? An Initial Investigation of Privacy and Disability Issues*, received considerable publicity and contained recommendations designed to increase awareness of the personal, relational and information privacy issues encountered by people with disabilities. Feedback received from consumers and service providers indicates that the report is proving to be a useful resource in addressing privacy issues for people with a disability. The paper was also distributed in New Zealand by the New Zealand Privacy Commissioner.

Interventions in Court Matters

The work of the Commission in intervening in court matters, to present a human rights perspective, is outlined in the section *Interventions*, in the following chapter.

Access and Equity Initiatives

The commitment of the Commission to access and equity is outlined in formal planning statements of the organisation which highlight a focus on promoting equitable access to services (See Access and Equity Plan 1991-1994; Corporate Plan 1993-1995).

During 1993/1994 regional offices have been particularly active in identifying and addressing the equity needs of target groups. For example, the Tasmanian office has been working in partnership with the Department of Immigration and Ethnic Affairs to undertake educational work on human rights and anti discrimination issues with the Vietnamese community.

Other highlights included the following:

- The Sex Discrimination Commissioner initiated a needs assessment project through the Cairns Regional Office in response to the relatively few complaints of sex discrimination from Aboriginal and Torres Strait Islander women. The aim of the project was to consult with Aboriginal and Torres Strait Islander women to understand the level of awareness of the *Sex Discrimination Act* (SDA), their interest in receiving information and how the Commission could respond more appropriately to their needs. A full report of the project appears in the chapter on the work of the Sex Discrimination Commissioner.
- In collaboration with Aboriginal and Torres Strait Islander communities, an information and intervention strategy and training program to develop ways of achieving resolution of community conflicts involving human rights was developed by the Aboriginal and Torres Strait Islander Social Justice Commissioner. A full report of the project appears in the chapter on the work of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Corporate Goal Two: A professional, competent and efficient manner

The Commission is committed to carrying out its functions in a professional, competent and efficient manner. To this end, in September 1993, the Sex Discrimination Commissioner initiated a review of the Commission's complaint handling process and services. The review focused on the effectiveness, flexibility and responsiveness of complaint handling; improving the quality and coordination of complaint data collection; and making recommendations about an appropriate training package for staff involved in complaint handling. The final report is due for completion in August 1994.

Working in Partnership

The Commission places great emphasis on working in cooperation with non-government organisations. In November 1993, a major national consultation with non-government organisations was held. The consultation provided an opportunity for information exchange around issues of common concern and discussion about possible strategies for developing closer cooperation between non-government organisations and the Commission.

Cooperative Arrangements with States and Territories

During 1993/1994 the Commission continued to participate in cooperative arrangements with States and Territories. Such arrangements provide for the State



In December the Commission met with non-government organisations to discuss strategies for closer cooperation.

agency to handle complaints under federal legislation and vice versa. As such, cooperative arrangements are designed to minimise duplication in the provision of services. They also seek to promote access to justice because complainants can go to one agency regardless of whether their complaint is to be pursued under State or federal legislation.

State Equal Opportunity Commissions in Victoria, South Australia and Western Australia handle complaints on behalf of the Commonwealth. The Commission handles complaints under State/Territory legislation in Queensland and the ACT. More details on the Queensland and ACT operations appear in the specific chapters relating to those offices.

The *Disability Discrimination Act* is not covered under existing cooperative arrangements (although this is currently being considered).

Payments to the participating States under cooperative arrangements in 1993/1994 were as follows:

- Victorian Equal Opportunity Commission \$357 600
- South Australian Equal Opportunity Commission \$277 600
- Western Australian Equal Opportunity Commission \$248 800

The Queensland and ACT operations are jointly funded ventures supported on a 50/50 basis by the Commonwealth and the relevant State/Territory Government. Total funding provided by the State/Territory Governments for these offices in 1993/1994 was as follows:

- Queensland \$1 069 688
- Australian Capital Territory \$ 186 703

The efficiency, effectiveness and appropriateness of these cooperative arrangements will be the subject of a detailed review in 1994/1995.

Complaint Handling

The work of the Commission in receiving, investigating and conciliating complaints is detailed in the following chapter.

Corporate Goal Three: Managing at the highest possible standards

As the diversity and complexity of the roles and functions of the Commission has increased, the organisation has actively sought to strengthen its management effectiveness and accountability.

In April 1994, an improved policy coordination, planning and evaluation focus was resourced with the formation of a unit to facilitate activities in these areas. In creating this unit a particular emphasis has been placed on developing mechanisms and processes which enhance the effectiveness of collegial decision making amongst Commissioners.

In November 1993 an internal auditor was appointed. Underlining a more proactive and systematic approach to resource management generally, an ongoing program of audit and fraud risk assessments, operational and compliance audits and performance audits has commenced.

An audit and fraud risk assessment was conducted for Corporate Services functions during the year, the results of which influenced the revision of the Fraud Control Plan for the Commission. Risk assessments are continuing to be conducted for the rest of the Commission during 1994/1995. Functions that have been identified as having a higher risk for fraud have been audited by the internal auditor. Computer system security and processing controls associated with high risk functions have been revised. No fraud, or suspected fraud, has been identified.

Overall, the Commission has been assessed with a low risk of fraud.

Keeping Staff Informed

The increasing size and complexity of the Commission highlights the importance of effective communication and information exchange within the organisation. In December 1993 the Commission's information technology systems were upgraded, including the inter-connection of all central office computers to form a Local Area Network.

Reflecting its commitment to developing the skills and expertise of its staff, in August 1993, the Commission appointed a human resource development officer. This position focuses on the management of training and development activities and maximising staff access to training opportunities. In the last twelve months a particular focus of this position has been training associated with the introduction of new computer software.

Library Services

The information needs of Commissioners and staff were supported by the work of the Commission library. The library holds a collection of resources in print and electronic formats, including legal, human rights, anti-discrimination and specialised subject areas. Reflecting a growing demand in research activities, during 1993/1994 there was a large increase in inter-library loans. In March 1994, a library committee was established providing a reference group for the ongoing development of the collection.

THE YEAR IN REVIEW
Complaint Handling and
Legal
Interventions

OVERVIEW OF COMPLAINT HANDLING

Introduction

An important service which the Commission provides is the investigation and conciliation of complaints about discrimination in areas covered by the *Racial Discrimination Act* (RDA), the *Sex Discrimination Act* (SDA), the *Disability Discrimination Act* (DDA) and the *Human Rights and Equal Opportunity Act* (HREOC Act).

Conciliation is the process of settling conflict by bringing disputing parties together to reach a voluntary and mutually satisfactory solution. The disputing parties are helped in this process by a conciliator who is a person responsible for the conciliation process on behalf of the relevant Commissioner. A large number of complaints are settled through the conciliation process. Where conciliation fails a complaint may be referred to a Commissioner for a public hearing (termed 'referral to inquiry').

Administrative Arrangements

During 1993/1994, complaints under federal legislation continued to be handled by:

- the Commission's central office in Sydney or one of its regional offices in Brisbane, Cairns, Rockhampton, Hobart, Darwin or Canberra;
- the State equal opportunity agencies in Victoria, South Australia and Western Australia under cooperative arrangements with the Commonwealth.

Staff in the Commission's offices in Queensland and Australian Capital Territory, along with dealing with complaints under federal legislation, handle complaints lodged under the *Queensland Anti-Discrimination Act 1991* and the *ACT Discrimination Act 1991* respectively. Over the past year, matters addressed in these offices have been increasingly dealt with under the State/Territory legislation and not under the federal legislation.

The Privacy Enquiries and Complaints Unit (PECU) was established by the Privacy Commissioner in 1991/1992. The staff of this unit handle complaints under the *Privacy Act 1988*. More comprehensive details on privacy complaints are provided in the *Sixth Annual Report on the Operation of the Privacy Act*.

Highlights for 1993/1994

Number of Complaints

During 1993/1994, the Commission received 2652 written complaints. Table 1 provides an overview of the complaints received for each federal Act at the central office of the Commission in Sydney and the various State/Territory agents and regional offices. The table also provides information on complaints lodged under the *Queensland Anti Discrimination Act 1992* and the *Australian Capital Territory Discrimination Act 1991*.

Table 1 Complaints received 1 July 1993 to 30 June 1994 by State/Territory and Act

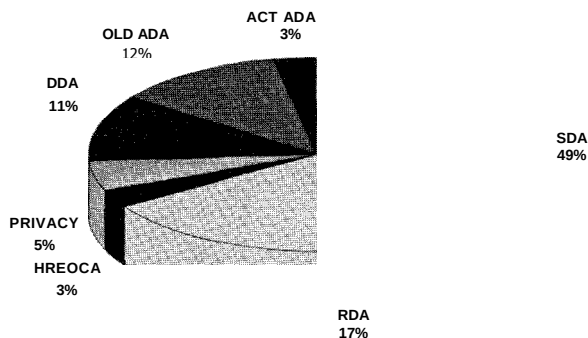
	Central	Qld ¹	NT	Tas	ACT ²	Vic	SA	WA	TOTAL
SDA	105	47	26	34	16	788	263	25	1304
RDA	59	19	16	9	15	190	139	11	448
HREOCA	45	7	2	9	8				71
Privacy Act	143								143
DDA	239	17	8	16	22				302
Qld ADA		304							304
ACT DA					70				70
TOTAL	591	394	52	68	131	978	402	36	2652

1 Includes complaints lodged under a federal act or under *Queensland Anti Discrimination Act*

2 Includes complaints lodged under a federal act or under *ACT Discrimination Act*

The largest number of complaints was lodged under the SDA (1304 complaints or approximately 49 percent of all complaints received). This represents an increase of 66.5 percent over the previous year. 458 complaints were made under the RDA, a 23.8 percent increase over 1992/1993. In the first full year of operation of the DDA there were 302 complaints. Figure 2 illustrates the percentage of complaints lodged under each Act.

Figure 2: Percentage of complaints lodged under each Act



Outcomes of Complaint Handling

During 1993/1994, a total of 1796 complaints were finalised. Table 2 provides information on complaints closed for each location. This table includes complaints closed under federal legislation and the Queensland and ACT anti discrimination legislation.

Table 2 All complaints closed 1 July 1993 to 30 June 1994

	Central	Qld ¹	NT	Tas	ACT ²	Vic	SA	WA	TOTAL
SDA	60	64	10	25	7	228	246	33	673
RDA	23	34	8	9	3	104	121	12	314
HREOCA	22	19		8	4				53
PA	250								250
DDA	98	4	2	6	1				111
Qld ADA		348							348
ACT DA					47				47
TOTAL	453	469	20	48	62	332	367	45	1796

1 Includes complaints closed under a federal act or under *Queensland Anti Discrimination Act*

2 Includes complaints closed under a federal act or under *ACT Discrimination Act*

Table 3 Outcomes of complaints closed or referred for hearing *under Commonwealth legislation* by Act 1 July 1993 to 30 June 1994

	SDA	RDA	HREOCA	PRIVACY	DDA	TOTAL
Conciliated	273	111	22	99	25	530
Withdrawn	128	45	18	48	25	264
Conciliation failed — not referred for hearing	38	6				44
No contact from complainant	75	40	5		6	120
Declined	44	66	5	97		218
Outside jurisdiction	6	8			48	14
Referred elsewhere	70	17	3	6	7	144
Referred for hearing	39	21				67
Report to Minister						
TOTAL	673	314	53	250	111	1401

Table 3 summarises the outcomes for cases closed or referred for hearing under federal legislation (i.e. excluding the Queensland and ACT anti discrimination legislation). Highlights of this table include:

- 530 complaints (37.8%) were successfully conciliated with a mutually agreed settlement. Settlements included agreements by respondents to make significant policy changes, or institute training programs within the workplace, and financial settlements.
- 384 complaints (27.4%) were discontinued by the complainant for a variety of reasons including obtaining another job, relocation or personal reasons. In many instances, complainants decided that, whilst the matter had not been resolved, they had pursued it to a level satisfactory to them. Discontinued complaints may also have been closed on the basis that the issues involved in the complaint are to be pursued at a policy level rather than as an individual complaint. Some matters were discontinued as they were resolved elsewhere. 120 of the total discontinued complaints were deemed withdrawn as the complainant repeatedly failed to respond to correspondence from the Commission.
- 218 complaints (15.6%) were declined by the Commission on the basis that they could not be substantiated.
- 67 complaints (4.8%) were referred for a formal hearing before the Commission, as the relevant Commissioner considered that the complaint could not be conciliated.

Table 4 shows the outcomes for all complaints closed or referred to hearing under federal legislation, by geographical location.

General Inquiries

During most of 1993/1994, the Commission operated a system of categorising correspondence from potential complainants, as either inquiries or complaints. Inquiries were those matters deemed to require additional investigation before they could be accepted as a complaint or those which clearly fell outside jurisdiction. Complaints were those matters that, on the basis of the initial correspondence, provided enough information for them to be accepted as complaints.

Table 5 outlines the number of personal and telephone approaches received by central and regional offices of the Commission. The table also indicates the number of written matters that were initially categorised as inquiries.

Table 4 Outcomes of complaints closed or referred for hearing *under Commonwealth legislation* by office¹ 1 July 1993 to 30 June 1994

¹		Central	Qld	NT	Tas	ACT	Vic	SA	WA	TOTAL
[	Conciliated	155	61	8	24	4	84	177	17	530
	Withdrawn	95	19	8	11	6	90	26	9	264
	Conciliation failed — not referred for hearing						44			44
	No contact from complainant	8	24	1	4			83		120
	Declined	111	7	1		2	68	20	9	218
	Outside jurisdiction			1				12	1	14
	Referred elsewhere	57		1	3	1	26	48	8	144
	Referred for hearing	27	10		6	2	20	1	1	67
	Report to Minister									
	TOTAL	453	121	20	48	15	332	367	45	1401

¹ Includes *Privacy Act 1988*

Table 5 Written, personal and telephone inquiries received by central and regional Commission offices 1 July 1993 to 30 June 1994

	Central	Queensland	NT	Tasmania	ACT	TOTAL
	Office					
Written inquiries	1352	1439	47	138	108	3084
Personal inquiries	193	694	160	188	240	1475
Phone inquiries	7691	14641	618	5471	1744	30165
TOTAL	9236	16774	825	5797	2092	34724

Table 5(a) provides a breakdown of the nature of the written inquiries which were assessed as not being covered by the legislation.

Table 5(a) Breakdown of matters received in writing by Commission offices and not covered by the legislation. 1 July 1993 to 30 June 1994

	Central	Old	NT	Tas	ACT	TOTAL
Employment	71	169	3	17	10	270
HREOC related	192	11	10	10	16	239
Misconceived	15	7		4	2	28
Sex related	165	386	5	39	10	605
Family law/legal system/justice	14	4	2	3	1	24
Race related	132	186	10	11	6	345
Miscellaneous	136	222	3	14	21	396
Privacy related			2		1	3
Referred to other agency				3	1	4
State/local government	2	88			5	95
Immigration	20			1		21
Prisons	27	51	2	1	1	82
Police	6	4		2	3	15
Housing	4	22		1	1	28
Social Security	6	7		1		14
Disability	527	162	9	14	22	734
Age	25	81			2	108
Advertising	3	21			1	25
Education	5	8		3	4	20
Goods/services/ places/facilities				9		9
Overseas matters						0
Sexual preference	2	10	1	5	1	19
TOTAL	1,352	1439	47	138	108	3084

Referrals to Inquiry

Referrals are complaints which are unable to be settled by conciliation and are therefore referred to a public hearing in accordance with the requirements of the relevant legislation.

The *HREOC Act* does not provide for the referral of unconciliated complaints. There is, however, an option for the Human Rights Commissioner to report to the

Attorney-General where conciliation has failed or where, due to the nature of the complaint, conciliation was not thought appropriate.

During the year, 67 matters referred for hearing were either heard, settled or discontinued. This comprised 39 matters under the SDA, 21 matters under the RDA and 7 matters under the DDA. As at the end of June 1994, there were 56 matters on hand.

Part time hearing Commissioners appointed by the Attorney-General include:

- The Hon Robert Nettlefold
- Mr Ron Castan QC
- Mr Terry Worthington QC
- The Hon William Carter QC
- Ms Patricia Wolfe
- Mr Ronald Merkel QC
- Ms Susan Crennan QC
- Mr Stanley Jones QC

External Litigation

During 1993/1994 a small number of proceedings were commenced against the Commission in the Federal Court when a complainant or respondent was dissatisfied with the decision of the Commission. Examples of such cases are outlined in this section.

I   Ellenbogen v Race Discrimination Commissioner, Human Rights Commissioner and the Human Rights and Equal Opportunity Commission

Mr Ellenbogen sought judicial review of the Commission's decision not to accept two complaints for conciliation. These were a RDA complaint against the Blue Mountains City Council and a *HREOC Act* complaint against the NSW Police Force. The RDA complaint alleged 'citizenship' based discrimination and the *HREOC Act* complaint alleged denial by the police of the statutory right of a person in custody to conduct written communication with the Commission. By the time the court hearing took place the Commission had accepted the RDA complaint.

The court held that it was proper for the Commission to have accepted the RDA complaint for inquiry and conciliation, as the threshold requirements for a valid complaint had been met by Mr Ellenbogen. As for the *HREOC Act* complaint, the Court agreed with the Commission that the alleged breach by the NSW Police of the

communications right was not capable of investigation by the Commission as it did not concern an 'act' or 'practice' as defined in the *HREOC Act*.

2. Clemens and Ursula Ebber v the Human Rights and Equal Opportunity Commission, Board of Architects of Queensland and Architects Accreditation Council of Australia

Mr and Mrs Ebber, both German-trained architects, sought judicial review of the Commission's decision to dismiss their RDA complaints as lacking substance prior to a full hearing. Their complaints concerned alleged discrimination over a period of years in connection with their attempts to obtain registration as architects in Queensland.

The Ebbers submitted to the Court, amongst other things, that there would have been sufficient evidence before the Commission to warrant a full hearing if the issue of indirect discrimination had been fully explored or given proper weight.

The Court has reserved its decision and the Commission does not expect a judgment to be issued until late 1994 or early 1995.

3. Commonwealth v the Human Rights and Equal Opportunity Commission, Dopking and Thomas

The Commonwealth (acting for the Australian Defence Forces (ADF)), argued that marital status discrimination was not a component of the ADF relocation allowances, despite the fact that officers without a 'family' cannot usually qualify. 'Family' in these circumstances essentially means a spouse or dependent child.

The Full Court of the Federal Court found in favour of the Commonwealth. The judgment consequently overturned the 1992 determination of the President that the relocation allowances provided by the ADF contain inherently discriminatory provisions.

The Commission is seeking leave to appeal to the High Court on this question, as the Federal Court's interpretation of the SDA definition of marital status discrimination may significantly diminish the protection afforded by the legislation.

Changes to Complaint Handling Processes

The Complaint Handling Review

In September 1993, the Sex Discrimination Commissioner initiated a comprehensive review of the complaint handling process and services. The review focused on the effectiveness, flexibility and responsiveness of complaint handling; improving the quality and coordination of complaint data collection methods; and developing proposals for appropriate training for staff involved in conciliation. The final report of the review is due for completion in August 1994. Implementation of the recommendations of the review will include significant training and procedural changes.

The Definition of Complaints

In November 1993, the Federal Court delivered a decision which has important implications for the way the Commission handles complaints (*Ellenbogen v Human Rights and Equal Opportunity Commission* unreported, Federal Court No. NG 868 of 1992, delivered on 30 November 1993, Whitlam J).

As outlined above, the Commission had adopted a practice that its staff should make an initial determination as to whether an 'inquiry' was within the jurisdiction of one of the Acts administered by the Commission, and thus should be accepted as a 'complaint'. Essentially the Commission officer considered whether the inquiry raised a ground of discrimination which was made unlawful by the relevant Act. If the Commission officer determined that the inquiry did not raise a ground of discrimination under the Act, the potential complaint was rejected by the officer and the party informed. As the inquiry was not considered by the relevant Commissioner, the potential complainant had little recourse to address any grievance with the decision of the officer.

In *Ellenbogen* (a summary of the case is outlined on page 35) Whitlam J held that the Commission's practice did not allow the review provisions of the legislation to operate as intended.

The consequence of *Ellenbogen* is that virtually all matters now received by the Commission are accepted as 'complaints' and considered by the relevant Commissioner. That Commissioner may decide to decline to inquire into the complaint if it is 'not unlawful' or 'misconceived', which may result in the complainant's application for a review of the decision by the President.

For Further Information

Later chapters of this report deal with the various Acts implemented by the Commission and contain further detail about complaint handling, including case studies of conciliated complaints and matters referred to hearing.

INTERVENTIONS

The Commission may intervene in Court proceedings involving human rights matters. This section describes interventions which took place between July 1993 and June 1994.

I   P. v P. — Sterilisation of a young woman

Description of the case

On 2 February 1994 the Commission sought leave to intervene in a family law case which was before the High Court of Australia concerning the possible sterilisation of a young woman.

The young woman, L., was sixteen years old and was in the custody of her mother ('Mrs P') following an order of the Family Court of Australia. In June 1993, Mrs P applied to the Family Court for a number of orders, in order to authorise medical treatment upon L. so that she would cease to menstruate and be permanently prevented from becoming pregnant.

The proposed treatment was to be carried out in New South Wales. The issue arose as to whether the Family Court could make the orders sought or whether the consent of the Guardianship Board of New South Wales had to be obtained, in accordance with the statutory provision of the *Guardianship Act 1987* (NSW). A case stated was reserved for the High Court on this constitutional issue of a conflict between State and Commonwealth laws.

Human rights matter involved in the Court proceedings

The Commission sought to intervene on the basis that it was necessary for the decision of the case, and as a matter of general importance, for the High Court to state as law specific guidelines and procedural safeguards to protect children from unnecessary sterilisation. It was submitted that the High Court had consistently

considered the rights of individuals when deciding cases involving conflicts between State and Commonwealth laws. Until the High Court clearly defined when courts could authorise sterilisation, it was not possible for individuals to decide which laws best protected the rights of children.

Outcome

The High Court granted the Commission leave to intervene in the matter and accepted written submissions in relation to the matters raised. The High Court subsequently handed down its decision in the matter on 20 April 1994 and held that the Family Court had the power to make the orders sought notwithstanding that the proposed medical treatment would be otherwise contrary to the *Guardianship Act*. As the matter was decided on purely constitutional grounds, the High Court judgement did not address the need or necessity for specific procedural guidelines and safeguards in relation to sterilisation in this case. Those matters would have to be clarified in a further case.

2 P. v P.; Re L. — Sterilisation of a young woman

Description of the case

On 20 May 1994 the Commission sought and was granted leave to intervene in a trial proceeding in the Family Court of Australia in Sydney.

The matter was essentially the trial on the facts of the matter known as *P. v P.* which had earlier gone to the High Court on constitutional grounds (see above). The question now before the Family Court, as a result of the judgement of the High Court, was whether on the facts pertaining to the particular young woman L., she should undergo the sterilisation proposed by her parents.

Human rights matter involved in the Court proceedings

The basis for the Commission's intervention in this case was to raise the following matters before the Court. First, the issue of what are the appropriate principles to guide the exercise of the judicial discretion to authorise sterilisation; second, the procedural safeguards necessary to protect human rights in the conduct of sterilisation.

Outcome

The Family Court is presently hearing the evidence relevant to the matter and the trial of the case is presently part heard. The trial is due to be finalised in September, 1994.

3. John Briton, Acting Public Advocate (Victoria) v G.P. and K.P. and the Human Rights and Equal Opportunity Commission — Consent to surgical treatment

Description of the case

On 9 March 1994 the Commission was granted leave to intervene in a matter which was pending in the Family Court of Australia.

The proceedings related to a child who was aged eleven years old and who suffered from a congenital cardiac condition. As a result of this, his health was found by the Court to be at grave risk. However, his parents were refusing to consent to surgical treatment, which may have assisted his condition.

An application was brought by the Acting Public Advocate of the State of Victoria to obtain the Court's authorisation for operative treatment if that surgery was, in the Court's view, practicable and necessary in all the circumstances. After extensive pre-trial inquiries, it became evident that no appropriately qualified surgeon could be found within Australia who would carry out the required specialised surgery without parental consent. This was the case irrespective of whether the Court authorised the operation. Accordingly, any authorisation which the Court may have ordered was, in effect, pointless.

Human rights matter involved in the Court proceedings

The Commission intervened to raise three broad matters with the Court. First, the direct responsibility of the Court to care for and protect the child. Secondly, the importance of the child's right to be told about any matter concerning its welfare (and the right to express its own views). Thirdly, the issue of whether the child itself could consent to the medical treatment irrespective of the parent's wishes.

The Commission also submitted that, notwithstanding the fact that a surgical option was not available, the Court could nevertheless still offer the child a degree of protection and assistance. Therefore, the Court should not dismiss the proceedings before it, despite the application of the parents and the initial application of the Acting Public Advocate that it do so.

Outcome

The Court accepted the Commission's submissions and held that a Court had a duty to remain primarily responsible for the child in these circumstances. Accordingly the Court refused to dismiss the proceedings. It made orders and received undertakings from the child's parents to ensure that the cardiac condition of the child would continue to be regularly reviewed. Further, that the parents would advise the child in the near future of the full nature of his medical condition.

4   Z.P. & P.S. — Abduction of a child

Description of the case

On 24 March 1994 the Commission was granted leave by the High Court of Australia to intervene in a special leave application which had been brought in relation to proceedings decided against the applicant's wife in the Full Court of the Family Court of Australia. The Commission supported the wife's application for special leave to appeal to the High Court.

The wife was appealing against a number of orders made by the Family Court in relation to the custody of the child of her marriage to the respondent husband (from whom she had separated). The effect of the orders was that the husband and wife were to return to Greece with the child of the marriage who had been brought to Australia by the wife, contrary to an order of a Greek court. The Greek court had ordered that the child of the marriage was not to be moved from Greece without the consent of that Court or the husband.

At first instance, in the Family Court, the question of jurisdiction to hear the matter was raised. The Court subsequently held that it would decline jurisdiction and made orders to effect the return of the child to Greece.

On appeal to the Full Court of the Family Court, that Court, by majority, confirmed the orders of the Court at first instance. The High Court of Australia then granted special leave to the applicant to appeal to the High Court.

The hearing of the appeal before a full bench of seven Justices of the High Court was heard on 2 June 1994, at which time the High Court granted leave to the Commission to continue its intervention in the matter.

Human rights matter involved in the Court proceedings

The Commission's submissions before the High Court were threefold: First, that international child abduction cases should be considered as not only being in the custody jurisdiction of the Family Court, but (also) within its child welfare jurisdiction: Second, that child abduction cases, being within the welfare jurisdiction of the Family Court, should never be declined by the Family Court as not being within jurisdiction, at least when the child is physically in Australia: Third, in exercising its jurisdiction in this area, it would generally be necessary for the Family Court to conduct a thorough review of the merits of the matter. In so doing it must always be guided by the best interests of the child and not by other issues.

Outcome

The High Court delivered its decision in the matter on 29 June 1994. The High Court unanimously stated that in considering international child abduction cases (where the

Hague Convention on the Civil Aspects of International Child Abduction did not apply) the Family Court must always exercise its jurisdiction and form an independent judgment as to what the welfare of the child requires, including whether or not to return the child.

In relation to the facts of the case, the High Court was divided 4:3 in granting the appeal and remitted the matter to the Full Court of the Family Court to determine whether, in accordance with the reasons for the judgment of the High Court, orders should be made for the return of the child to Greece.

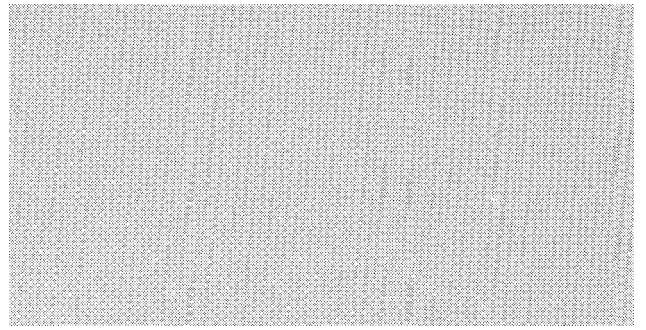
5 Human Rights and Equal Opportunity Commission v Mount Isa Mines Ltd. & Ors — Health and safety at work

Description of the Case

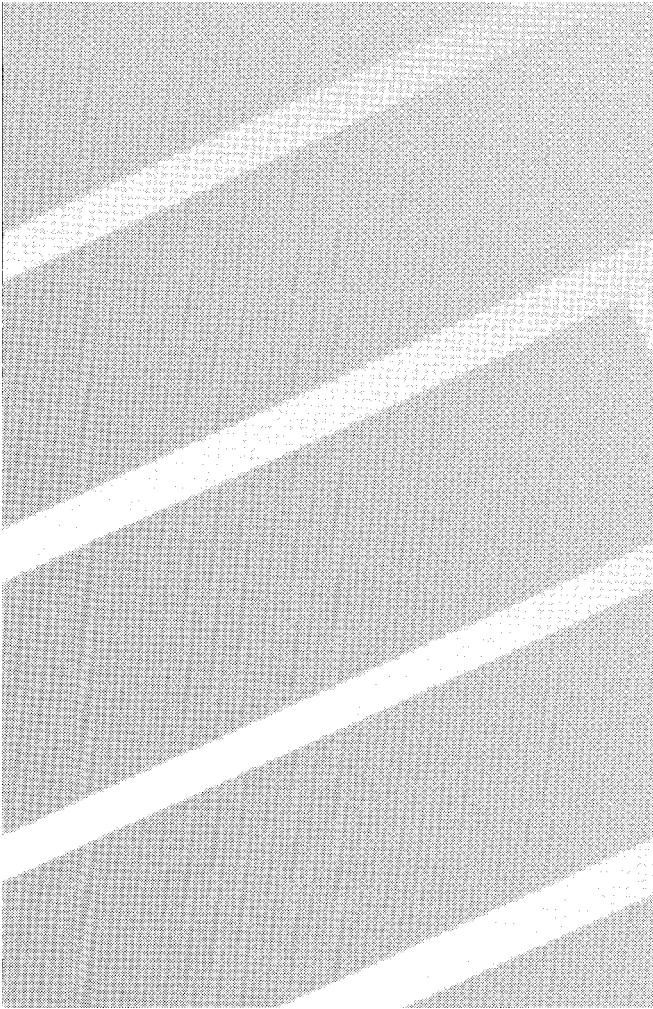
On 9 November 1993, the Full Court of the Federal Court upheld the 1992 decision by the Federal Court ruling that the National Occupational Health and Safety Commission ('Worksafe') should reconsider certain paragraphs of a proposed code and standard of practice relating to employment in the lead industry. This was on the basis that the content of those paragraphs had not been determined purely by health and safety considerations but by inappropriate concerns with the provisions of the *Sex Discrimination Act 1984* (the Act).

Despite affirming the decision at first instance, the Full Court disagreed with the reasoning of the trial judge on three points relating to important principles of discrimination law. Firstly, the Full Court held that, while Worksafe had a primary duty to declare health and safety standards, it still had to consider all relevant discrimination legislation. Secondly, the trial judge had indicated that employers who followed the standards proposed by Worksafe would not violate the Act even if the standards advocated different treatment of women for reasons based on health and not sex. The Full Court disagreed stating that, in determining if conduct is discriminatory under the Act, both the operative effect and the intent behind the conduct can be relevant.

Finally, the Full Court discussed the meaning of 'materially different' for the purposes of the Act. The trial judge's interpretation of this important phrase allowed for differential treatment of men and women because he found that there was a material difference between the effect of lead on men and women as regards their health. However, The Full Court held that the term 'materially different' could not extend to any differences caused by the difference in sex, as to allow otherwise could frustrate the purposes of the Act.



HUMAN RIGHTS



HUMAN RIGHTS COMMISSIONER

Brian Burdekin, a lawyer and former diplomat, was appointed as the first Human Rights Commissioner in December 1986. Prior to his appointment, Mr Burdekin represented Australia in Washington and Geneva and in a number of international negotiations.

The Commissioner is responsible for a wide-ranging portfolio and for the day-to-day administration of the Commission in his role as Chief Executive Officer.

Statement from the Human Rights Commissioner

This will be my last formal statement as Human Rights Commissioner. In reflecting on my eight years with the Commission I am proud of the achievements we have made in furthering the protection and promotion of human rights in Australia.

When the Commission was established in 1986 I made a commitment to produce practical reports that would give real meaning to Australia's human rights obligations. I believe this objective has been achieved with our two major reports concerning the human rights of homeless children and Australians affected by mental illness.

The Inquiry process is a valuable means of involving the community, in a practical way, with human rights issues. It provides a channel for many individuals who would normally be marginalised from consultation processes to voice their views about human rights problems and possible solutions. Inquiries are also significantly broader than our individual complaint handling functions and they enable the Commission to effectively investigate and report upon systemic human rights violations.

The release in October 1993 of the *Report of the National Inquiry concerning the Human Rights of People with Mental Illness* underlined the effectiveness of the Commission's Inquiry strategy. The Inquiry's findings received extensive coverage around Australia, generated considerable community debate and prompted substantial responses from the Federal Government, some State governments and the community.

The report of the Inquiry represents an intensive and sustained effort by the Commission over a three year period, in which we received nearly 900 written submissions, heard from over 450 witnesses at formal hearings and consulted with approximately 300 people at forums and informal meetings. Initiatives in the 1994/1995 federal Budget represent an increase of approximately \$200 million over four years in services for people with mental illness. In addition, the New South Wales and Queensland State Governments have announced initial packages of \$169

million and \$25 million respectively for new and upgraded services. Substantial further commitments have been foreshadowed by several State and Territory governments.

By the end of this year, new programs in response to our recommendations will total between \$400 and \$500 million. However, the final success of the Mental Illness Inquiry must be measured by tangible improvements in the protection of the rights of those affected. The Commission will, therefore, continue to monitor responses to the report over the next twelve months.

Indeed, the Commission's contribution to protection of the rights of the mentally ill constitutes a case study in the development and application of international standards. The Commission played a major role in developing the UN Principles for the Protection of the Mentally Ill. We then used those principles as the basis for a national inquiry. During that inquiry the Government announced a national mental health strategy which took the principles as a benchmark and also committed itself to bringing Australian legislation into conformity with the principles.

In addition to our work in conducting inquiries, the Commission has undertaken a range of activities which I believe have had a major impact on ensuring the observance of human rights in Australia. Our ongoing resolution of individual complaints of discrimination continues to be a highly effective process in achieving a settlement in many cases. It has a number of advantages over a system relying purely on the courts and other more formal mechanisms. These advantages include increased accessibility; reduced costs (to parties and to public funds); and flexibility in the process and the remedies available.

The processes presently available to the Commission also allow issues to be approached on a number of different levels. Conciliated settlements often involve changes in policy or practice which produce benefits considerably beyond the particular complainant. Related processes of education and consultation may lead to practices being revised to prevent discrimination.

The broad policy and promotional functions of the Commission have also produced significant results. These include interventions in major Federal and High Court cases concerning human rights issues; changes to legislative and administrative policy such as the Australian Defence Force policy on homosexuality; and assisting in the development of international human rights instruments such as the Convention on the Rights of the Child.

Initially, it is fair to say that the establishment and structure of the Commission was viewed as an experiment. This 'experiment' has proved so successful, however, that the Commission has now earned an international reputation as one of the most effective national human rights mechanisms in the world. The United Nations, in encouraging the establishment of national human rights institutions, particularly in the Asia-Pacific region, has regularly called upon our expertise to assist countries in the establishment and strengthening of national human rights machinery. I believe

that assisting, when requested, in the 'nurturing' of new national human rights institutions demonstrates Australia's commitment to a constructive interest in the human rights situation in other countries — and thus assists in enhancing our credibility for those occasions on which we must protest violations of human rights.

There is no doubt, however, that our existing structure can and must be improved. As the chief executive officer of the organisation, I have presided over major additions to the Commission's jurisdiction and responsibilities. In 1986, the Commission consisted of the part-time President, a Race Discrimination Commissioner, a Sex Discrimination Commissioner and myself as the Human Rights Commissioner. By 1994, the structure of the Commission had expanded substantially with the addition of the Privacy Commissioner, the Disability Discrimination Commissioner and the Aboriginal and Torres Strait Islander Social Justice Commissioner.

When we commenced operation, four States (NSW, SA, WA and Victoria) had anti-discrimination legislation. By 1994 we had assisted with the preparation of legislation in Queensland, the Northern Territory and the ACT and had entered into cooperative arrangements with Queensland and the ACT. The framework of cooperative arrangements needs to be rationalised and strengthened but there is now only one Australian jurisdiction, Tasmania, in which there is no State legislation which effectively proscribes discrimination.

This evolutionary phase has not been without its difficulties. The growth of the Commission has led to increasingly more complex internal organisational structures to reflect our increased responsibilities. It is a credit to the commitment of all Commission staff, however, that throughout this period of constant change the quality of our work has always been of a very high standard.

In this context I welcome the recent review of the Commission initiated by the Attorney-General. I am confident that its outcome will enable the Commission to more effectively meet its objectives and maintain its independence and integrity.

It has been a privilege to serve as the Human Rights Commissioner. I wish to express my sincere thanks to Sir Ronald Wilson and to my fellow Commissioners and the staff of the Commission for their support and sheer hard work. I am confident that the Commission will continue to make a major contribution to the promotion and protection of human rights in Australia and to set an example which will increasingly be followed by other countries.

MAJOR PROJECTS FOR 1993/1994

Mental Illness Inquiry

The Report of the National Inquiry into the Human Rights of People with Mental Illness was tabled in Parliament and publicly released on 20 October 1993.

The Inquiry was chaired by the Human Rights Commissioner with the assistance of hearing commissioners Dame Margaret Guilfoyle, DBE and Mr David Hall.

Over a three year period the Inquiry received nearly 900 written submissions; heard from over 450 witnesses at formal hearings; and consulted with approximately 300 people at forums and informal meetings. This extensive body of evidence formed the basis of the Inquiry's report.

The Inquiry focused on critical areas such as inpatient and community treatment and care of people affected by mental illness; the rights of carers; the special needs of particularly disadvantaged groups; accommodation; employment; professional training and education; community education; research; prevention and early intervention; and the reform of mental health and related legislation.

The findings of the report received extensive media coverage. The reaction from mental health professionals and the general public was extremely supportive. Several substantial responses to the findings and recommendations of the report have been made by governments and other bodies, as outlined in the following sections.

Commonwealth Government

In response to the report of the Inquiry, the Federal Government has made a clear statement of support for the report's findings and recommendations. Initiatives in the 1994-95 Federal Budget represent an increase of more than \$200 million over 4 years for services either directly targeted at, or providing substantial benefit to, people affected by mental illness.

Key initiatives include:

- \$133.6 million to enhance and expand the National Mental Health Strategy (announced after the Inquiry began) which will bring the total amount available under the strategy to \$250 million over the next 4 years;
- \$12.3 million to initiate specialist responses for people with dementia;
- \$22.8 million allocated over 4 years to the Commonwealth Rehabilitation Services specialist psychiatric pilot units;

- \$20.6 million for the development and delivery of integrated programs for younger veterans with post traumatic stress disorder;
- \$34.9 million in additional assistance over 4 years under the Disability Reform Package to increase the number of people with a disability, including those with a psychiatric disability, who are able to be supported in open employment.

The Federal Government has also made a commitment to develop, by October 1994, uniform national legislation, consistent with the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.

New South Wales

On 15 June, in response to the Mental Illness Inquiry, the NSW State Government announced a \$169 million package for new and upgraded mental health services.

The major features of the package include:

- \$85 million of additional recurrent funding over 4 years;
- An additional 700 community mental health staff will be employed over the next 4 years, with approximately 140 new positions available next year;
- \$4 million in additional capital funding in 1994/1995 to provide at least 13 new supported accommodation services around NSW;
- \$80 million for constructing new community health facilities and improving current psychiatric hospitals. Significant projects that will be undertaken in the plan include:
  - residential programs for the homeless mentally ill;
  - boarding house support treatment;
  - more mobile treatment teams focusing on boarding house and hostel residents;
  - more Aboriginal liaison and mental health workers, in both metropolitan and rural areas, as well as an Aboriginal supported accommodation scheme;
  - dual diagnosis teams to deal with people who experience mental illness and drug and alcohol problems;
  - additional specialist assessment teams for elderly people with mental illness;
  - additional child and adolescent mental health services in city and rural areas; and
  - increased after hours crisis services.

The NSW Government has also announced that this funding package will be supplemented by a further response to the Mental Illness Inquiry which is currently being developed across all relevant NSW government agencies. This response will be considered by the NSW Cabinet in the near future.

Queensland

The Queensland State Government announced its initial response to the Mental Illness Inquiry on 31 May 1994. (The Human Rights Commissioner has been assured that a more comprehensive response will be forthcoming in the second half of 1994.)

Funding for public mental health services in Queensland has been increased by sixteen percent (\$24.7 million) for 1994/1995, with a particular focus on the expansion of community-based services, including:

- \$1.5 million for the introduction of Mobile Intensive Treatment Teams;
- \$1.5 million for the development of suicide prevention programs, particularly as they affect young people;
- \$2.5 million for extended hours community mental health services;
- \$2 million as supplementary funding for Child and Adolescent Mental Health program expansion; and
- \$2.1 million for community-based non-government organisations.

There is also additional funding of \$16 million for the construction of two more inpatient facilities.

Victoria

The Victorian State Government has not yet formally responded to the Mental Illness Inquiry. The Government has, however, announced several initiatives in response to the Inquiry. These have included:

- commitment to a 50/50 split in inpatient—community spending by 1997;
- the services of 24 hour crisis teams have been expanded to cover the Melbourne metropolitan area;
- early this year the Victorian State government announced an additional \$1.5 million in funding for 21 community psychiatric disability support services.

Response of other Bodies

Another particularly positive response to the report came from the Law Council of Australia and the Australian Bar Association. After consultation with all State and Territory Councils and Bar Associations they have committed their members to:

- provide where necessary free legal advice and representation to the Commission to permit intervention in cases where the human rights of the mentally ill have been violated or abused;
- provide free legal advice and representation to individuals identified by the Human Rights Commissioner as having had their human or legal rights apparently breached;
- assist without charge in the conduct of test cases to establish the obligations to the mentally ill of Commonwealth and State Government instrumentalities;
- assist with free legal advice in the conduct of investigations by the Human Rights Commissioner of complaints involving apparent breaches of the human rights of the mentally ill;
- provide advice on Commonwealth and State legislation with a view to achieving greater clarity and harmony.

In addition, the Human Rights Commissioner has initiated a more detailed investigation of issues relating to discrimination against the mentally ill in insurance (including health insurance) and superannuation raised during the Inquiry. It is anticipated that this investigation will be completed in late 1994.

Convention on the Rights of the Child

The Commission participated in planning the first International Congress on Family Law and Children's Rights, which was held in Sydney in July 1993, and the Human Rights Commissioner presented the opening address. With over 750 lawyers from 50 countries attending, the Congress provided an excellent opportunity to develop the initiative for a draft Optional Protocol to the Convention on the Rights of the Child dealing with child sexual exploitation (discussed in detail later in this chapter). The final Congress communique specifically endorsed the resolution by National Human Rights Institutions (taken at a meeting held simultaneously with the United Nations World Conference on Human Rights) concerning the preparation of an optional protocol.

The Commission has continued to be active in public discussion of children's rights issues. In 1993/1994 this included drawing attention to inconsistencies between legislative proposals and the Convention, including:

- advising the Victorian Attorney-General that in the Human Rights Commissioner's opinion there were serious inconsistencies between the proposed Victorian *Crimes (Amendment) Bill 1993* and our international treaty obligations under the Convention;
- advising the Premier of Western Australia with regard to the *Bail Act* and breaches of the International Covenant on Civil and Political Rights and the

Convention on the Rights of the Child. In particular, the Human Rights Commissioner raised concerns about proposed changes which meant that adolescents may not be released on bail on their own undertaking;

- advising the acting federal Attorney-General on whether the provisions of the Victorian *Education (Amendment) Bill* were inconsistent with the Convention.

The Commission also participated in the Australian Health Ministers' Advisory Committee Working Party on the development of a National Child and Youth Health Policy.

Age Discrimination

One of the recommendations of the Commission's Report of the National Inquiry into Homeless Children was the development of comprehensive national age anti-discrimination legislation. Following the release of the report of the Inquiry, the Federal Government has examined this issue on a number of occasions.

In 1994, the Attorney-General reconvened an Age Discrimination Task Force to develop a comprehensive federal age discrimination policy and to prepare a draft discussion paper for community consultations. The Commission was included as a member of the task force.

The prevalence of discriminatory provisions in legislation in relation to age (by comparison to other grounds of discrimination) makes the need for further legislative action in this area particularly pressing for the protection of the rights of those affected by such discrimination. In a number of complaints of age discrimination brought to the Commission it has been impossible to secure satisfactory results through conciliation, because the discrimination in question has been authorised, or in some cases required, by legally binding awards or statutes.

Detention of Refugees

The Human Rights Commissioner made a submission to the Parliamentary Joint Standing Committee on Migration concerning Australia's policy and practice in the detention of asylum seekers. The submission covered issues concerning the policy of prolonged detention and the provisions of the International Covenant on Civil and Political Rights; the detention of children and the provisions of the Convention on the Rights of the Child; access to information, recreation, education and training; and the provision of counselling and rehabilitation services. The Commissioner also appeared before a public hearing of the Joint Committee in August 1993.

Prisons

The Human Rights Commissioner continues to pursue a number of policy issues arising from complaints and representations involving federal prisoners. These issues include the treatment of prisoners, prison standards and conditions, access to education and training, voting rights, compensation, and the international transfer of prisoners. The Commission also continues to receive numerous representations from prisoners sentenced under State and Territory laws.

The Commissioner has continued to be active in public discussion of the criminal justice system and human rights issues. In 1993/1994 this included issues relating to watch-houses, and the treatment of juvenile offenders and women prisoners. The Minister for Justice, the Hon. Duncan Kerr MP, also requested the Human Rights Commissioner's advice on proposed amendments to the *Crimes (Search Warrants and Powers of Arrest) Bill*.

ILO III: National Advisory Committee

The National Advisory Committee was established by the Attorney-General to advise the Commission on the performance of its functions in relation to equality of opportunity in employment, and, when requested by the Minister, to report to the Minister as to action that needs to be taken by Australia in order to comply with the provisions of the International Labour Organisation Discrimination (Employment and Occupation) Convention 1958 (ILO 111).

The Committee comprises representatives of the Commission, Commonwealth and State governments, the Australian Council of Trade Unions, the Business Council of Australia, the Australian Chamber of Commerce and Industry and various community and interest groups.

The Commission acts as the secretariat to the Committee. During the reporting period, the Committee met three times and is currently considering a variety of issues including: the development of a national policy on discrimination in employment and occupation; the implications of the anti-discrimination provisions of the federal *Industrial Relations Reform Act* on the jurisdiction of the Commission; and the development of Disability Standards under the *Disability Discrimination Act*.

A training package — *The Best Person for the Job: Assisting Managers in Eliminating Discrimination in Employment* — has been developed. The training package emphasises the benefits which can be gained by organisations when discriminatory practices are eliminated from the workplace. To date, training sessions have been conducted with over 300 organisations.

Whistleblowing

In November 1993, the Human Rights Commissioner appeared before the Senate Select Committee on Public Interest Whistleblowing. The Committee was formed to inquire into whether whistleblowing should be the subject of Commonwealth legislation (to enable the making of disclosures of 'wrongdoing' and 'gross mismanagement' in the public interest) and, if so, what form the legislation should take.

In appearing before the Committee, the Commissioner drew on the large body of evidence presented to the Mental Illness Inquiry concerning the reluctance of health professionals to expose the practices of fellow professionals or the activities of health administrations. The Commissioner's submission also covered issues such as the nature of any protection that should be extended to whistleblowers from discrimination and victimisation; what persons or organisations should be covered by whistleblowing legislation; and whether a new agency should be created to receive and investigate any discrimination suffered by whistleblowers or whether an existing Commonwealth agency should have that role.

Reporting by Australia under Human Rights Treaties

The Commissioner provided information to the federal Attorney-General's Department concerning the presentation of Australia's reports to the United Nations under Article 40 of the International Covenant on Civil and Political Rights and Article 44 of the Convention on the Rights of the Child.

The Commissioner also participated in the development of Australia's *National Action Plan on Human Rights*. Australia's initiative for the formulation of National Action Plans was endorsed by the United Nations World Conference on Human Rights held in Vienna in June 1993. The Vienna Declaration and Programme of Action stated that:

The World Conference on Human Rights recommends that each state consider the desirability of drawing up a national action plan identifying steps whereby that state would improve the promotion and protection of human rights.

50th Session of the United Nations Commission on Human Rights

From 17 February to 11 March 1994, the Human Rights Commissioner attended the 50th Session of the United Nations Commission on Human Rights in Geneva, as a

special advisor to the Australian delegation. In addition to general activities of the Commission, the Commissioner worked to secure agreement for a new Optional Protocol on Child Sexual Exploitation to the Convention on the Rights of the Child to strengthen measures directed at the protection of children from prostitution, trafficking and other forms of abuse and sexual exploitation, and for the adoption of a resolution strengthening the role of National Human Rights Institutions.

At the request of the UN Centre for Human Rights, the Human Rights Commissioner also met with the recently appointed United Nations High Commissioner for Human Rights, Mr Ayala Lasso, to discuss the constructive role which national institutions could play — particularly in the Asian/Pacific region.

National Institutions

There has been an increasing international trend towards the development of national human rights institutions. It is gratifying to note that the Commission has developed an international reputation for excellence, with many countries viewing its structure and operation as a 'model of international best practice'. As a result, the Human Rights Commissioner has received many requests from other countries to assist them in the development of national human rights machinery.

Assisting (when requested) in the creation or strengthening of new national human rights institutions demonstrates Australia's commitment to our 'constructive' interest in the human rights situation in other countries and thus assists in enhancing our credibility for those occasions on which we must protest violations of human rights.

The Human Rights Commissioner has, at the request of both the Federal Government and the United Nations, provided advice to countries regarding the establishment of human rights machinery and, in particular, national human rights institutions. This has included advice to India, Indonesia, Thailand, Hong Kong, Russia, Latvia and Malawi.

In May 1994, the Commissioner visited Hong Kong at the request of the Hong Kong Legislative Assembly and Amnesty International. The purpose of the visit was to highlight the important role national human rights institutions can play in protecting and promoting human rights. The Commissioner undertook a variety of activities including major addresses to legislators, meetings with senior government officials, including the acting Governor and Chief Secretary, the Secretary for Home Affairs, the Secretary for Constitutional Affairs and the Director of Administration. He also met a large number of NGO representatives.

Optional Protocol on Child Sexual Exploitation

At a meeting of National Human Rights Institutions held in conjunction with the Vienna World Conference on Human Rights, the President and the Human Rights Commissioner presented an initiative calling for the urgent preparation of an Optional Protocol to the Convention on the Rights of the Child specifically strengthening measures directed at the protection of children from prostitution, trafficking and other forms of abuse and sexual exploitation. The proposal received unanimous support from other Human Rights Commissions (particularly those in our region, including the Philippines, New Zealand and India). The meeting resolved that the Protocol should be submitted to the United Nations for urgent consideration by Member States and that all Member States should accord this issue the highest priority and respond effectively to abuses which are occurring.

The Commission was given responsibility for drafting the Optional Protocol. At a meeting of National Human Rights Institutions in December 1993, this draft was accepted without amendment. The fiftieth session of the United Nations Commission on Human Rights in February/March 1994 agreed to form a working party to develop the Optional Protocol using the draft produced by the Commission as the basis for negotiation.

First Optional Protocol Working Group

The First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) enables individuals to complain to the United Nations Human Rights Committee concerning violations of rights recognised in the ICCPR.

The Attorney-General has established a working group to examine options on providing assistance to individuals wishing to lodge complaints with the United Nations Human Rights Committee and the Commission participated as a member of this working group.

COMPLAINT INVESTIGATION

During 1993/1994, complaints under the *HREOC Act* continued to be handled by the Commission's central and regional offices only.

Table 6 shows that 71 complaints were accepted under the *HREOC Act* during the year. Of these 66 were lodged under ILO 111. Table 7 shows the grounds of

Table 6 Complaints lodged under the HREOC Act 1 July 1993 to 30 June 1994

	Central	Old	NT	Tas	ACT	TOTAL
<i>Relevant International Instrument</i>						
International Covenant on Civil and Political Rights	4					4
International Labour Organisation Convention 111	40	7	2	9	8	66
Declaration on the Rights of the Child						0
Declaration on the Rights of Disabled Persons	1					1
Declaration on the Rights of Mentally Retarded Persons						0
Declaration on the Rights of the Child						0
Declaration on the Elimination of all forms of Intolerance and Discrimination Based on Religion or Belief						0
Total	45	7	2	9	8	71
<i>Area of Complaint</i>						
Employment	40	7	2	9	8	66
Immigration						0
Access to goods and services	3					3
Education						0
Civil rights in general	2					2
Total	45	7	2	9	8	<u>71</u>
<i>Category of Complainant</i>						
Male	39	3	2	6	6	56
	5	4		3	2	14
Female	1					1
Group/organisation						0
Other						0
Total	45	7	2	9	8	71
<i>Category of respondent</i>					6	
Commonwealth authority				1		28
State	21			1	2	13
Other	8	3	1	7		30
	16	4	1			
Total	45	7	2	9	8	71

complaint under ILO 111. The greatest number of ILO 111 complaints (23 or 34.8%) involved alleged discrimination on the grounds of age. Many of the complaints raised the issue of compulsory retirement ages specified in legislation and industrial awards.

Respondents to complaints lodged at the Commission's central office under the *HREOC Act* included Commonwealth Government departments (28), State Government departments (13) and private sector organisations (30).

Four complaints were received under the International Covenant on Civil and Political Rights and one complaint was received under the Declaration on the Rights of Disabled Persons.

The introduction of the *Disability Discrimination Act* has led to a marked decrease in the number of ILO 111 complaints lodged on the grounds of medical record, impairment, mental, intellectual, physical and psychiatric disability and psychiatric disability (a decrease of 18 complaints or 72% from 1992/1993 figures).

Table 7 Grounds of Complaint under ILO 111 — 1 July 1993 to 30 June 1994

	Central	Old	NT	Tas	ACT	TOTAL
Age	14	3		2	4	23
Medical record	1					1
Criminal record	8	3	1	3	1	16
Impairment	1					1
Marital status						0
Mental disability	1					1
Psychiatric						0
disability						0
Intellectual						0
disability						9
Nationality				3		4
Sexual preference	5			1	2	5
Trade union activity	1					0
Religion	4		1			0
Political opinion						2
Race	1	1				4
Sex	4					
Physical disability						
TOTAL	40	7	2	9	8	66

Conciliated agreements under the *HREOC Act* have resulted in financial compensation, changes in employment practices and the introduction of training programs. Table 8 provides a breakdown of the outcomes of *HREOC Act* complaints finalised during the past financial year.

Table 8 Outcome of complaints closed under the HREOC Act (1986) — 1 July 1993 to 30 June 1994

	Central	Qld	NT	Tas	ACT	TOTAL
Conciliated	7	9		5	1	22
Withdrawn	11	3		2	2	18
No contact from complainant		4		1		5
Declined	2	3				5
Outside jurisdiction						0
Referred elsewhere	2				1	3
Report to Minister						0
TOTAL	22	19	0	8	4	53

Case Studies

The following case studies provide examples of complaints lodged under the HREOC Act, and their outcomes.

Case Study I: ILO III — Medical Record

A woman was offered a part-time telephonist's position with a government business enterprise. She claimed that the offer was subsequently withdrawn on the basis of medical tests and her medical record regarding her hearing. She claimed that following an ear operation several years earlier, there had been no continuing impairment and her doctor advised that she should be capable of carrying out the work. The woman also claimed that the organisation suggested she seek an independent medical opinion about her hearing. She did so and obtained a report which pronounced her hearing to be acceptable. When she re-contacted the organisation with this information, she was told that she should seek work elsewhere as there was a ban on the external advertising of positions which fell vacant.

The Commission wrote to the organisation. They agreed that the audiology tests had raised concerns about the woman's ability to carry out the work, but stated they were prepared for her to seek a further consultation with an ear, nose and throat

specialist at the organisation's expense and if the finding's were positive, she would be offered a casual position.

As the specialist's findings were supportive of the complainant, the organisation offered the woman another part-time job as a telephonist, which she accepted.

Case Study 2: HREOCA — Sexual Harassment

The complainant, a female employee of a State government authority, alleged that she had been raped by a co-worker in 1988. Following this assault, the complainant suffered ongoing sexual harassment from this co-worker. The complainant alleged that the employer had not adequately safeguarded her rights or properly investigated her allegation of sexual harassment.

The complaint against the employer was successfully conciliated and led to a payment of \$80,000 for hurt and distress and payment of a variety of expenses totalling approximately \$20,000. The employer also agreed to the implementation of a major anti-sexual harassment management and training strategy.

EDUCATION AND PROMOTIONAL ACTIVITIES

The Education and Promotion Section worked with the policy staff of the Human Rights Commissioner in publishing and distributing the *Report of the National Inquiry into Human Rights of People with Mental Illness*.

Demand for the report has been extensive and, in spite of the fact that the Commission has given copies without charge to the hundreds of witnesses who presented submissions, the Commission has received approximately \$70,000 from sales to the general public.

10,000 copies of the pamphlet *Protection Against Discrimination in Employment and Occupation* have been printed and are being distributed.

Federal Human Rights Commissioner

Major Speeches

1 July 1993 to 30 June 1994

JULY 1993

5th	World Congress on Family Law & Children's Rights; <i>"The UN Convention on the Rights of the Child - A General Overview"</i>	Sydney
6th	Guest Speaker Western Port Lunch Club; <i>"Society's Treatment of the Disabled: Barbaric or Humane"</i>	Western Port (Vic)
6th	Banksia Environmental Foundation; Guest Speaker and Co-presenter of Awards <i>"Social Justice for Young Australians"</i>	Melbourne
21st	CEDA (Community for Economic Development of Australia) <i>"Social Justice for Middle Australia"</i>	Melbourne
23rd	National Conference on Mental Illness - Keynote Speaker; <i>"Mental Health in Remote and Rural Areas"</i>	Darwin
23rd	National Conference on Mental Illness - Guest Speaker at Conference Dinner; <i>"Mental Health - not an Optional Extra"</i>	Darwin
28th	Public Seminar - ARAFMI/GROW/Schizophrenia Fellowship of South Qld. Keynote Speaker <i>"Winning the Future - Lessons for Qld. from the Mental Illness Report"</i>	Brisbane

AUGUST

17th	Address to the Mexican Diplomatic Training Institute: <i>"The Role and Functions of National Human Rights Commissions"</i>	Mexico City
18th	Address to the Mexican Human Rights Commissioners and Staff <i>"The Powers of National Human Rights Commissions and the Role of National Inquiries"</i>	Mexico City
24th	Joint Parliamentary Standing Committee on Migration - Address to a Public Hearing into Detention Practices	Sydney

SEPTEMBER

2nd	University of Sydney Law School Guest Speaker at Seminar on <i>"Humanitarian Law Relating to Refugees"</i>	Sydney

2nd	World Conference on Religion and Peace Keynote address <i>"Children's Rights in Asia and the Pacific - A Challenge to Religious Communities"</i>	Melbourne
9th	Aged Care Australia Conference Keynote speaker - <i>"The Perth Rights of the Mentally Ill in Institutions - Future Options"</i>	
13/17th	Murdoch University - Visiting Fellow for the week and Fremantle to deliver The 1993 Murdoch Lecture - <i>"Human Rights, Democracy and the Rule of Law"</i> . Also series of public lectures - <i>"Human Rights and Mental Illness";</i> <i>"The Role of International Instruments in Setting Human Rights Standards";</i> <i>"Human Rights and States' Rights"</i>	
20th	Launch of The Australian Youth Foundation (AYF) National Adolescent Training Program <i>"Children and Young People - Ensuring their Mental Health"</i>	Melbourne
22nd	Launch of the Centre for the Advancement of Mental Health Nursing - Opening Address, Queensland University of Technology; <i>"Professional Responsibilities - Our Role as Advocates"</i>	Brisbane
27th	23rd National Conference of the Australian Association of Social Workers - opening address; <i>"Care and Treatment of People with Mental Illness - Redressing the Balance"</i>	Newcastle
29th	Launch of Newcastle Media Awards for Reporting of Disability Issues; <i>"Giving Disadvantaged Australians a Voice"</i>	Newcastle

OCTOBER

8th	Seminar on Social Justice organised by the Victorian Catholic Primary Staff Association <i>"Youth Unemployment and Human Rights"</i>	Melbourne
8th	<i>"Violence and Resolution"</i> (joint address with Archbishop Tutu) - St Paul's Cathedral	Melbourne
13th	Royal Children's Hospital - Seminar; <i>"Rights of the Child"</i>	Melbourne
13th	Brotherhood of St Laurence Conference, keynote address <i>"Prevention of Youth Homelessness - the Cost of Inaction"</i>	Melbourne
13th	Royal Children's Hospital - Vernon Collins Oration - <i>"Implementation of the United Nations Convention on the Rights of the Child"</i>	Melbourne

18th	Launch of National Mental Health Week address in Parliament House - <i>"An Overview of Mental Health Abuse in Australia"</i>	Canberra
20th	Launch of the Report on the National Inquiry into the Human Rights of People with Mental Illness <i>"Human Rights and Mental Illness"</i>	Sydney

NOVEMBER

3rd	Official opening of the Housing Assistance Service - <i>"Homelessness and Mental Health"</i>	Hobart
4th	Address to the Australian Youth Foundation (AYF) National Symposium - <i>"Aspects of Disadvantage Among Young Australians"</i>	Hobart
7th	Launch of the AYF Report <i>"A Lost Generation?"</i>	Sydney
8th	Address to AYF National Symposium on <i>"Protecting the Rights of Disadvantaged Young People"</i>	Sydney
25th	Address to National Seminar of NGO's (report from HREOC outlining current organisational structure, legislative responsibility and policy directions)	Sydney
26th	Keynote speech - Mental Health Forum (Mental Health Task Force of Manly Warringah Pittwater) <i>"Follow-up of Report: Human Rights and Mental Illness"</i>	Sydney
29th	Address to the Senate Select Committee on Whistleblowing <i>"Professional Accountability - The Responsibilities"</i>	Canberra

DECEMBER

3rd	Chairman's Address to the Annual General Meeting of the Australian Youth Foundation	Sydney
12th	Address to the annual meeting of National Human Rights Commissions - <i>"The Importance of National Human Rights Machinery"</i>	Tunis

FEBRUARY 1994

17th	Australian Catholic Health Care Association - National forum on Mental Health <i>"Human Rights; Where to from Here?"</i>	Sydney
21st	Opening Address to the International Coordinating Committee (ICC) of National Institutions	Geneva
23rd	Address to the ICC <i>"Participation of National Institutions in United Nations Human Rights Fora"</i>	Geneva

MARCH

1st	Address to the UN Human Rights Commission (on behalf of the Australian Delegation) <i>"The Role of National Institutions in Protecting Human Rights"</i>	Geneva
3rd	Address to the ICC <i>"The Need for the UN to Adopt an Optional Protocol to prevent the Sexual Abuse and Exploitation of Children"</i>	Geneva
19th	NAPCAN - Fourth National Conference Keynote address <i>"Should Parents have a Learners Permit - Children's Rights"</i>	Sydney
24th	Aged Care Australia (WA Branch) Public Forum - Challenging the Boundaries of Aged Care: <i>"The Rights of the Elderly Mentally III"</i>	Perth
25th	Hillview Child and Adolescent Services address - <i>"The Importance of Early Intervention Services"</i>	Perth
25th	Addresses to the South East Community Development Council Workshop; Finding the Balance <i>"Youth Suicide - Lessons from the Mental Illness Report"</i> and <i>"Addressing the Mental Health Concerns of Young People"</i>	Perth
25th	Curtin University - address to the School of Social Work <i>"Mental Health - Caring about Children, Parents and Seniors"</i>	Perth
28th	Address to the Australian Association of Social Workers (WA Branch) <i>"Carers and the Human Rights of the Mentally Ill"</i>	Perth

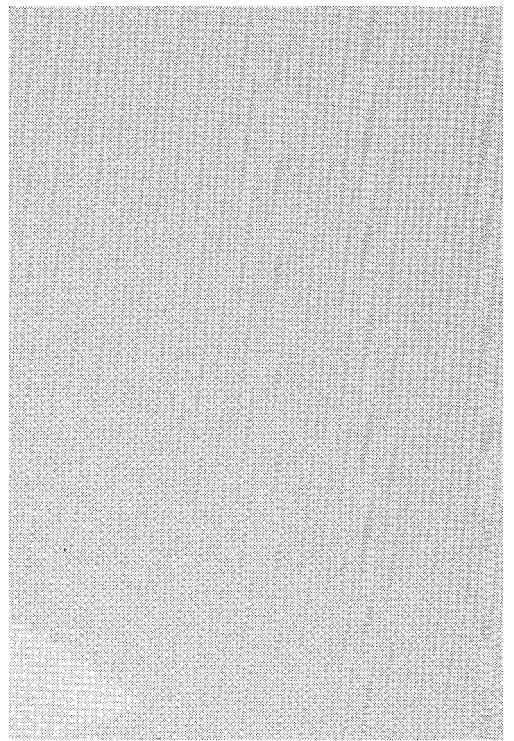
APRIL

7th	Guest Speaker at Conference of Mexican Human Rights Commission <i>"The Right to Development"</i>	
13th	Launch of the "Lighthouse Foundation" <i>"Youth Homelessness"</i>	Melbourne
16th	St John's Church Adelaide <i>"A Community Social Justice Program for Disadvantaged Australians"</i>	Adelaide
28th	Australian Nursing Federation - Victorian Branch address to their 1994 Conference <i>"Human Rights and Mental Illness - the Response thus Far"</i>	Melbourne

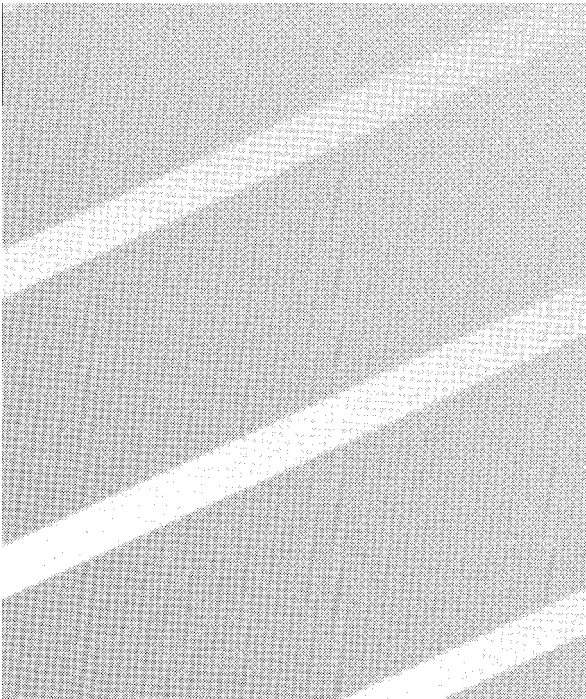
MAY

5th	Launch of Boystown Legal Service - guest speaker <i>"Juvenile Justice - the Need for a Better Response"</i>	Brisbane

18th	Launch of AYF <i>"Panic Stations"</i> by the Port Youth Theatre Workshop; <i>"Facing the Challenge of Protecting the Rights of our Young People"</i>	Adelaide
19th	Keynote address at the NAPCAN (S.A.) Conference <i>"Justice for Children - the Evidence in Australia"</i>	Adelaide
20th	Launch of <i>"The Children in Shelters Program"</i> on behalf of the Southern Area Women's and Children's Shelter Inc. (SA) <i>"Child Abuse, Homelessness and Mental Illness - the Links"</i>	Adelaide
24th	Address to the Hong Kong Legislative Assembly	Hong Kong
24th	Address to the Foreign Correspondents Club	Hong Kong
JUNE		
11th	Rural Doctors Association of Queensland Annual Conference <i>"Mental Health in Rural and Remote Areas"</i>	Mount Isa
18th	New Zealand Human Rights Commission Seminar <i>"National Human Rights Institutions - the Experience in Australia"</i>	Auckland
20th	Address to the Staff and Members of the New Zealand Commission <i>"The Role of National Inquiries"</i>	Auckland
28th	Launch of the AYF's <i>"Hand Brake Turn"</i> Project <i>"Young Offenders - Prevention and Rehabilitation"</i>	Melbourne
30th	Keynote address to the Australian and New Zealand Education Law Association Conference <i>"The Rights of Children and Parents in Contemporary Australia"</i>	Brisbane



SEX DISCRIMINATION



SEX DISCRIMINATION COMMISSIONER

Susan Walpole took up her appointment as Sex Discrimination Commissioner in February 1993. Ms Walpole has brought to the position an extensive background in employment and industrial relations. Most recently a human resources executive with the Australian Broadcasting Corporation, she has specialised in employment policy and practice, particularly in the development of equal opportunity policies for women, has worked for Government agencies at both State and federal level, and was a national official for a major public sector trade union.

Born in Canberra and educated in Australia and the United States, Ms Walpole has a Bachelor of Laws and a Bachelor of Jurisprudence in Industrial Relations from the University of New South Wales. She has studied industrial democracy systems overseas and has a Graduate Diploma in Media Management from Macquarie University.

Ms Walpole began her career in the Industrial Democracy Unit of the South Australian Premier's Department. She spent four years as National Industrial Officer for the Administrative and Clerical Officers' Association, going on to become the Principal Executive Officer for the Women's Bureau in the then Department of Employment and Industrial Relations.

Ms Walpole was Deputy Director of the Affirmative Action Agency before joining the ABC in 1988 as a human resources manager. She was appointed Federal Head of Human Resources for ABC TV in 1992.

Statement from the Sex Discrimination Commissioner

As this report indicates, 1993/1994 has been a year of great activity by the Sex Discrimination Unit. It has also been a year with a record number of complaints under the *Sex Discrimination Act*. In part this activity reflects the changes to the *Sex Discrimination Act* outlined in my last report. It also reflects the extremely hard work of the Unit and of Commission staff to ensure that all Australians have access to the rights and remedies established by the Act. It is a particularly pleasing outcome as the Act completes its tenth year.

Much of the work reflected in the report has been made possible because of the increased resources granted to the Unit in the last budget. This allocation has enabled me to build on the firm foundation of community consultation developed in my first few months in office. Such consultation is a critical part of my role and has continued with regular regional visits and meetings with community groups over the year. It also continues to be one of the most personally rewarding aspects of my work.

Developing effective community education tools such as the *Sexual Harassment Training Kit*, the *Women, Hospitality and the Law* project and the *Trade Union Manual* is one outcome of this consultation process. However, information provision and education is only the beginning of the task. Effective complaint handling is also of critical importance. For this reason I initiated a major review of the Commission's complaint processes. I was joined in this project by both the Race and Disability Discrimination Commissioner's. The review was greatly assisted by an active staff steering committee which included representatives from the Western Australian, South Australian and Victorian Commissions as well as the Commission's offices around the country.

Although the review's final report has yet to be considered by the Commission in its totality, many recommendations began to be implemented this year. Two are worthy of particular note. First, the development of a new database that will enable better information to be provided on complaints and will eventually enhance complaints management. Second, the development of a computerised system for the recording of Commission decisions so that they are readily available to all Commission staff and to practitioners in the field. These two projects alone will provide valuable assistance to the Commission and its clients in the successful resolution of complaints.

The issue of access to the Commission's complaints procedures was a major theme of the Unit's work and the Complaints Handling Review. The *Sex Discrimination Act* is important to all but is not often used by Aboriginal or Torres Strait Islander women or women from non-English speaking backgrounds. The important work commenced in the Cairns office (Aboriginal and Torres Strait Islander Women's Project) will be built on this coming year with further project work and the implementation of changes to procedures and staffing as recommended.

Although 1993/1994 saw no further changes to the *Sex Discrimination Act*, it did see the passage of the *Industrial Relations Reform Act* with its many provisions dealing with discrimination. As employment continues to be the single largest area of complaint under the Sex Discrimination Act, considerable work was commenced this year to enable my active participation in the major processes and hearings of the Australian Industrial Relations Commission. This will continue to be a major focus of work in the coming period when a number of important test cases will occur.

Annual reports should provide a time for reflection, the impetus for future planning, and the opportunity for congratulations where they are due. The enormous amount of work done this year has been the result of great effort by many of the Commission's staff, by community groups with whom we have worked but most particularly to the staff of the Sex Discrimination Unit. My personal congratulations are to them. The coming year will build on the successes of this one with its emphasis on education and information provision, access to and quality of complaints procedures and further efforts to achieve the elimination of sex discrimination by working with major institutions, both public and private, of the Australian community.

MAJOR PROJECTS FOR 1993/1994

Commonwealth Programs and the Sex Discrimination Act

The *Sex Discrimination Act* (SDA) extends beyond discrimination in employment, to cover discrimination in education, accommodation, the provision of goods and services, land transactions, clubs and the administration of Commonwealth laws and programs.

Investigation is under way to establish ways to ensure Commonwealth programs are carried out lawfully under the SDA.

The *Review of Government Policy Advice Mechanisms on the Status of Women* by Senator Rosemary Crowley, the then Minister Assisting the Prime Minister on the Status of Women (released in October 1993) recommended that there be:

Better integration of accountability measures on women in the evaluation and audit activities of Government programs. In particular evaluation against Section 26 of the Sex Discrimination Act which makes unlawful discrimination in the administration of Commonwealth laws and programs. The first such evaluation to be undertaken by the Department of Employment, Education and Training on Commonwealth Employment Service operations. (Recommendation 10)

Review of Commonwealth Employment Service (CES) Services and Programs

The Review of CES services and programs in relation to s.26 of the Act commenced in February 1994. The project is being conducted by the Sex Discrimination Commissioner and the Department of Employment, Education and Training (DEET), in conjunction with the Office of Status of Women.

The aims of the project are to:

- examine the operations and programs of the CES network in relation to discriminatory outcomes on the basis of sex;
- recommend any measures necessary to improve the capacity of DEET policy decision-making and the CES network to meet the department's obligations under the SDA; and
- identify issues and principles which may be relevant to other Commonwealth agencies.

More specifically, the Review seeks to identify whether:

- CES services and programs discriminate in relation to sex, either directly or indirectly; and
- what should be done to prevent sex discrimination in CES programs and services.

The process for undertaking the review has involved calling for submissions from interested organisations, conducting meetings with key organisations, examining CES policies, procedures and guidelines and running consultations with CES users, staff and employers in three locations. The locations selected were western Sydney, Lismore and Alice Springs. Users who were particularly sought for their views included women from non-English speaking backgrounds, Aboriginal women and women with disabilities.

The final report is due to be completed by the end of August 1994, for consideration by the Minister for Employment, Education and Training.

Women, Hospitality and the Law

The Sex Discrimination Commissioner is concerned about the opportunity for employees within the hospitality industry to access training and information on sex discrimination and affirmative action issues. This has been a particular concern because of the high number of women employed in the industry and the number of sex discrimination and sexual harassment complaints against the industry brought to the Commission.

As a result the Commissioner has initiated work which will result in the development and evaluation of a training program on sex discrimination and affirmative action for the hospitality industry. The project is being jointly conducted by the Sex Discrimination Commissioner, the Affirmative Action Agency and the Federal Hotel Group. Specialist advice is also provided by a reference group.

The aims of the project are to:

- develop curriculum, teaching resources and student workbooks about anti-discrimination and equal employment opportunity issues in the context of the hospitality industry;
- facilitate the trial implementation of the course in a relevant hospitality workplace;
- develop a train-the-trainers program for curriculum users; and
- evaluate the trial of the program for the purposes of seeking approval for its inclusion into mainstream hospitality courses.

The training program is being written using competency based training methodology and will be piloted at the Federal Hotel's Country Club Casino in Launceston.

It is envisaged that in the long term, this project will ensure that training and information on these issues forms an integral part of general workplace programs which deal with the rights and responsibilities of employees, as well as a critical component of any vocational and further education in the hospitality field.

Aboriginal and Torres Strait Islander Women's Project

Few complaints of sex discrimination are received by the Commission from Aboriginal and Torres Strait Islander (ATSI) women. The Sex Discrimination Commissioner has initiated an ATSI women's project through the Cairns Regional Office of the Commission.

The aim of the project is to consult with ATSI women to find out:

- whether ATSI women are aware of the SDA;
- whether ATSI women were interested in information about the legislation; and
- how the Commission can respond more appropriately to the needs of ATSI women.

Consultations with ATSI communities and government departments in the Cairns area began in September 1993. Information about the SDA was provided and ATSI women discussed their experiences of discrimination.



Sex Discrimination Commissioner Sue Walpole meeting with the Women's Advisory Board and Project Workers, Patimah Malone and Hanine McCaskill. *From left to right* Sue Walpole, Ada Tillet, Shirley Swindley, Patimah Malone, Jeanette Singleton, Hanine McCaskill and Rosemary Anderson.

The consultations revealed that the majority of women interviewed did not know about the legislation. As a result another round of consultations were held in early 1994 with the same communities to provide further information and explanation on the legislation and to discuss in detail how to effectively handle complaints from ATSI women and inform them of the role of the Commission.

A report of the findings and recommendations was released in July 1994. Further work will be conducted to ensure appropriate service delivery to ATSI women.

Sexual Harassment, Students and Educational Institutions

The *Sex Discrimination and Other Legislation Amendment Act 1992* introduced major reforms to the sexual harassment provisions in the SDA. The amendments redefine sexual harassment and extend the areas of public life where it is unlawful.

One of the most significant changes concerns sexual harassment in education. It is now unlawful for 'adult' students (16 years and over) to sexually harass other 'adult' students or members of staff.

In order to promote awareness of these new provisions, a national information strategy for students and educational institutions was commenced in 1994.

The objectives of the strategy are to:

- provide students with clear, relevant and accessible information on their legal rights and responsibilities with regard to sexual harassment;
- ensure that educational institutions in all sectors are aware of their legal obligation to take action to eliminate and prevent sexual harassment.

The strategy is aimed at three specific groups:

- school students and young students in other education sectors (eg. TAFE);
- students in tertiary institutions; and
- educational institutions.

Streetwise Comics were commissioned to produce a four page colour comic on sexual harassment in schools. The comic, called *Hands Off*, gives examples of sexual harassment in the school environment and illustrates its effect on students. It also explains the action students can take if they experience sexual harassment at school. National distribution of the comic will commence at the beginning of July 1994.

The Sex Discrimination Unit has also produced a *Charter for Women Students*. The Charter sets out women's rights to equal opportunity in tertiary education, including the right to:

- choose courses based on interests and abilities;
- assessment of work on its merits;

- use of all services and facilities;
- teaching which is non discriminatory; and
- freedom from sexual harassment by staff and students, or in residential colleges.

The Charter has been produced in both poster and flyer format and will be distributed throughout tertiary institutions nationally.

Sexual Harassment Guidelines for Educational Institutions are currently in preparation and it is anticipated they will be ready for distribution in August 1994. The guidelines cover issues such as liability and legal compliance, establishing sexual harassment policies and complaint procedures and strategies for prevention.

Women, Unions and the SDA

Historically, industrial relations matters covered in industrial awards and agreements have been exempt from the SDA. In December 1992, amendments gave the Sex Discrimination Commissioner new powers with regard to complaints of discrimination in new federal industrial awards and agreements. Because few unions have used the SDA to tackle sex discrimination in employment, it was decided to provide information for unions and women workers on ways that the SDA and other anti-discrimination legislation can be used to promote the rights of women at work.

The aims of this project are:

- to produce a manual for trade union officials and delegates to explain how the SDA, and other legislation which deals with sex discrimination (e.g. the *Industrial Relations Reform Act*, the *Affirmative Action Act*) can be used to promote the rights of women at work; and
- to produce a leaflet on the rights of women at work for distribution by union officials.

The Sex Discrimination Commissioner is working with the ACTU to finalise the manual for release before the end of 1994. The leaflets on the rights of women at work are now available.

Enterprise Bargaining Manuals

The shift to workplace bargaining in Australia, and new requirements in both the *Sex Discrimination Act* and the *Industrial Relations Reform Act* to produce non-discriminatory industrial awards and enterprise agreements, require a much greater knowledge of anti-discrimination law and practice in Australian workplaces.

The Sex Discrimination Commissioner has funded the production of enterprise bargaining manuals in three industry-specific areas: local government, small public sector agencies and the finance sector.

The aims of this project are:

- to produce manuals which help managers and unionists in specific industries negotiate non-discriminatory enterprise agreements which also promote equal opportunity at work for women and workers with family responsibilities; and
- to produce manuals for specific industries which explain anti-discrimination law in plain English.

These manuals will be available in September 1994 and will be distributed free of charge to industry and unions.

Queensland Awards Project

Industrial awards and agreements have the force of law and determine wages and conditions for most workers in Australia. Many awards and agreements still contain provisions which disadvantage women and/or use discriminatory language.

The project aims to identify ways to change discriminatory provisions in Queensland awards and to produce guidelines for inclusion in a practice note which will be issued by the Queensland Industrial Relations Commission. This is being conducted in conjunction with the Queensland Department of Employment, Vocational Education, Training & Industrial Relations.

This project is due for completion at the end of 1994.

The Rockhampton Meat Industry Project

Around a third of workers in the meat industry are women. Many abattoirs are located in central and north Queensland, and the Queensland offices of the Commission have a significant number of complaints of sex discrimination from women meat workers. These complaints highlight the problems faced by women workers in the meat industry more generally, including the occupational segregation of work in the industry, the existence of discriminatory provisions in meat industry awards, and sexual harassment.

In response to a number of complaints of sex discrimination from women abattoir workers in the Rockhampton region, the Rockhampton office of the Commission:

- undertook an education and awareness campaign for women workers, managers, and union officials in the meat industry in the region; and

- made a submission to the Industry Commission's Inquiry into the Meat Processing Industry, which highlighted the need for the industry to examine workplace practices in terms of the costs of discrimination to the efficiency and effectiveness of the industry. The submission also discussed the need for the industry to be aware of new provisions in the *Sex Discrimination Act* which allow complaints of discrimination to be made if there are discriminatory provisions in industrial awards, and provided examples of financial costs of sex discrimination and sexual harassment to the industry.

The Rockhampton, Cairns and Brisbane offices are currently working with the meat industry unions to improve awareness of sex discrimination legislation and equal employment opportunity.

Superannuation

The Sex Discrimination Commissioner has been investigating areas of superannuation which discriminate against women. With the introduction of more limited exemptions to the industry, this issue has become a priority area. She has been involved in extensive research and consultation with government bodies and industry representatives.

A publication, *Superannuation and the Sex Discrimination Act 1984: Current Status and Future Directions*, was produced in this period. It contains three of the Commissioner's speeches on the existing conditions in the industry and the foreshadowed policy directions.

Senate Inquiry into Sexual Harassment in the Defence Force

On 15 October 1993 the Commission was invited to make a submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade: Inquiry into Sexual Harassment in the Australian Defence Force. It was considered appropriate that the Sex Discrimination Commissioner should respond to this invitation. A submission was forwarded to the Senate Committee on 15 November 1993. The Sex Discrimination Commissioner also appeared before the Senate Committee in Public Hearing as a witness on 4 February 1994.

The SDC in her address to the Senate Committee stated:

Senators, you are confronted with a series of issues which are fundamental to the working lives of all Australian women.

What type of community are we if we cannot protect women workers from sexual harassment?

What type of community are we living in, if we cannot provide rights for women workers against sexual harassment and cannot enforce those rights?

It is clear that women currently continue to face problems of sexual harassment in the workforce — it is pervasive. Why? Because women are not afforded equal status in this society. The disparity between the rewards men and women workers receive is an obvious example. All aspects of public life reflect this unequal status. The Defence Force reflects this...

As well as providing background information on the sexual harassment provisions in the SDA and the impact of this unlawful behaviour on individuals and organisations, the submission strongly argued that the incidents of sexual harassment reported in the Defence Force represent the 'tip of the iceberg'.

Highlights of the submission included:

- the Defence Force as a workplace can be characterised as a 'hostile working environment'. This is where sexual harassment is pervasive, relentless and well entrenched within the culture of the organisation. The behaviour is often condoned or at times even encouraged by the organisation. It affects the recipient's work performance and creates an intimidating, abusive or offensive work environment;
- that a certain set of conditions, such as traditionally male dominated workplaces, will create the right climate for sexual harassment and abusive work environments. The implications of this behaviour are even more serious in the Defence Force, as negative conduct directed at women in situations where employees depend on each other, could be life threatening;
- the sexual harassment complaints against the Defence Forces demonstrate that the particular types of conduct reported are not unique. It ranges from lewd and suggestive comments to groping and grabbing and actual rape. It is occurring to women on a regular basis;
- there have been inadequacies in the ways the Defence Force has responded to complaints made internally, and when made to the Commission. One clear weakness is the length of time it takes to investigate allegations of sexual harassment. Bureaucratic responses and the rigidity of hierarchies has meant that response time is increased as the complaint moves through the system. The seeming lack of seriousness with which significant incidents of sexual harassment have been treated, sometimes by relatively senior staff, has caused undue stress for complainants, unnecessary escalation of the issue and ultimately time delays;
- it is apparent that the key priorities of the Defence Force, if they are to be brought to fruition, mean that more attention and resources be directed towards the development of appropriate internal mechanisms. The Defence

Force also needs to develop appropriate responses to outside agencies such as the Sex Discrimination Commissioner, to assist her endeavours to fulfil her statutory duties of investigating and conciliating complaints of sexual harassment and sex discrimination;

- complaints data research indicates that a number of Commonwealth Government departments, including the Defence Force are repeat respondents to sexual harassment complaints. The submission outlines possible future directions and minor amendments to the SDA in order to broaden the Sex Discrimination Commissioner's powers to address systemic discrimination and the repeat respondent factor within Commonwealth agencies; and
- women's expectation that they can work productively in an environment which encourages their contribution is not being met whilst they are being confronted by sexual harassment.

At the Senate Committee Public Hearing the Commissioner commented that

The Australian community, through Parliament and by legislation, has said that not only are women's expectations legitimate, but they are a right — an enforceable right. Complaints under the Sex Discrimination Act represent breaches of these rights.

The task for all organisations is to ensure that this right is upheld for the benefit of individual workers as well as the productivity of the workplace.

National Wage Case Intervention by Sex Discrimination Commissioner

In September 1993, the Sex Discrimination Commissioner made her first intervention in a National Wage Case. The submission was made on the basis of her responsibility to eliminate discrimination in employment, and her new responsibilities with regard to the elimination of discrimination in new federal industrial awards and agreements.

With the advent of the new *Industrial Reform Regulations Act*, and its strong emphasis on equity outcomes, the Commissioner will be closely monitoring progress and intervening as necessary.

COMPLAINT INVESTIGATION

Table 9 shows that 1,304 complaints within jurisdiction were lodged under the *Sex Discrimination Act* (SDA) during 1993/1994.

Table 9 Complaints lodged under the Sex Discrimination Act (1984) by ground of complaint — 1 July 1993 to 30 June 1994

	Central	Qld	NT	Tas	ACT	Vic	SA	WA	TOTAL
Sex	25	7	6	4	4	265	44	14	369
Sexual harassment	50	37	6	20	10	313	150	6	592
Sex and sexual harassment	4		7	2			54		67
Marital status	1	3	1	4		37	4	1	51
Pregnancy	19		2	4	2	111	11	4	153
Family responsibilities	3		3						6
Victimisation			1						4
Other						62			62
TOTAL	105	47	26	34	16	788	263	25	1304

Of the 1,304 complaints received, the largest proportion (659 or 50.5%) involved allegations of sexual harassment. Complaints of sexual harassment include those lodged on the grounds of sexual harassment or sex and sexual harassment together.

Complaints on the ground of sex constituted the next largest category, with 369 or 28.3 percent of complaints lodged. Complaints on the ground of pregnancy represented 153 or 11.7 percent of all complaints lodged under the SDA. The Commission received 6 complaints on the ground of family responsibilities, 51 on marital status and 4 on victimisation.

The large number of complaints from Victoria is due to the recent changes which were made to the Victorian *Equal Opportunity Act*. As a consequence, it is assumed that Victorian complainants are using the federal legislation in preference to the State legislation.

Table 10 outlines the areas in which complaints under the SDA were lodged. As in previous years, the vast majority of complaints (1,187 or 91%) were in the area of employment. Access to goods, services, places and facilities represented 6 percent of all complaints, with 75 complaints received in this area.

Table 10 Complaints lodged under the Sex Discrimination Act (1984) by area of complaint — 1 July 1993 to 30 June 1994

	Central	Old	NT	Tas	ACT	Vic	SA	WA	TOTAL
Employment	91	38	21	32	15	720	245	25	1187
Accommodation/land						7	1		8
Goods/services/facilities	8	3	1		1	50	12		75
Clubs	1	3				2	1		7
Administration of Commonwealth laws/programs	3	1	2						6
Education	1	2	2	1		8	4		18
Other	1			1		1			3
TOTAL	105	47	26	34	16	788	263	25	1304

Table 11 Complaints lodged under the Sex Discrimination Act (1984) by category of complainant and respondent — 1 July 1993 to 30 June 1994

Category of Complainant

	Central	Old	NT	Tas	ACT	Vic	SA	WA	TOTAL
Male	14	4	5	3	5	66	2	7	106
Female	84	41	21	31	11	422	261	16	887
Trade Union	3							2	5
Two or more persons	2	2							4
On behalf of a person/group	2								2
Representative complaint									0
Not recorded						300			300
TOTAL	105	47	26	34	16	788	263	25	1304

Category of Respondent

	Central	Old	NT	Tas	ACT	Vic	SA	WA	TOTAL
Commonwealth	26	7	4	2	7	42	7	8	103
<u>Other</u>	79	40	22	32	9	746	256	17	1201
TOTAL	105	47	26	34	16	788	263	25	1304

The categories of complainants and respondents are set out in Table 11. The majority of complaints under the SDA (887 or 687%) were lodged by women. This is to be expected, as the basis of the Act is the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Nevertheless, 106 complaints were received from men, a significant increase of 79.7 percent on the 59 complaints received from men last year.

Table 12 provides a breakdown of the outcomes of complaints finalised or referred for hearing over the past year. 273 or 40.6 percent of complaints were successfully concluded through the conciliation process, while 39 (5.8%) were referred for public hearing by the Commission.

203 (30.2%) matters were discontinued because the complainant either did not respond to the Commission's correspondence or withdrew their complaint.

Table 12 Outcome of complaints closed or referred for hearing under the Sex Discrimination Act (1984) — 1 July 1993 to 30 June 1994

	Centra	Old	NT	Tas	ACT	Vic	SA	WA	TOTAL
Conciliated	26	32	6	14	2	54	124	15	273
Withdrawn	10	11	3	3	3	69	22	7	128
Conciliation failed — not referred for hearing						38			38
No contact from complainant		14		1			55		75
Declined	2					32	3	7	44
Outside jurisdiction							5	1	6
Referred elsewhere	1		1	2		26	37	3	70
Referred for hearing	16	7		5	2	9			39
TOTAL	60	64	10	25	7	228	246	33	673

Case Studies

The following case studies illustrate typical complaints lodged under the *Sex Discrimination Act* and their outcomes.

Case study I: SDA — Employment

A woman applied for a position with a large government agency. The position involved working in remote locations.

The complainant alleges that she was discriminated against on the ground of sex in that questions asked of referees by members of the selection panel referred to her abilities to cope in certain situations based on her sexual status rather than merit. These included questions such as whether she would have the skills or strength to free a bogged vehicle.

In investigation, the respondent agreed that the selection process had not been conducted following normal selection procedures, and that panel members had made inappropriate comments about the gender of applicants.

The respondent, without any admission of liability, agreed to provide the complainant with an apology and \$1000 for injury to feeling. They also agreed to provide the branch managers and supervisors with equal employment opportunity training on selection procedures and to include on selection panels, for a period of twelve months, consultants with relevant equal opportunity experience.

Case study 2: SDA — Marital status

A woman complained that she was sacked because she was married to a colleague and the company had a policy of not employing married couples. The man complained that he felt his position was jeopardised because of friction with the company's senior management arising from the termination of his wife's employment. The allegations were denied by the company but the matter was conciliated with the provision of compensation to the woman, apologies and references to both the man and the woman and an undertaking not to discuss the issues or cause detriment to the couple.

Case study 3: SDA — Sexual harassment

A young woman was employed as a telephone operator with a charity fundraising organisation. The male manager of the organisation asked the complainant to go out socially with him. She allegedly refused him, but he continued on later occasions to tell her he was fond of her, arrived at her home to take her for a drive and constantly telephoned her at home.

The complainant alleged that for nearly 12 months her manager attempted to turn their working relationship into a personal one.

The constant advances, all of which she rejected, made her feel ill and her work deteriorated significantly. The complainant alleged that she advised senior management, but when no action was taken, she resigned to protect herself from the behaviour.

The complaint was resolved with payment for loss of wages by the company (\$3200) and compensation for injury to feeling being paid by the personal respondent (\$500).

Case study 4: SDA — Sex discrimination/sexual harassment

A woman was employed as a gardener for a period of three years in a male dominated work area. She alleged that during that period she was harassed and discriminated against by her workmates and that the employer (the respondent) failed to protect her against this behaviour and to discipline the perpetrators.

The complainant alleged that from the commencement of her employment she was subjected to crude comments of a sexual nature, derogatory remarks about her qualifications and ability to perform her work and insinuations regarding her sexuality. In particular one of her supervisors kept pornographic material in the work area, made sexually explicit comments to the complainant about women he saw in the street and told her about his sexual experiences.

The complainant claimed that when she made complaints to her manager about the behaviour of her workmates no effective action was taken. She was eventually forced to take stress leave, to transfer to another work area and finally to resign. Medical evidence supported the complainant's claim that she was unable to return to her previous work environment.

The respondent denied liability but acknowledged that they were aware of some problems related to the integration of women into the work area and claimed to be addressing these problems through education and training.

During investigation two other women in the same work area supported the allegations made by the complainant about the behaviour of their male colleagues and the attitude and response of management to problems.

A conciliation conference was held but the complaint was not conciliated. Negotiations continued with both parties and an agreement was reached to settle the complaint, the complainant's Workcover claim and a common law action for \$70,000 made up of \$18,460 in respect of the Workcover claim, \$46,540 in respect of the equal opportunity and common law actions and \$5,000 to cover legal costs.

REFERRALS TO INQUIRY

Table 13 SDA Matters Determined 1 July 1993 to 30 June 1994

Name	Area of Discrimination	Handed Down
Lesley Mutsch v Tyre Marketers (Aust) Ltd T/A Beaurepaires	discrimination in employment on the grounds of sex and pregnancy (s.14)	29 July 1993
G v R & Department of Health, Housing and Community Services	discrimination in employment on the ground of sex (s.14) and sexual harassment in employment (s.28)	17 September 1 993
Victoria Ciemcioch v Echuca-Moama RSL & Citizen Club	discrimination in club membership on the ground of marital status (s.6)	9 September 1993
Judith Mary Shaw v Perpetual Trustees Tasmania Ltd	discrimination in employment on the ground of sex (s.14)	10 September 1 993 25 January 1994
Philomena Grady v Challenge Bank Ltd T/A National Permanent Management Services P/L	discrimination in employment on the grounds of sex and pregnancy (s.14)	
Marion Cielland v Graham Allen T/A Allen & Sons Steel & Aluminium Fabrications	discrimination in employment on the ground of sex (s.14)	18 February 1994
Teresa Liddle v Peter Morley & Colonial Mutual Life Assurance Society Ltd	discrimination in employment on the ground of sex (s.14) and sexual harassment in employment (s.28)	23 February 1994
Alexander Proudfoot v Quentin Bryce	discrimination in the provision of services (s.22) and in the administration of a Commonwealth Law (s.26) on the ground of sex	30 March 1994
Theresa Hall v John Naisnnith & Department of Defence	sexual harassment in employment (s.28)	31 March 1994
Gail Straney v John Brady	sexual harassment in employment (s.28)	22 April 1994
Ljljana Sreckkovic v Computer Power Group Ltd	discrimination in employment on the ground of pregnancy (s.14)	30 June 1994

The following case studies provide examples of the outcomes of complaints referred to inquiry.

Hall v Naismith and Department of Defence

The complainant was employed as a civilian steward with the Department of Defence in the Mess at Watsonia. She alleged that during the course of her employment she

was sexually harassed by the kitchen manager, Sergeant Naismith (the respondent). The complainant alleged that during a one month period, Sergeant Naismith had harassed her through his lewd comments and behaviour, including inquiring whether she wanted to have an affair, rubbing his hand up her thigh, making sexually suggestive comments when she was washing the floors, leering and commenting on the size of her breasts.

The complaint against the Department was conciliated. However, the complaint against the Sergeant was not conciliated and the matter referred for public inquiry. Sergeant Naismith failed to attend the inquiry and the matter was dealt with in his absence.

The Inquiry Commissioner accepted the complainant's evidence and found that the complaint was substantiated. The Commissioner awarded the complainant the sum of \$5,000 in damages.

The respondent has sought a review of this decision by the Federal Court.

Gail Straney v John Brady

Mrs Straney (the complainant) alleged that she had been sexually harassed between 1985 and 1990 by her employer, a solicitor, Mr John Brady (the respondent).

The complainant and the respondent had known each other since 1959 professionally and personally. In 1985 the complainant commenced working for the respondent who was a sole practitioner. Mrs Straney was his sole full-time employee. The complainant was entrusted with considerable authority for the management of the office.

The complainant and the respondent appeared to enjoy a good relationship, dining out in the company of others and even going on holidays together. The respondent had paid for three successive holidays. The respondent met the cost of the complainant's travel and accommodation, as well as purchasing clothes and jewellery. The complainant accepted these as a bonus which she believed were justified because of the difficulties she encountered in managing the office due to the respondent's excessive drinking.

The complainant alleged ongoing harassment in the form of touching which she said she tolerated but that she had made plain that she did not like. The complainant also alleged that on one occasion, when she was at the respondent's home trying to help him get to work after a heavy bout of drinking, he sexually assaulted her.

The complaint could not be conciliated and was referred to a public inquiry.

The President concluded that the incident of sexual assault had occurred but that he was not satisfied that there had been a rejection by the complainant of the respondent's advances sufficient for the respondent to realise that the advances were

unwelcome. Additionally, the President was not satisfied that the other ongoing sexual harassment had either occurred or had been been unwelcome at the time.

The President was of the opinion that the allegations could be explained by a distorted perspective of the relationship brought about by the stress of the respondent's drinking and the trauma associated with the breakdown of her relationship with the respondent. There were no allegations of harassment during the holidays which the complainant and the respondent spent together in the company of others but without the complainant's husband. The complaint was dismissed.

Despite the finding, the President observed that this case highlighted the sense of oppressive authority which often lies at the heart of allegations of sexual harassment which is more likely to be imparted in the context of a close relationship where there is a wide disparity in ages between an older employer and a younger employee. In such a context, acts of generosity from the employer to the employee could contribute to that sense of oppression.

Victoria Ciemcioch v Echuca Moama RSL & Citizens Club

Mrs Ciemcioch alleged that she had been refused membership of the Echuca Moama RSL & Citizen's Club on the ground of her marital status. The complaint was unable to be conciliated and was referred to a public inquiry.

Echuca Moama RSL and Citizen's Club (the respondent) applied to the Commission to dismiss the complaint on the basis that it was misconceived. They argued that Mrs Ciemcioch was denied membership of the club because it bore a grudge against her husband, with whom it had been involved in various disputes culminating in litigation in which Mr Ciemcioch had been successful.

The respondent argued that it could not be concluded that the refusal had been on the basis of marital status. Rather the club's attitude could be explained by the fact that Mrs Ciemcioch had a close relationship to a person whose activities the club regarded as damaging to its interests. The club had treated Mrs Ciemcioch's application in the same manner in which it would have treated any application from a person who was closely associated with an individual who had been involved in an activity which the club saw as contrary to its interests.

The Commissioner was of the view that it would be unfair to the complainant not to give her the opportunity to present her case as to why she felt that she was the subject of discrimination especially because:

- (i) the respondent refused to furnish any reasons;
- (ii) refusals of membership were rare;

- (iii) the complainant's husband had been involved in significant disputes with the club; and
- (iv) detailed evidence as to the basis of the decision had not been assessed.

The Inquiry Commissioner found the complaint to be substantiated and that the respondent had engaged in unlawful conduct. The Commissioner directed that the club reconsider her application for membership and awarded \$3000 in damages.

Mutsch v Tyre Marketers (Australia) Limited trading as Beaurepaires

Ms Mutsch (the complainant) was employed as a 'recordkeeper' at the respondent's business trading as Beaurepaires at Wodonga. Her employment was terminated by the store manager on instructions from the regional manager on 28 June 1991. She was asked to leave work that same day. The complainant stated that her termination was explained to her by the store manager as being because 'it had been decided that all females had to go.' It had only been two days prior to her dismissal that she had informed the acting store manager that she was pregnant. It was for these reasons that she alleged that her dismissal was influenced, unlawfully, by considerations relating to her gender and her pregnancy.

The respondent asserted that the termination of the complainant was entirely due to normal business considerations and that her pregnancy had not influenced the company's decision. It was accepted by the respondent that the complainant was a very good worker and that she was a valued employee at the Wodonga store. However, her termination was a result of a policy to retrench all recordkeepers as a consequence of implementing a national computerised store accounting and financial management system.

Approximately 115 staff were employed as recordkeepers. It was estimated that over 90 percent of these people would have been women, and indeed, in evidence references by witnesses to 'women' was a way of referring to recordkeepers. Retrenchment discussions by senior management resulted in 93 positions being placed on a retrenchment list. The complainant was one of the women on this list.

From evidence given at the Inquiry, it appeared that senior management were aware of the complainant's pregnancy at the time when retrenchment lists were drawn up. It was found by the Inquiry Commissioner that her pregnancy was the factor which tipped the balance against her in otherwise retaining her as a valued employee. The Inquiry Commissioner found that the complainant had suffered substantial financial loss and significant emotional harm as a result of her termination and the inherently offensive manner in which her termination was expressed to her.

The respondent was accordingly directed to pay to the complainant \$12 000 in damages.

EDUCATION AND PROMOTIONAL ACTIVITIES

Highlights of the 1993/1994 review period include:

- The training program *Eliminating Sexual Harassment from the Workplace — A Training Package for Managers and Supervisors* has been very successfully marketed. The package consists of two half-day workshops which examine the meaning of sexual harassment and its impact on productivity and performance. It also includes case studies, a video and training notes, a resource kit and half day trainer familiarisation.
- List of Recent Publications
  - Books
    - Superannuation and the Sex Discrimination Act 1984: Current Status and Future Directions*
    - Sex Discrimination Act 1984: Future Directions and Strategies Submission to the Senate Standing Committee on Foreign Affairs Defence and Trade: Inquiry into Sexual Harassment in the Australian Defence Force*
    - Unrewarded: Women in Community Services*
  - Pamphlets
    - Your Guide to the *Sex Discrimination Act 1984*
    - The Sex Discrimination Act 1984: Sexual Harassment: Knowing Your Rights*
    - Your Rights at Work
    - Hands Off! (Streetwise comic for school students on sexual harassment)
  - Posters
    - No Sexual Harassment (for educational institutions)
    - You don't have to live with it (for accommodation)
    - What right do you have to treat me like that? (for employment)
  - Newsletter
    - Agender (1st issue)
- During 1993/1994, 5,000 packages of information were sent by the Commission in conjunction with the Department of Administrative Services to private sector organisations, some unions and government departments. Each package contained the following:
  - Sexual harassment in employment poster
  - General sexual harassment brochure
  - A Guide to the *Sex Discrimination Act* brochure
  - Order form

- Work is continuing on the production of a manual for trade unions on the *Sex Discrimination Act*.
- Posters and pamphlets on sexual harassment were distributed to TAFE colleges and universities to coincide with student orientation activities.
- The Commissioner and the Sex Discrimination Unit staff have delivered a large number of speeches and public presentations, and conducted seminars on topics such as sex discrimination, sexual harassment, enterprise bargaining and superannuation.
- Staff have also conducted training courses on sexual harassment and sex discrimination.

Sex Discrimination Commissioner Speaking Engagements

The Sex Discrimination Commissioner has undertaken a wide range of speaking engagements during 1993/1994. These were:

in July 1993

- an address to the Women Management and Industrial Relations Conference on *The Sex Discrimination Act and Enterprise Bargaining: The New Amendments*;
- two addresses at the Swinburne Affirmative Action Awards launch on *Managing People* and *The Sex Discrimination Act and Enterprise Bargaining: The New Amendments*

in August 1993

- an address in Sydney to a Life Insurance Federation of Australia Briefing Session on Superannuation Issues on *Sex Discrimination Act Superannuation Guidelines*;
- an address to Telecom Australia on *EEO and Enterprise Bargaining*.

in September 1993

- two addresses at the Crossroads Conference on *Against the Odds: Anti-discrimination and Directions for Change* and *Ways Ahead for EEO*;

in October 1993

- an address to the Expert Group Meeting on Measures to Eradicate Violence Against Women;
- an address in Sydney to the International Conference on Trade Union Rights on *Equal Rights in the Workplace*;
- an address to the Royal Institute of Public Administration Australia in Melbourne on *Women's Power — Women and Decision Making*.

in November 1993

- an address to the Affirmative Action Agency/Royal Institute of Public Administration Australia Conference in Sydney on *The Glass Ceiling — Illusory or Real?*

in December 1993

- an address to the Work and Family: The Corporate Challenge Conference in Melbourne on *Sex Discrimination and the Industrial Relations Interface*;

in February 1994

- an introductory statement to the Senate Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Sexual Harassment in the Australian Defence Force in public hearing.
- an address to the Women and Superannuation seminar in Canberra on *Indirect Discrimination and Superannuation*;
- an address to the National Conference on Equal Opportunity Law and Practice.

in April 1994

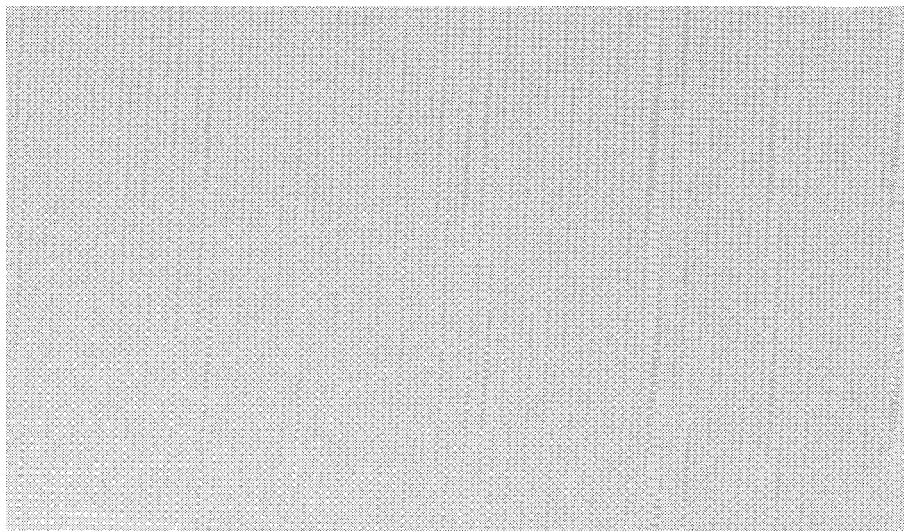
- the keynote address to the Australian Women's Education Coalition Conference in Adelaide on *Old Problems, New Responsibilities — Sexual Harassment and Students*;
- an address to the Industrial Relations Society Conference on *Sex Discrimination and Industrial Relations: Goodbye to Boys' Own IR?*

in May 1994

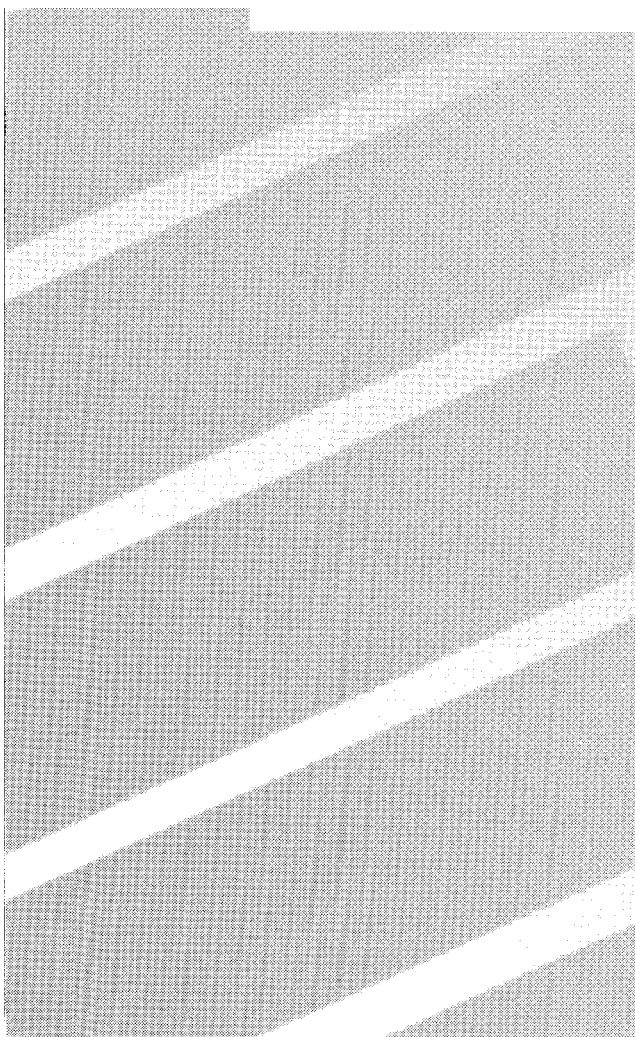
- an address to the Australian Institute of Administrative Law on *Administrative Law and Sex Discrimination: The Review of Complaint Handling*.
- an address to the Equal Pay: Status and Strategies Conference on *Legislation: Panacea or Placebo and Equal Pay and the Industrial Relations Reform Act*;
- an address to the NSW Teacher's Federation;
- an address at the NSW Parliament House Theatre

in June 1994

- an address at Dublin Castle, Ireland on *The Australian Experience of Gender Legislation*.



DISABILITY DISCRIMINATION



DISABILITY DISCRIMINATION COMMISSIONER

Ms Elizabeth Hastings was appointed as the first Disability Discrimination Commissioner on 17 December 1992 and commenced duty on 8 February 1993.

Ms Hastings was a Commissioner with the original Human Rights Commission from 1981 to 1986. She has practised as a psychologist and psychotherapist, and was Senior Counsellor at La Trobe University from 1977 until her appointment as Disability Discrimination Commissioner. She holds a Bachelor of Arts with Honours from the University of Melbourne.

Ms Hastings was a founding member of the Victorian Consultative Committee on Disability and the Victorian branch of Disabled People's International. She was a member of the Victorian Executive Committee for the International Year of Disabled Persons and a delegate to the inaugural Disabled People's International Congress in Singapore.

Statement from the Disability Discrimination Commissioner

In my Annual Report statement last year I underlined the necessity of people who have disabilities entering into social, political, economic, cultural and legal equality with the whole community. Since the early eighties people with disabilities have been progressively included in State anti-discrimination legislation (except in Tasmania), but the *Disability Discrimination Act* (DDA) is the first recognition at federal level of equality of citizenship of Australians who have a disability.

This intellectual and legislative recognition is not yet, however, automatically or even usually translated into action. I am constantly reminding audiences that in the real community we all belong to (rather than the idealised one we may wish to believe we are living in) nearly one in five people has a disability. There are more than three million workers, consumers, voters, holiday-makers, students, managers, artists, renters, investors, sportswomen and men, house buyers, parents, grandparents and cousins who have a disability. Most of these people have families, friends, colleagues and associates.

Yet people who have a disability, and their associates, are still experiencing serious and systemic discriminations which are so pervasive in our society that observers (and sometimes people with disabilities themselves) may not even register that they have occurred. It seems to be convenient to put people who use wheelchairs in the back of the cinema, separated from their companions; efficient to produce information only in printed form, despite the fact that those who are vision impaired,

or possessing some other print handicap, cannot then benefit from it; easier to segregate those who have an intellectual or a psychiatric disability; adequate to deliver television programmes without captions, even though the Deaf are thereby deprived of the enjoyment of that service; economic to exclude people who have an acquired brain injury from places where other customers may feel discommoded; necessary to 'protect' the public at the expense of the hopes of a person who is HIV positive; expedient to deny employment to a person who has epilepsy, 'just in case'.

It is the pervasiveness of these values and assumptions of 'convenience', 'efficiency', 'ease', 'adequacy', 'economy', 'necessity', 'expedience' which masks the reality of lives denied enjoyment, aspiration, choice, dignity. People with disabilities have for centuries adjusted their hopes, limited their expectations, minimised their vision and exaggerated their gratitude — for only so could we survive in a world which found us inconvenient, inefficient, difficult, inadequate, uneconomic, unnecessary and inexpedient.

Still the first cry raised by suggestions for making a society accessible to people with a disability is 'but look what it will cost!'. Often, of course, it costs very little. Proper design at the planning stage of a building or facility adds no more than about one percent to the overall cost, with benefits to many; inclusion of disability in equal opportunity programmes ensures rewards as well as equality, for people with disabilities have been demonstrated over and over again to be sound employees; the provision of information in a variety of formats reduces ignorance and misunderstandings for all.

Another argument against these changes is the often spurious one of danger to self or others. The 'protections' arising therefrom frequently result in lives diminished, talents wasted, experience ignored.

As Australia's first Disability Discrimination Commissioner I have the obligation to draw attention to these systemic discriminations, false economies and unfounded fears, and to educate employers, providers of goods and services, educators and other persons and agencies covered by the DDA in the principles and practice of equality of opportunity for people who have a disability, and in their responsibilities under the Act. This is being effected through public addresses and regular newsletters to employer and business organisations; development of guidelines to DDA Action Plans to assist organisations to plan and implement strategies for a discrimination free work and business environment; publication of a Guide to the DDA for employers and EEO managers; and through a Compliance Promotion unit within the Disability Discrimination Section of the Commission.

The DDA enables those who believe they have been discriminated against on the basis of their disability to bring a complaint to the Commission for conciliation where possible, or for public hearing where conciliation cannot be achieved or is not appropriate. I also, therefore, have the obligation to inform and educate people who have disabilities, and their families, carers and associates, of their rights under the

Act. A National DDA Awareness Campaign, timed to coincide with the first anniversary of the legislation, has achieved increased awareness in the community of the existence of the DDA, although very limited funds did not allow the type of television, radio and print media coverage that is really desirable in such a campaign.

I issue a quarterly 'Open Letter' to organisations representing or advocating for people who have a disability. This has been well received, with the number of organisations doubling in a year to the current list of 2400 recipients. Many of these organisations print my letter in their own publications, so it reaches an interested and involved target audience.

Like all information released about the DDA, this newsletter is offered in various formats: large print, computer disc, braille and audio tape, in order to reach the largest possible audience. This Annual Report, as the Commission's public statement of accountability, will also henceforth be available in these alternative formats.

Another aspect of education of people with disabilities, and their advocates, is the establishment of specialist DDA Legal Centres in each State and Territory. Funded by Legal and Family Services, these centres are being assisted in their task by a manual on using the DDA developed under the supervision of my office. This manual will be published and distributed by August and will be a most helpful resource for the effective use of the complaints provisions of the Act. People who have disabilities, and their carers, are not accustomed to having an avenue of redress for the countless direct and indirect discriminations which beset them in daily life: these DDA Legal Centres, and the manual, will assist them to develop confidence in the legislation, and in their right to use it.

Along with education and compliance promotion, the third major thrust of the work in these early years of the legislation is the development of standards under the DDA in the areas of Commonwealth Government programmes, accommodation, public transportation, education and employment. It is most important that all who will be affected by the introduction of Standards are fully involved in their development. To this end my office is developing a consultation strategy and a standards development process which will ensure that the ceiling thus created is not too low, nor the floor too high, for the desired outcome of equal access for people with disabilities to these areas of ordinary living.

The fourth major area of activity has been, of course, complaints handling. The number of complaints received under the DDA has quickly grown beyond the capacity of present staffing arrangements to manage them. This problem is exacerbated by the absence from the beginning of the effective life of the DDA of cooperative arrangements equivalent to those long established with Victoria, South Australia and Western Australia under the Sex and Racial Discrimination Acts. As nearly 40 percent of the 350 current complaints (as at June 1994) come from Victorians, this absence is significant. I anticipate cooperative arrangements being developed in the next financial year which would offer to people who have

disabilities equal treatment with those who experience, and seek redress for, discrimination on the grounds of race and sex.

It has been essential in this first year, which has been largely one of establishment of the office, settling of procedures and priorities, interpretation for the first time of the legislation and of its provisions, and involvement of interested parties at all levels of government and the private sector, to ensure inclusion of all relevant groups.

Contrary to general belief, disability knows no boundaries: it is an attribute '*sans frontier*'. The sectioning off of people with disabilities as though they were not people from non-English speaking backgrounds, Aboriginal or Torres Strait Islanders, children, women and men of all ages, ordinary Australians, but some discrete group which can be treated alone perpetuates injustice and inequality. It continues to marginalise and isolate a large section of our community. It pretends that human rights, and human beings, can be divided, segmented, treated alone. This is not so: human rights, including the right not to be discriminated against, are indivisible, and the community of human beings to which we all belong is indivisible. To diminish or to acquiesce in the diminishment of any person's life on the basis of an attribute of 'human being-ness' is to diminish the life of us all.

MAJOR PROJECTS FOR 1993/1994

Development of Disability Standards

Section 31 of the *Disability Discrimination Act* (DDA) empowers the Attorney-General to formulate 'disability standards' (which take effect subject to Parliamentary approval or amendment, and which it is unlawful to contravene) in relation to:

- employment;
- education;
- accommodation;
- public transport services and facilities; and
- the administration of Commonwealth laws and programs.

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

The Commission has the function under the DDA of reporting to the Attorney-General on matters related to the development of disability standards.

Progress towards development of Disability Standards has been slower than initially expected by the community or hoped by the Commission. In part this has been due to the need for development of an extensive consultative process, which is now well understood by the community and well under way. The delay has also been due to lack of staff resources in the Commission and in the Attorney-General's Department. 1994-95 Budget additional allocations will redress this problem to a limited extent.

Progress to Date

In November 1993 the Disability Discrimination Commissioner released an *Issues Paper on Disability Standards* to promote and inform community debate. The Paper was produced on behalf of the DDA Disability Standards Working Group, which the Attorney-General has established to advise him on the development of Disability Standards.

The paper was circulated to a wide range of organisations representing people with a disability, and other relevant organisations, and was made available in braille, large print, tape and computer disc in addition to standard print.

Direct responses to the paper to date have been limited. However, issues raised in the Issues Paper have been included in a further discussion paper issued on behalf of a National Coalition for the Development of Disability Standards, which has been formed by the national peak organisations representing people with a disability, families and carers. The National Coalition is presently conducting consultations based on that discussion paper.

The Commission has also contributed through the DDA Disability Standards Working Group to consideration of the development of Disability Standards in relation to Commonwealth laws and programs, which the Working Group has identified as a priority. The Working Group expects to make recommendations to the Attorney-General by the end of 1994.

The Committee on Discrimination in Employment and Occupation formed under the *HREOC Act* has formed a sub-committee on Disability Standards in the employment area. A background paper prepared for this sub-committee will be circulated in July 1994 to identify possible issues to be addressed by DDA Disability Standards on employment. This paper will address possible areas of uncertainty under the existing provisions of the DDA in the employment area; possible approaches of DDA Disability Standards to these issues, including discussion of the *Americans with Disabilities Act* and the regulations issued under that Act by the US Equal Employment Opportunity Commission; assist interested parties in defining their positions on the desirability, nature and content of any DDA Disability Standards on employment; and assist in identifying appropriate processes for further consideration of DDA Disability Standards in this area.

Action Plans

The DDA gives the Commission the function of receiving voluntary 'action plans' which providers of services (including Commonwealth or State government departments or authorities) may prepare and implement. The Commission is required to consider the provisions of an action plan lodged by a provider of services in dealing with any complaint which may be made under the DDA against that provider.

Action plans are to include provisions on:

- the devising of policies and programs to achieve the objects of the DDA;
- communication of these policies and programs to personnel;
- review of practices with a view to elimination of discriminatory practices;
- setting of goals and targets, where appropriate, and other means of evaluating the success of the plan.

To date no action plans have been lodged. The Commission has recently commenced work on guidelines to assist in development of action plans. Completion of this has been delayed by lack of staff resources but is now expected early in 1994/1995.

Legislative Review

The Commission has functions under the DDA of reporting to the Attorney-General on laws that should be made by the Parliament, or action taken by the Commonwealth, on matters relating to disability discrimination.

In 1992/1993 the Disability Discrimination Commissioner wrote to the Attorney-General and to all federal Ministers raising the need for review of laws for consistency with the DDA prior to the expiry of the general exemption under the DDA for actions in compliance with other laws.

A number of Ministers have responded that they would review laws within their responsibility in the context of a general review initiated by the Attorney-General, rather than responding separately to the Commission. The Commission does not have sufficient resources itself to review all Commonwealth laws for consistency with the DDA and will therefore await with interest the results of the review initiated by the Attorney-General.

Migration Exemption

One area of Commonwealth law requires more immediate attention. The DDA exempts discriminatory actions 'in relation to' the administration of the *Migration*

Act. The Disability Discrimination Commissioner has conveyed to the Attorney-General the view that this exemption is broader than can be justified by reference to any of the Government's legitimate responsibilities and objectives in the migration area, and should be replaced by a more narrowly tailored provision. The Commission will be considering further action in this area in 1994/1995.

Guidelines

The Commission has the function of preparing and publishing guidelines for the avoidance of disability discrimination.

This function has not been met in 1993-94 to the level desired by the Commission or by industry and community organisations, due to limited staff resources and the demands of the general public awareness campaign. However, a manual on employment issues was released as part of the public awareness campaign in March 1993.

More specific guidelines addressing particular employment issues, and guidelines in other areas, will be developed in conjunction with relevant industry and community representatives during 1994-95.

Research and Policy

Research and policy priorities for 1993-94 were directed to supporting major project activities: in particular, the national community awareness campaign, the Legal Resource and Training Project and the promotion of consideration of Disability Standards. Policy staff have also had significant involvement in review of complaint handling procedures to ensure their effectiveness and accessibility, and in pursuing policy issues arising from complaints.

Submissions to Government

Access to law

Following the Attorney-General's announcement of 1993-94 Budget measures to improve access to law, the Disability Discrimination Commissioner made representations to ensure that these measures incorporated improvements to access for people with disabilities.

Australian Electoral Commission

Following resolution by conciliation of a number of complaints of lack of equal access to voting facilities for federal elections, the Disability Discrimination Commissioner wrote to the Australian Electoral Commission encouraging the development of an action plan to identify and remove barriers to equal participation by people with disabilities in this aspect of citizenship. The Commonwealth Disability Strategy, adopted in February 1994, contains specific provisions in this respect and the Commission will be following up their implementation in 1994/1995.

Issues paper on workers with family responsibilities

The Disability Discrimination Commissioner responded to the Attorney-General's Department Issues Paper on discrimination legislation regarding workers with family responsibilities. The submission noted that the DDA provided a model for amendments to the *Sex Discrimination Act* to give clearer and more comprehensive coverage in this area than presently exists, and provided significant protection regarding carers, family members and other associates of people with disabilities. The submission also pointed to a possible role for Disability Standards in setting out the requirements and limits of adjustments to accommodate family or carer responsibilities.

Supported wage scheme

The Commission provided comments on the guidelines and Model Award Clause for implementation of the Supported Wage scheme for workers eligible for the Disability Support Pension. Changes were made in line with these comments to clarify the entitlement of people with a disability, whether under this scheme or not, to non-discriminatory access to training and provision of reasonable adjustment, and to emphasise that the position of people with a disability employed outside the ambit of this scheme should not be undermined.

Advice to Community Organisations

There was substantial demand from organisations representing people with disabilities for policy advice on matters of interpretation, coverage and effective use of the DDA. It is expected that in 1994/1995 much of this demand will be more appropriately referred to the now established DDA Legal Advocacy Services.

Reasonable Adjustment in the Australian Public Service (APS)

Requests for advice came from a number of Commonwealth departments on matters of reasonable adjustment in employment. However, those departments might have been expected to already have policies and information given the longstanding adoption of reasonable adjustment as a policy within the APS. In 1994/1995 the Commission will be seeking means to ensure that departments and agencies perform their own responsibilities in this respect under the Commonwealth Disability Strategy adopted by Cabinet in February 1994, rather than looking to the Commission to supply all needs.

Requests for Advice from Industry

In 1993-94 there was a small but increasing demand from individual enterprises and industry associations for advice on permissibility under the DDA of various practices, and the requirements for compliance with the DDA. The Commission has only a very limited ability to respond to such requests. It proposes to address these needs by development of guidelines and other material to support and stimulate efforts by industry associations and relevant Government agencies to inform and promote compliance activity in their own sectors.

Applications for Exemption

Section 55 of the DDA allows the Commission to grant temporary exemptions from the operation of the provisions of the DDA which make discrimination unlawful (except those relating to disability standards). This power is exercisable only when an application for an exemption is made by one or more persons.

The Commission has received one application for exemption to date, regarding Automatic Teller Machines operated by a major bank. This exemption is under consideration at the time of writing.

COMPLAINT INVESTIGATION

The DDA was passed by the Federal Parliament on 15 October 1992 and came into effect on 1 March 1993. Since this date the Commission has been able to receive complaints under the DDA, provided the alleged discrimination occurred on or after 1 March 1993. The Commission's central office handled all complaints made under the DDA during the initial period of the legislation; DDA complaints are now also being handled by the regional offices.

Table 14 details complaints lodged at each office by type of disability. It shows that 302 complaints were accepted as within the jurisdiction of the DDA during the period 1 July 1993 to 30 June 1994. Of these, the largest number of complaints of discrimination (172 or 57%) involved physical disability.

Table 14 Complaints lodged under the Disability Discrimination Act 1992 by type of disability — 1 July 1993 to 30 June 1994

Type	Central	Qld	NT	Tas	ACT	TOTAL
Physical	142	4	4	14	8	172
Intellectual	13	1	2		7	23
Psychiatric	22	3		2	2	29
Sensory	55		2		5	62
Malfunction		7				7
Organisms capable of causing disease (including HIV)	7	2				
TOTAL	239	17	8	16	22	302

Table 15 outlines the areas of complaint, the most significant being employment (175 or 57.9%) and the provision of goods, services and facilities (74 or 24.5%).

As the DDA has only been in effect for sixteen months, it is not possible to ascertain longer term trends or patterns in the complaints received.

Table 16, which outlines the categories of complainants and respondents, shows that more complaints have been received from males (169 or 56%) than females (109 or 36%). 11 complaints involved 2 or more individuals, 7 were lodged on behalf of a person or group of persons and 6 were representative complaints. A significant proportion of respondents were from the private sector (144 or 47.7%).

Table 15 Complaints lodged under the Disability Discrimination Act 1992 by area of complaint — 1 July 1993 to 30 June 1994

Area of complaint	<u>Central</u>	<u>Qld</u>	NT	Tas	ACT	TOTAL
Employment	142	7	4	7	15	175
Education	16	2	2	1	1	22
Access to premises	11	3		1	1	16
Goods/services/facilities	61	3	2	4	4	74
Accommodation/land	4			1	1	6
Clubs/sport	2	2		2		6
Administration of Commonwealth laws/programs	3					3
Other						
TOTAL	239	17	8	16	22	302

Table 16 Complaints lodged under the Disability Discrimination Act (1992) by category of complainant and respondent — 1 July 1993 to 30 June 1994

Category of Complainant

	<u>Central</u>	<u>Qld</u>	NT	Tas	ACT	TOTAL
Male	134	8	3	11	13	169
Female	89	4	5	4	7	109
Two or more persons	5	4			2	11
On behalf of a person/group	5	1		1		7
Representative complaint	6					6
TOTAL	239	17	8	16	22	302

Category of Respondent

	<u>Central</u>	<u>Qld</u>	NT	Tas	ACT	TOTAL
Commonwealth	50	2	1	3	8	64
State	50	5	1	6	8	70
Private Enterprise	124	8		7	5	144
Other	15	2	6		1	24
TOTAL	239	17	8	16	22	302

Table 17 outlines complaints under the DDA closed or referred for hearing during 1993/1994. Of these complaints 25 (22.5%) were conciliated and 48 (43.2%) were referred elsewhere.

Table 17 Outcome of complaints closed or referred for hearing under the Disability Discrimination Act (1992) — 1 July 1993 to 30 June 1994

	Central	Qld	NT	Tas	ACT	TOTAL
Conciliated	19	2	1	3		25
Withdrawn	19	2	1	2	1	25
No contact from complainant						0
Declined	6					6
Outside jurisdiction						0
Referred elsewhere	48					48
Referred for hearing	6			1		7
TOTAL	98	4	2	6	1	111

Case Studies

The following case studies illustrate typical complaints lodged under the *Disability Discrimination Act* and their outcomes.

Case study I: DDA — Access to premises and physical disability

A university lecturer who had a disability which required him to use a wheelchair, in the course of his employment, brought a complaint that, although the university had agreed to make special provisions to allow him to continue to teach, these provisions were totally inadequate.

The complainant asserted that he was expected to use facilities which were provided for students, that lectures were often reallocated to rooms which were inaccessible for him, and other facilities that the university had agreed to provide, were not available.

Following conciliation, the university agreed to remedy the matters relating to provision of facilities, agreed to pay the lecturer an additional sum in compensation for the problems he had experienced and also agreed to employ him as a consultant in order to help develop a policy in relation to the on-campus treatment of people with disabilities.

Case study 2: DDA Employment and physical disability

A woman who has multiple sclerosis and who sometimes uses a wheelchair or crutches applied for a job in a local office of Telecom and was told that despite the

company's Equal Employment Opportunity (EEO) policy the workplace would not be accessible. However, the National EEO Coordinator advised the manager this was not consistent with the company's policy position and was not acceptable.

A conciliation conference was organised between the parties where upon an apology was given to the complainant. As a result of this complaint, the company also realised that many front-line managers were not clearly aware of the operationalisation of EEO policies. Therefore, Telecom's general manager agreed to 'fast track' the EEO training of all managers nationally with particular emphasis on the interpretation and operation of the DDA.

Furthermore, as a result of this incident it became apparent the current recruitment forms and practices were not adhering to the DDA requirements nor to Telecom's EEO policy. This has now been rectified through withdrawing the former application forms and by developing and implementing new ones which comply with all EEO legislation and company policy.

In addition to this a commitment was given by the National EEO Coordinator to ensure all business buildings would implement a building audit to identify areas which require modification.

(Note: Telecom has given permission to be identified in this case study as an example of their commitment to good corporate practice.)

Case study 3: DDA — Employment and physical impairment

Two employees applied and were found suitable for specific operational conversion training in order to transfer to other positions. However, they were both subsequently advised that, due to their previously recognised defective colour vision, they could not undertake the training. The complainants believed that this outcome would severely limit their career options with their employer, as there were plans to phase out their current positions. They claimed that defective colour vision was irrelevant to the job for which they were applying.

In its first response to the Commission, the employer stated that the complainants were not capable of meeting required medical (and implied safety) standards and this was the reason for their unsuitability for further training. The complainants rejected this claim and cited further information (such as expert opinion and individual cases) which they believed supported their argument that defective colour vision was irrelevant to the tasks. One complainant withdrew his matter in the middle of this process for personal reasons.

Following several more exchanges between the parties it was agreed to hold a conciliation conference. The complaint was settled when the employer agreed to offer the complainant the opportunity to undergo further more appropriate colour vision tests, the results of which would finally determine whether the complainant could proceed to the conversion course.

Case study 4: DDA — HIV positive status and provision of pathology services

The complainant who was HIV positive alleged that the respondent pathology company refused to conduct a spirometry test on him because of his HIV status.

A conciliation conference was held to attempt to resolve the complaint. Conciliation was successful and a settlement was reached. The terms of settlement included agreement for the respondent company to institute a training program for its employees in relation to HIV/AIDS and dealing with people with HIV/AIDS, and the payment of \$8,000 to the complainant for reimbursement of expenses and damages for injuries to feelings and humiliation.

Case study 5: DDA — Employment and physical disfigurement

The complainant, both an employee and a shareholder, alleged that he had been discriminated against after he was diagnosed with cancer and had undergone a course of chemotherapy and surgery.

After the chemotherapy and surgery, the complainant alleged that his employers told him that they were not comfortable with his appearance and that he would also not feel comfortable seeing clients because of his appearance. In January 1994 the complainant stated that his contract of employment was not renewed as a consequence of having cancer and needing treatment.

In conciliation the respondents denied that they had discriminated against the complainant and stated that their only concern was for the business. They asserted that they had been concerned for the complainant and had continued to pay his salary during his period of illness.

The complaint was resolved on the basis of no admission by the respondent of having discriminated against the complainant. The terms of the settlement including a payment of \$22,500 to the complainant comprising amounts for the repurchase of shares, termination of employment and discrimination. The respondents also agreed to give the complainant a computer.

REFERRALS TO INQUIRY

Table 18 DDA Matters Determined 1 July 1993 — 30 June 1994

Name	Area of Discrimination	Handed Down
X v Dr Arthur John McHugh, Auditor-General for the State of Tasmania	discrimination in employment on the ground of a disability (s.15)	Heard 22-24 June 1994 Handed down 8 July 1994

Matters Referred by the Attorney-General

The Commission may inquire into, and make determinations on, matters referred to it by the Attorney-General or the Disability Discrimination Commissioner. The Commissioner is required to refer matters which:

- she thinks cannot be settled by conciliation; or
- she has unsuccessfully attempted to settle by conciliation; or
- she thinks should be referred.

No matters under the DDA have been referred to the Commission by the Attorney-General to date.

Matters Referred by the Disability Discrimination Commissioner

X v Dr Arthur John McHugh, Auditor General for the State of Tasmania.

The President of the Commission, Sir Ronald Wilson, found that the respondent employer had discriminated against X because of X's mental illness by dismissing him because of behaviour connected with his illness. X had been dismissed without being given a fair opportunity to demonstrate his ability to perform the inherent requirements of the job after he had received treatment.

The President found that, while the employer had not intended to discriminate because of disability, the *Disability Discrimination Act* prohibited not only intentional discrimination, but thoughtless discrimination as well'. In the circumstances of the case, discrimination because of the effects of X's disability amounted to discrimination because of his disability.

Compensation of \$20,000 was awarded for economic loss and for pain and humiliation. Reinstatement was not ordered as the man had found another job.

EDUCATION AND PROMOTIONAL ACTIVITIES

National Awareness Campaign

Funding provided during 1992/1993 for a public awareness campaign in association with the introduction of the DDA was rolled over to 1993-94 to permit appropriate planning and community consultation. Total available funding of \$619,000 (including funds re-allocated by the Commission from other purposes to augment specific purpose funding provided) set limits on approaches available, including preventing any paid television advertising.

Campaign launch

The Attorney-General launched the campaign at Parliament House on 1 March 1994, the first anniversary of the commencement of the Act. The President of the Commission, the Disability Discrimination Commissioner, and two people with a disability (Ms Leonie Manns, who appeared in campaign material, and Mr Tim Bowden from the ABC) spoke.

Campaign objectives

Campaign objectives were to increase awareness in the Australian community of the existence of the DDA; what disabilities were covered by the Act; and what areas of life it covered. The target audience was broad and included people both with rights and responsibilities under the Act.

Campaign strategies

To maximise effective use of limited funds the following strategies were used

- magazine advertising, in 12 mainstream magazines, as well as disability specific publications, with advertisements appearing 27 times across three and a half months;

- ethnic community media advertising, in 16 newspapers with advertisements appearing 32 times, and on 11 radio stations;
- radio advertising, through 36 metropolitan and regional mainstream radio stations across Australia with a 30 second advertisement being run 1440 times in a two week period, and through seven Radio for the Print Handicapped stations;.
- media strategy including distribution of 2700 media kits; 41 radio interviews conducted by the Commissioner or Commission staff; interviews on television current affairs programs; 12 newspaper and magazine interviews; a video targeting television current affairs and news programs; and a community service announcement seen on television in major metropolitan areas across Australia and a number of regional areas;
- 008 Information Hotline to serve as contact point for inquiries and distribution of printed information. This was operational for 31/2 months from 1 March and received over two thousand calls.
- information distribution, through requests to Hotline and through targeted mailouts of 17,500 Fact Sheet kits for people with disabilities; 6500 Fact Sheet kits for the general public; 5200 booklets '*Good Business Practice: The Disability Discrimination Act —A Guide to Assist Employers*'; 800 more detailed manuals on the DDA and Employment; 200 sets of information in alternative formats; 27,000 sets of posters and promotional materials.

Research and evaluation strategy

Initial material developed was researched and tested by focus groups in Sydney and Melbourne. Disability organisations were also surveyed. Benchmarks for the success of the campaign were set by random selection and telephone interview of 1200 people across Australia. A sample of 75 people with disabilities was also surveyed. Similar samples were surveyed after the campaign.

Post campaign evaluation is yet to be completed. However, information from research and data collected from the callers to the 008 Information Hotline indicates an increased awareness of discrimination against people with disabilities, an increased knowledge of the breadth of coverage of the Act and an increased knowledge about disability discrimination legislation more generally.

Data collected from callers to the Hotline in March indicated 58.1 percent of callers were women; 34 percent people with disabilities and 24.2 percent parents, carers or associates; 14 percent were people identifying as from a non-English background; and 2 percent were from an Aboriginal or Torres Strait Islander background.

DDA Resource and Training Project

In conjunction with the introduction of the DDA, specialist DDA Legal Advocacy Services were funded in each State and Territory by Attorney-General's Department Office of Legal Aid and Family Services.

These services were established during 1993/1994. Part of the funding originally allocated to operate these services in 1992/1993 was rolled over into the 1993-94 financial year to address the resource and training needs of these services and other legal and disability advocacy organisations. Resource projects were developed by the Commission and the Office of Legal Aid and Family Services, in close consultation with key stakeholders from legal and disability sectors.

DDA Resource Manual

A DDA Resource Manual will be completed and delivered to advocates throughout Australia by early August 1994. The manual will assist DDA Legal Advocacy Services to provide effective advocacy support to people with a disability who wish to make a complaint under the DDA. It will also be useful to a broader audience, including other legal and para-legal disability advocacy and representative groups, as a training resource and in providing advocacy services.

National Training Workshop

A national training workshop was conducted for staff of DDA Legal Advocacy Services. The workshop also provided an evaluation of the draft DDA Resource Manual, indicating overall success in meeting its objectives but also identifying the need for more specific materials and training to address a number of specific access needs. These will be addressed in 1994/1995 in the second stage of the project.

Further Projects

The following proposals have been approved by the Parliamentary Secretary to the Attorney-General, Mr Duncan, to be conducted during 1994-95. As funding body, Legal Aid and Family Services Branch of the Attorney-General's Department will assume overall responsibility for these projects from July 1994. They are included in this report because the Commission had major responsibility for their development during 1993-94.

Coordination and principles of service delivery

A project worker will be employed by the National Association of Community Legal Centres for six months to initiate and develop networking between the DDA Legal Advocacy Services and other key advocacy groups; organise further training for advocates employed by these services; and oversee the development of national service delivery principles, to ensure that services are delivered effectively, accessibly and equitably.

Community legal education workshops on the DDA

Community legal education workshops will be provided in each State and Territory for legal and disability advocates.

Resource material

Resource material will be produced which will provide accessible information, guidance and referral points to people with a disability who choose to pursue a complaint under the DDA independently. This material will contain more detailed information and advice than the promotional material produced by the Commission under its community education function. The information will be produced in community languages and as an AUSLAN video as well as in alternative formats, including Braille, audio tape and computer disk.

DDA workshop project for Aboriginal legal service workers

A national workshop project will provide workers from Aboriginal Legal Services with increased knowledge of the DDA and how it can be used effectively.

Developing guidelines for representative complaints

Several organisations have experienced difficulty and uncertainty to date in using the representative complaints procedure under the DDA. This project will therefore bring together representatives and experts, drawn from legal and disability fields, to develop guidelines for publication on the effective use of this procedure.

Disability Discrimination Commissioner Speaking Engagements and Regional Visits

The Disability Discrimination Commissioner continued her extensive program of speaking engagements and regional visits, spending several days in each of a number of regional centres (Townsville, Rockhampton, Barwon, Albury) conducting meetings and briefings with business and disability community representatives. This program was however more limited in early 1994 to allow concentration of limited resources on the national public awareness campaign and on policy activities. A significant number of speaking engagements has been, and will continue to be, declined due to limited resources. Details of the Commissioner's speaking engagements are listed below.

in July 1993

- the keynote speech to Second National 'Pathways' Conference in Brisbane, on *Smoothing the Path: The Disability Discrimination Act and Higher Education*;
- an address to the International Deafness Conference in Sydney on *the Disability Discrimination Act and the Deaf: Achieving Equity*;
- briefing for Department of Business & Employment
- Waverly Council Launch of Updated Access Policy and Lift
- Jewish Welfare Society - Integration Programme Advisory Meeting
- Guardianship Board Conference: *Finding the Least Restrictive Alternative*

in August 1993

- an address to senior public and private sector managers in Perth on *Management in the Light of the DDA*;
- briefing for Commercial Sector, Albury
- briefing for Australian Taxation Office, Disability Liaison Officer Network
- Community Disability Groups & Service Providers Forum, Albury
- National Federation of Blind Citizens of Australia - First Regional AGM, Albury
- Swinburne University of Technology - Equity Seminar
- Independent Living Centre NSW (Inc) - Alison Watson Memorial Lecture: *Creating a Discrimination Free Environment*

in September 1993

- a keynote address to the ILO 111 Conference in Sydney on *The DDA and Equity in the Workplace*;
- an address to key disability and employer groups

- a dinner address to the Head Injury Council of Australia - Second International Conference on Recovery from Brain Injury - *"Disability Discrimination Legislation: Implications for the Head Injury Field"*
- a keynote address to the Head Injury Council of Australia's 2nd International Conference on Recovery from Brain Injury - *"Panel: The Way Forward"*
- Public Service Office - Launch Disability Awareness Kit
- an address to the Ballarat School of Mines
- an address to the Barwon Disability Regional Council, Geelong
- a keynote address to the Disability & Sexuality Forum
- an address to the Anti-discrimination Law and Practice Conference on *The Federal Disability Discrimination Act*
- Victorian Trades Hall Council
- an address to the Crossroads Conference - *"Against the Odds.. Anti-Discrimination & Directions for Change"*
- Mental Health Co-ordinating Council - AGM
- guest speaker at the Yooralla Society of Victoria AGM

in October 1993

- an address to the Australian Association for Special Education Needs national conference in Melbourne on *the DDA and Special Education — Implications for Philosophy and Policy.*
- James Cook University

in November 1993

- Townsville - Government Departments
- Townsville - Disability Network & Independent Advocacy in the Tropics
- Disability Access Forum
- Melbourne Attendant Care Network Inc
- an address to graduates with a disability at Deakin University

in December 1993

- public briefings in Rockhampton
- a keynote address at the University of Queensland on *"Voices at the Margin"*

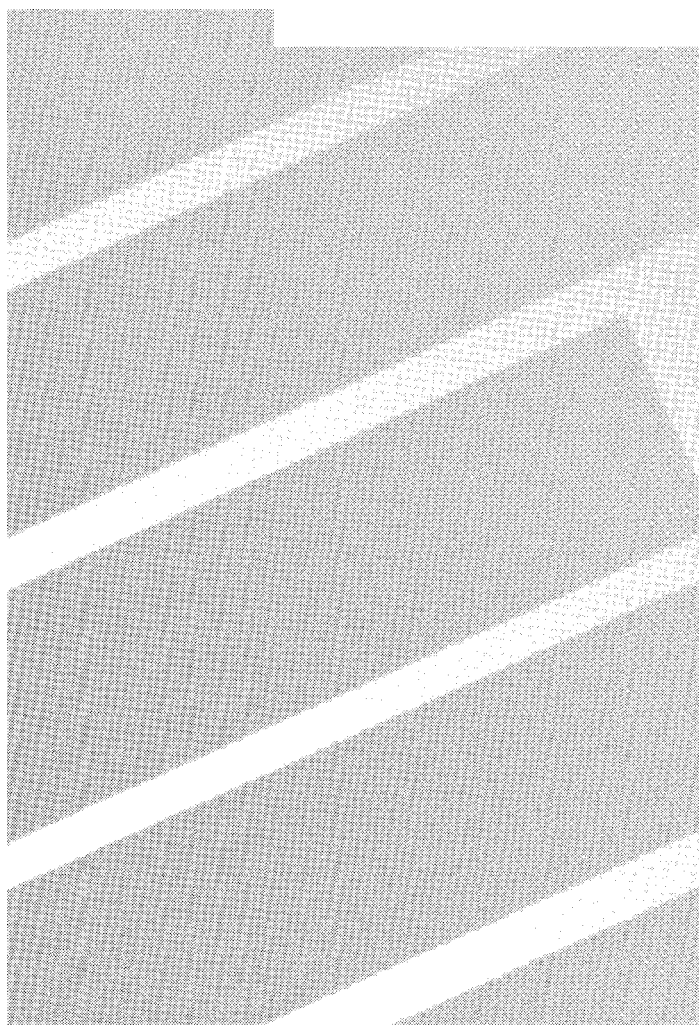
in February 1994

- an address at the Jewish Welfare Association to the Jewish community on *The DDA and Citizenship*

in May 1994

- Royal Australasian College of Physicians - Annual Scientific Meeting, Hobart

ABORIGINAL AND TORRES STRAIT ISLANDER SOCIAL JUSTICE



ABORIGINAL AND TORRES STRAIT ISLANDER SOCIAL JUSTICE COMMISSIONER

Michael Dodson is Australia's first Aboriginal and Torres Strait Islander Social Justice Commissioner. Born in the Northern Territory town of Katherine, Mr Dodson was educated in Katherine, Darwin and Victoria. He has completed a Bachelor of Jurisprudence and a Bachelor of Law at Monash University.

Statement from the Aboriginal and Torres Strait Islander Social Justice Commissioner

The responsibilities of the Aboriginal and Torres Strait Islander Social Justice Commissioner are critical, urgent, and deeply emotive. They cannot be adequately captured in legislation or descriptions of programs. They concern the difference between children, women and men living lives of disease, discrimination and abuse, or living lives of health, opportunity and dignity. For Aboriginal and Torres Strait Islander peoples what is in the balance is, quite literally, a matter of life and death.

In my first full year as Aboriginal and Torres Strait Islander Social Justice Commissioner, I have been confronted with the complexities involved in seeking to protect indigenous human rights in contemporary Australia. Taking up my office in the midst of a heated public debate in response to the High Court's Native Title decision provided somewhat of a baptism by fire. It has been one of the most vigorous and heated debates on human rights since the colonisation of this country; a debate embracing both pride in and resentment towards the first formal recognition by Australian common law of the continued validity of indigenous laws and customs.

The High Court's decision was broadly received by indigenous Australians as a seminal act of justice. We were disillusioned by statements reflecting deep pockets of ongoing racism and ignorance; we were heartened by the growing swell of recognition amongst the general population that violation of the rights of indigenous peoples is not acceptable. This latter position was captured in the broad and staunch public opposition to proposals to suspend the *Racial Discrimination Act*. Australians of all races, classes, religions and ethnic origins stood firmly behind the principle that this society must be one based on racial equality and non-discrimination.

This was an achievement in principle. But the principle of equality is still divorced from reality. The reality is that the Aboriginal and Torres Strait Islander peoples of this country remain the poorest, sickest, most imprisoned, ill educated and unemployed people in Australia. Our life expectancy is some 20 years less than that

of non-indigenous Australians. This is one of the most extreme and critical indicators of a whole pattern of human rights abuses which we continue to suffer.

To fully comprehend the meaning of this problem for indigenous people, it is worth reflecting on what it would mean if the entire Australian population found themselves in comparable circumstances regarding their health and the health of their children. I think there can be little doubt that if the general Australian population began to sicken and die at the rates that are common to indigenous Australians, a state of national emergency would be declared. If the burden of death and disease experienced by Aboriginal and Torres Strait Islander people were general throughout Australia, it would affect the entire fabric of this country's society and economy. It would severely reduce participation in education and employment.

The fact that only 1.7 percent of the population, the indigenous population of Australia, endures third world health standards, while the rest enjoy first world standards merely reduces the physical dimension of the problem. It does not reduce its moral and human dimension. It intensifies it. Australia is not a third world country. We have the capacity to provide health to all our citizens.

Our failure to meet this capacity is a matter of national disgrace; not a matter for breast beating, but for action.

My office was set up as part of the Government's response to the Royal Commission into Aboriginal Deaths In Custody. The report of the Royal Commission is a study of massive proportions which made 339 recommendations for changes which would improve the human rights situation of Aboriginal and Torres Strait Islander peoples. Charged with the responsibility to monitor our enjoyment and exercise of human rights I find that little has changed for indigenous Australians since the Royal Commission. To take just one central issue concerning rates of imprisonment: since the Royal Commission, in some States, the over-representation of indigenous peoples in custody has actually worsened.

In monitoring the shifts in the human rights situation of indigenous Australians, I have noted with a great deal of distress that the sense of urgency with which the Royal Commission recommendations were expressed has been lost. There has been much bureaucratic activity but little positive change. We are facing a critical situation. And yet there is no sense of urgency at the fact that our people are still arrested, imprisoned and dying in custody in appalling numbers. No sense of urgency that every day hundreds more children are being born into a life of crippling disadvantage.

It must be understood that every day that passes without real commitment and concrete action is a day lost in terms of diverting our young people from the criminal justice system and from addressing the underlying causes which put our young people at risk.

The realities demand a sense of urgency.

The reality is a child of five being assimilated into an education system that classifies them as a 'disadvantaged person'; that this indigenous child is orphaned by the system, dispossessed of their history, their culture, their sense of being. The institutionalisation of education has meant that our wisdom and independence is traded for task reduced knowledge. That we are transported from the sites of our own knowledge to alien institutions in which that knowledge is totally devalued.

If Australia aspires to be a first rate social democracy then all its people must enjoy social justice. And if Australia is to grow to its full richness, then the systematic attrition of indigenous peoples and indigenous cultures must be stopped. The principle of equality must become a reality.

As the Prime Minister observed in Redfern Park:

'We cannot imagine that the descendants of people whose genius and resilience maintained a culture here through fifty thousand years or more, through cataclysmic changes to the climate and environment, and who then survived two centuries of dispossession and abuse, will be denied their place in the modern Australian nation.'

If the unimaginable is to be averted, all Australians must take up their responsibility to respect human rights.

Respect for the human rights of indigenous peoples must go beyond the mere alleviation of suffering and prohibition against positive abuse or discrimination. It must include recognition and acceptance of the fact that the Aboriginal and Torres Strait Islander peoples occupy a unique position as the first and only indigenous peoples of Australia; peoples who have retained unique identities and cultures despite the many permutations of genocidal and assimilationist policies. This recognition must extend to full respect for the right of Aboriginal people and Torres Strait Islander peoples to exercise and enjoy our own cultures today, and of our right to self-determination.

This is a recognition which must come from within and without.

On the one hand indigenous peoples must know our fundamental human rights and know about the laws available in place to assert them. Already we know the truth of our being and spirit. We must walk in the footprints of our ancestors and reclaim our wisdom, our right to self-determination, our right to a quality of life that allows us to link our spirit with our lands and our territories.

On the other hand, it is the responsibility of non-indigenous Australia to recognise and actively support the rights and priorities of the indigenous peoples of this country. This will not be achieved by thin descriptive words of appreciation of our cultures. It will be achieved through concrete action based on genuine negotiation and a recognition of indigenous rights. It will require good will and imagination.

As we approach 200 years of federation there is much talk about the future of this nation and national unity. In my view, before we can achieve any sense of national unity in Australia, there must be a general recognition and acceptance of the unique

position of Aboriginal and Torres Strait Islander peoples as the indigenous peoples of Australia. And there must be a recognition that as distinct indigenous peoples, Aboriginal and Torres Strait Islander peoples have the right to self-determination in accord with Article 1 of the International Covenant on Civil and Political Rights which grants the right to all peoples.

As I stated in my *First Report*, many non-indigenous Australians find the assertions of such independence variously bewildering, threatening or offensive. However, self-determination, the exercise of this right does not necessarily threaten the integrity of the Australian nation.

The recognition and accommodation of diversity is not divisive. Real division arises through the denial of adequate recognition of an identity that will not be yielded up.

In this first year I have walked the tightrope between potential and resistance. I am determined that over the next four years that tight rope will come down from its precarious heights to the firm ground of social justice.

POWERS, FUNCTIONS AND RESPONSIBILITIES

The establishment of the Aboriginal and Torres Strait Islander Social Justice Commissioner was stimulated by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and the Commission's National Inquiry Into Racist Violence. The position of Aboriginal and Torres Strait Islander Social Justice Commissioner was established under the *Human Rights and Equal Opportunity Commission Amendment Act (no 2)*, passed on 16 December 1992.

The major functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner are:

- to monitor the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples, and to report annually to the Attorney-General on his findings;
- to promote discussion and awareness of the human rights of Aboriginal and Torres Strait Islander people, and to promote respect for, and enjoyment of those rights through research, educational and other programs;
- to examine enactments and proposed enactments to see whether they recognise and protect the human rights of Aboriginal and Torres Strait Islander people and to report to the Attorney-General the results of any such examination.

Consultation

In the process of performing these functions the Aboriginal and Torres Strait Islander Social Justice Commissioner must consult with the Aboriginal and Torres Strait Islander Commission, and must have regard to the objects of the *Council for Aboriginal Reconciliation Act*. The Commissioner may also:

- consult with Aboriginal and Torres Strait Islander organisations;
- consult with indigenous organisations in other countries, international organisations and agencies;
- consult with other organisations, agencies or persons as considered relevant.

The Act provides the Commissioner with the power to obtain documents and information from government agencies if there is reason to believe the agency has information or a document relevant to the functions of the Commission

The assessment of Australia's human rights performance in relation to indigenous people is also to be conducted in the context of internationally recognised human rights standards and instruments. The Act provides that the Commissioner may make reference to any instruments considered relevant. It specifically mentions the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Rights of the Child.

The Native Title Act

The *Native Title Act 1993* was assented to on 24 December 1993, with the majority of its provisions coming into operation on 1 January 1994.

Section 209 of the Act gives the Aboriginal and Torres Strait Islander Social Justice Commissioner another function. It provides that:

- (1) As soon as possible after 30 June each year, the Aboriginal and Torres Strait Islander Social Justice Commissioner must prepare and submit to the Commonwealth Minister a report on:
  - (a) the operation of the Act; and
  - (b) the effect of this Act on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders.
- (2) The Commonwealth Minister may also direct the Commissioner to report to the Commonwealth Minister on any matter covered by (1)(a) or (b).

A report of work undertaken in this area appears later in this chapter.

Comment on Overall Progress During 1993/1994

Fulfilling the legislative objectives requires that the Commissioner covers a vast amount of territory. There is however a significant shortfall in the resources that have been allocated to carry out those functions. However, despite limited resources, since the commencement of the Commissioner's office, it has achieved a number of its aims.

The work and achievements to date of the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner have been realised through the exceptional commitment of the staff members. For example, a temporary skeleton staff completed and submitted the *First Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner* which was tabled in Federal Parliament in November 1993.

However, the Commissioner will not be able to cover the legislative field set out until adequate resources are allocated to the task. The resources put forward provide the energy to assist in bringing social justice to Aboriginal and Torres Strait Islander peoples. They reflect the degree of commitment of the Commonwealth Government to actually tackling the issues which have previously been marginalised. As stated in the Commissioner's *First Report* this is an issue of rights, not welfare. The rights of Aboriginal and Torres Strait Islander people are there to be respected and realised not ignored or treated as privilege or an issue of welfare.

MAJOR PROJECTS FOR 1993/1994

Aboriginal and Torres Strait Islander Social Justice Commissioner Report

This report to the Attorney-General had as its objectives:

- to monitor the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples;
- to reflect Aboriginal and Torres Strait Islander aspirations for social justice and self determination;
- to evaluate Australia's human rights performance regarding Aboriginal and Torres Strait Islander peoples in terms of the relevant international human

rights standards and instruments, and to have regard to the objectives of the Council for Aboriginal Reconciliation.

- to make the report accessible to all indigenous and non-indigenous Australians.

A number of different strategies, emphasising partnership and participation, were followed in the development of this report. Highlights include:

- broad consultation with Aboriginal and Torres Strait Islander organisations and close coordination with the Aboriginal and Torres Strait Islander Commission;
- research into the current situation of indigenous Australians in particular areas;
- establishment of communication networks with relevant federal and State government departments to obtain information regarding the situation of indigenous peoples;
- study of the relevant international human rights instruments and standards and consultation with international human rights agencies, indigenous organisations in other countries and international indigenous networks; and
- involvement of Aboriginal artists in the preparation of the report to create a format to maximise accessibility.

Outcomes

The Commissioner's *First Report* was completed and submitted to the Attorney-General on 8 December 1993. The report has received favourable comment from a wide number of sources.

The Commissioner conducted research into a number of key areas, the major areas of concern including land rights, self-determination, health, employment, housing, education, criminal justice and international issues. In view of the High Court decision in the Mabo case, the report examined the question of Native Title and the implications of the decision for Aboriginal and Torres Strait Islander people.

It highlighted certain areas as crucial to the exercise and enjoyment of the human rights of Aboriginal and Torres Strait Islander people. Land rights and self-determination are prerequisites for the fulfilment of all human rights for Aboriginal and Torres Strait Islander people and accordingly held a prominent place both in the report and in the work of the office.

In the preparation of the report, the staff of the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner have been involved in establishing networks in the community to allow for community input and involvement in the production of future reports. Limited resources in the unit constrained the establishment of adequate national networks, and this will be an area requiring

further work. The unit also coordinated its efforts with the Aboriginal and Torres Strait Islander Commission and began to form links with the Council for Aboriginal Reconciliation.

The Commissioner continued to access and extend networks with international and indigenous organisations in other countries. The Commissioner attended the eleventh Session of the United Nations Working Group on Indigenous Populations (where he was involved in further drafting of the Draft Declaration on the Rights of Indigenous Peoples) and a conference on indigenous human rights in Amsterdam. The Commissioner was also represented at a Conference on Sea Rights in Norway. The Unit has established preliminary communication with indigenous organisations in New Zealand, the United States and Canada.

The Commissioner has been studying relevant international instruments to examine their relevance to the promotion of human rights of indigenous peoples.

National Legal Field Officer Training Program

This program sought to implement Recommendation 212 of the RCIADIC through the development of a national professional training course for Aboriginal Legal Service Field Officers and para-legal workers in areas of federal, State and Territory law, including anti-discrimination, international and customary law.

Specific objectives included:

- for the program to provide an educational forum for Aboriginal and Torres Strait Islander legal workers in relation to indigenous human rights issues;
- to establish a training course which will provide an opportunity for Aboriginal and Torres Strait Islander people to obtain further legal qualifications; and
- to ensure that Aboriginal and Torres Strait Islander legal and educational organisations are closely involved in the development and implementation stages of the program;

A number of strategies were pursued including:

- the establishment of a Steering Committee to oversee the development and implementation of the program, and to ensure that the program retains its cultural and educational integrity;
- the employment of a project coordinator to coordinate the program development;
- the setting up of a working group to work closely with the Project Coordinator and supervise and assist in the day to day running of the program; and

- the development of an action plan which will include conducting an audit on courses available in all States and Territories, developing a process for involving appropriate Aboriginal and Torres Strait Islander academics, community organisations, and in particular legal services in project development; liaising with appropriate academics, community organisations and legal services to develop a draft tender document for educational institutions to develop the training course.

Outcomes

When the funding for this program was originally approved, the project was to be jointly coordinated by the Commission and the National Aboriginal and Islander Legal Services Secretariat (NAILS S). However, after considerable attempts to work together, the Commissioner and NAILSS reached an impasse due to conflicting views about the use of program funds and the course development. As a result of this problem there have been significant delays in implementing the strategies.

However, in April 1994 approval was obtained from the Prime Minister for the Commission to take full carriage of the program.

In the interim period, the Commissioner has implemented the following:

- a steering committee has been set up comprising the Aboriginal and Torres Strait Islander Social Justice Commissioner and representation from ATSIC, the Department of Employment Education and Training, the Attorney-General's Department, the National Federation of Aboriginal Education Consultative Groups and Aboriginal and Torres Strait Islander legal services. The Steering Committee held its first meetings and approved the recruitment of a Project Coordinator. The Committee set out preliminary priorities for the Project Coordinator;
- a working group with representation from the above organisations has been set up; and
- the process of recruiting a Project Coordinator has begun.

Reporting on the Operation of the Native Title Act (1993)

A number of strategies have been implemented in order to be able to provide a report to the Minister for Aboriginal and Torres Strait Islander Affairs on the operation of the *Native Title Act*. These include:

- national consultation and networking with Aboriginal and Torres Strait Islander communities and their representative bodies including land councils and legal services at local and regional levels;
- providing information on the Act in appropriate formats for the varying lifestyles, circumstances and geographic regions in which Aboriginal and Torres Strait Islander peoples live;
- from the aforementioned process and with reference to international human rights instruments and associated domestic legislation, representing the human rights interests of Aboriginal and Torres Strait Islander peoples to government through recommendations concerning the Act and Regulations;
- establishing networks with relevant Commonwealth, State and Territory government agencies, including the National Native Title Tribunal, State Premier's departments and Chief Ministers' departments and Attorney-General's departments; and
- close consultation, strategic planning and program development with the Aboriginal and Torres Strait Islander Commission and the Aboriginal Reconciliation Council.

The outcomes of these strategies to date have led to:

- participation by the Commissioner in negotiation with government concerning the principles structuring the Act;
- establishment and recruitment processes have commenced for a Native Title Unit within the Commissioner's Office;
- networks have been established with relevant commonwealth agencies, including the Aboriginal and the Torres Strait Islander Commission and the Aboriginal Reconciliation Council. Networks have also been established with peak level Aboriginal and Torres Strait Islander Non-Government Organisations;
- discussions with representatives of the National Farmers' Federation and the Australian Mining Industry Council concerning the operation of the Act have occurred;
- negotiation with government regarding the principles to structure legislation concerning the National Indigenous Land Fund in response to part 10 of the Act;
- participation in the National Indigenous Task Force established by ATSIC and the Aboriginal Reconciliation Council to consult widely with indigenous communities on issues to be addressed and remedied in the Government's social justice response to the High Court's decision on Native Title;

- national advertisements inviting submissions concerning the operation of the Act and its impact on the human rights of Aboriginal and Torres Strait Islander peoples; and
- establishment of a national toll free telephone facility to receive comments concerning the Act.

EDUCATION AND PROMOTIONAL ACTIVITIES

National Aboriginal and Torres Strait Islander Community Education Program

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

The specific goals of developing this project include:

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

A number of strategies were pursued including:

- the appointment of a National Coordinator to manage the total program and two staff to assist with policy and administration;
- the establishing of a reference committee comprising Aboriginal and Torres Strait Islander peoples involved in media and community education to oversee the development, production and dissemination of the video;
- the establishing of a reference committee comprising Aboriginal and Torres Strait Islander peoples involved in community education, representation from ATSIC and various educational authorities to oversee the development, implementation and evaluation of the resource package and the Train the Trainer package;

- the appointment of a Project Manager and production team to manage and produce the national video;
- the appointment of consultants to develop the resource and train the trainer packages in three regions including the following:
  - i) New South Wales, Victoria, Tasmania and the Australian Capital Territory
  - ii) Northern Territory and South Australia
  - iii) Western Australia
- a pilot training of the resource *Tracking Your Rights* (developed in Queensland as the forerunner to the national program) in Aboriginal and Torres Strait Islander communities in far north Queensland and the Torres Strait, and to produce a report on the effectiveness of the resource as a training tool;
- regular meetings between the Project Coordinator and members of the reference committees and the consultants to develop management plans and schedules for the production of the program; and
- consultants to develop proposals to visit a range of Aboriginal and Torres Strait Islander communities facilitating discussion about the overall project as well as the specific content areas and medium for the most effective delivery of the information.

Outcomes

A National Coordinator was appointed and commenced work in March 1994. A management plan and schedule have been developed. An administrative officer has been appointed. The recruitment process for the additional policy officer has begun.

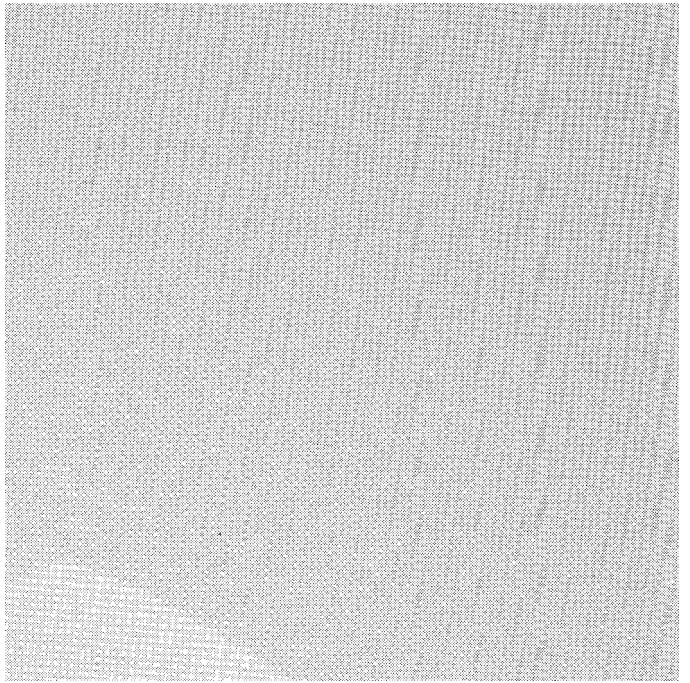
Tenders for the consultancies have been sought and are currently being assessed by two panels. A great deal of interest was shown through the numbers of people responding to the advertisements for consultants and in the diversity of background of people seeking information and making application.

Training in north Queensland has been very successful with the demand for further training exceeding our existing capacity. The section on the work of the Commission's Queensland offices details locations of training offered in Queensland during 1993/1994.

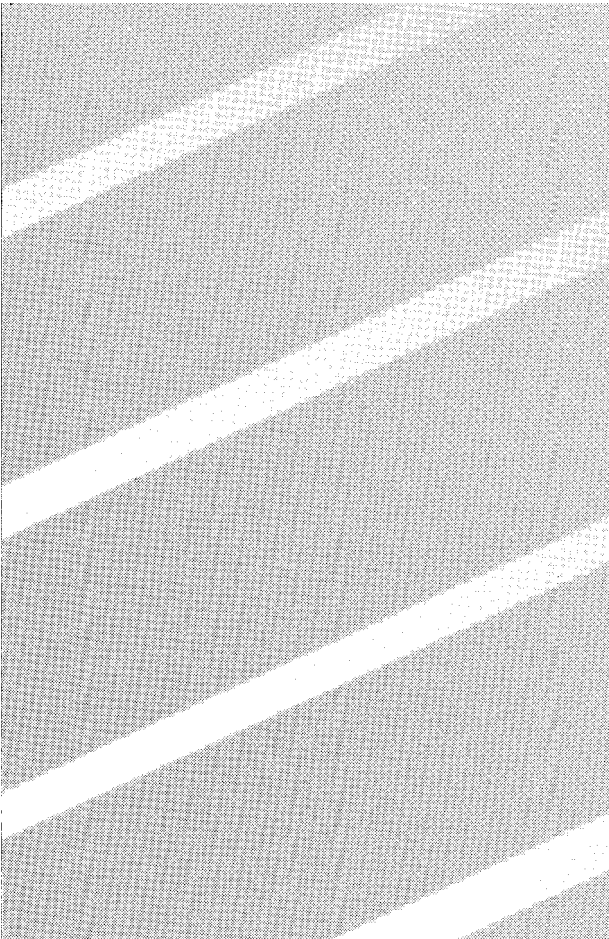
Aboriginal and Torres Strait Islander Social Justice Commissioner Major Speaking Engagements

The Commissioner has undertaken a wide range of speaking engagements during 1993/1994. Highlights include:

- in September 1993, delivering the David Unaipon Memorial Lecture at the University of South Australia on *Social Justice for Indigenous Peoples*;
- in November 1993, the opening address to the Voices of the Earth Conference in Amsterdam on *Voices of the People — Voices of the Earth: Indigenous Peoples — Subjugation or Self Determination?*;
- in April 1994, delivering the Wentworth Lecture for the Australian Institute of Aboriginal and Torres Strait Islander Studies on *The End is the Beginning: Re (de) finding Aboriginality*.



RACE DISCRIMINATION



RACE DISCRIMINATION COMMISSIONER

Irene Moss, an arts and law graduate from Sydney and Harvard, was appointed as the first Race Discrimination Commissioner in December 1986 for a seven-year term.

Her commitment to anti-discrimination strategies and social justice issues was evident before her appointment as Race Discrimination Commissioner, during her years with the NSW Anti-Discrimination Board where she was involved with a number of landmark legal cases in support of human rights.

As part of her wide multicultural interests, Ms Moss is a director of the Board of the Special Broadcasting Service (SBS) and a member of the management committee of the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS).

Ms Moss resigned as Commissioner in June 1994, to take up a position with the NSW Judiciary.

Statement from the Race Discrimination Commissioner

As this is the last Annual Report statement that I shall write as Race Discrimination Commissioner, perhaps I may be excused if I occasionally stray beyond events of the past year and into some of the changes that have occurred during my term.

Soon after my appointment in December 1986, a situation erupted on the NSW/Queensland border that became known as the 'Goondiwindi riot' which was blamed on racial discontent between the Aboriginal and non-Aboriginal people in the area. I visited the district (towns on both sides of the river which marks the State border) in January 1987 and found wide disparities between the living standards and the socio-economic expectations of Aboriginal people and those of Anglo-Australians. In particular, I noticed that the living standards in Toomelah, an Aboriginal community, were unacceptably poor and considerably worse than the nearby towns which had mainly non-Aboriginal populations.

During the Inquiry which followed my visit, the image stayed with me of the residents of Toomelah lining up twice a day to access the artesian water which was rationed and dispensed in two fifteen-minute bursts. After the Inquiry's report was made public, I received letters from other Aboriginal people telling me that the supply of water and the sanitation services were just as bad in their communities. I was quite shocked that a country as wealthy and technologically sophisticated as

Australia was unable to supply the most basic of all services to a number of its citizens.

From that came the incentive to undertake a research project into the problems of supplying water and sanitation services to Aboriginal and Torres Strait Islander communities, especially the remote ones. I realised that it would be a long and complex project — and it was! However, I am proud of the final report, simply entitled *Water*, and pleased that the Attorney-General tabled the report in Federal Parliament whilst I was still the Commissioner.

The fact that the *Water Report* tackles questions such as Aboriginal self-management of resources and the need for an indigenous Bill of Rights shows how far we have come on indigenous issues even during my term in office. Within the seven and a half years that my position has been extant, we have seen the establishment of a representative indigenous structure in ATSIC; the accelerating development of the land rights movement culminating in the historic Mabo decision; and the acknowledgment of past wrongs and commitment to future cooperation through the process of reconciliation.

I also feel that there has been a realisation throughout the broader community of the injustices done to Aboriginal and Torres Strait Islander peoples as revealed by the findings of the National Inquiry into Racist Violence and the Royal Commission into Aboriginal Deaths in Custody. It is to the Government's credit that it has appointed an Aboriginal and Torres Strait Islander Social Justice Commissioner to monitor the amelioration of those injustices.

As Race Discrimination Commissioner, I was involved not only with Aboriginal and Torres Strait Islander communities, but also with that increasing proportion of Australians who are from a non-English speaking background. At the time of my appointment 11.6 percent of the total Australian population were people who had been born overseas in non-English speaking countries. By the time of my resignation that figure had risen to over 13 percent. Counting these immigrants, their children, and allowing for the people of non-English speaking background who have migrated from English-speaking countries (like Maoris and Pacific Islanders coming from New Zealand, or Indians and black Africans from South Africa), we have well over a quarter of the total Australian population who can be described as being of non-English speaking background.

During the past year, I was pleased to present to Federal Parliament the first *State of the Nation Report on People of Non-English Speaking Background*. This had been requested by the Attorney-General and will be produced annually. Although I still believe that there is, generally, reasonably good public acceptance of the extraordinary cultural diversity that marks modern Australian society, I nevertheless feel that there is no room for complacency. At the time of the Report's release I warned about the dangerous possibility of developing an 'ethnic underclass'. This warning was based on a careful analysis of ethnicity and employment statistics which

showed that the burden of unemployment and under-employment was falling disproportionately onto certain groups of people of non-English speaking background.

At the time of my resignation, work was well under way on the second *State of the Nation Report*. Rather than presenting a broad overview as the first one did, the second Report will focus on specific issues of concern to ethnic communities. A number of other projects were also nearing completion and I regret not seeing them in their final form. I include here the reviews of the *Mornington* and *Baryulgil Reports*; and the research project on domestic homicide where Filipino Australians are the victims. However, I know that I leave them in the capable hands of my staff, to whom I express my appreciation for their assistance to me over the years.

I have to admit my disappointment that the Federal Government had not introduced racial vilification legislation before my departure. During the National Inquiry into Racist Violence I became convinced that such legislation was needed to protect minority groups from the serious consequences of racial hatred and even racist violence, and to offer them avenues of redress for racist harassment and vilification. I am aware that there is considerable opposition in some quarters to such legislation but, as I made clear in many speeches on the topic, I feel that there is a greater obligation to protect minority groups from incitement to racial hatred than there is to allow an untrammelled freedom of expression of racist views. It is also very important that a strong commitment to this position is made as part of government policy.

The role of Race Discrimination Commissioner is a fascinating and fulfilling one to play — being in a 'box seat' to observe the shifting nuances of multicultural Australia. Importantly, the role also allowed active participation in shaping the nature of the interactions between various groups in society. I am honoured to have had the position since its inception. I leave with good memories of my term and with best wishes to my successor.

MAJOR PROJECTS FOR 1993/1994

The Water Report

Water: A Report on the provision of water and sanitation in remote Aboriginal and Torres Strait Islander communities was tabled by the federal Attorney-General on 30 May 1994 and received strong endorsement from the Aboriginal and Torres Strait Islander Commission (ATSIC).

The *Water Report* is the result of an in-depth study of the problems of inadequate water and sanitation services to many Aboriginal and Torres Strait Islander communities, especially those in remote locations. It could not have been accomplished without the cooperation of eight Aboriginal and two Torres Strait Islander communities, representing a range of lifestyles, locations and existing services. The Report concluded that the problems were social and political in nature, rather than technical; and that any viable, long-term solutions depended upon indigenous community control in the decision-making and resource allocation processes.

A number of recommendations were presented, plus suggestions as to how government departments and other agencies might better work with Aboriginal and Torres Strait Islander communities to ensure the provision of services in an appropriate and non-intrusive manner.

Inquiry into Race Discrimination, Human Rights and the Distribution of Alcohol in the Northern Territory

The report of this complicated and lengthy Inquiry is currently in draft form. The final report is expected to be tabled in Federal Parliament before the end of the year.

The Inquiry was originally initiated by the Commission to ascertain the nature and extent of alcohol distribution in the Northern Territory, the extent to which these factors contribute to alcohol abuse and whether limitations on distribution contravene the *Race Discrimination Act* and/or international human rights instruments.

During the course of the Inquiry, new factors have emerged. Of particular interest has been the concerted effort of a number of Aboriginal communities to tackle the question of alcohol abuse by requesting limitations on alcohol sales; and by citing the 'special measures' provisions of the *Race Discrimination Act* (RDA) to support negotiated different treatment of their community members by licencees.

The Inquiry has had to be extended well beyond its original time frame to include these current developments. Its frame of reference was also broadened to allow the consideration of strategies to address alcohol abuse in the community and the greater participation by Aboriginal communities in the decision-making process.

Mornington Review

With the release of the *Mornington Report* in April 1993, the Race Discrimination Commissioner promised a review in a year's time of the implementation of the 91 recommendations contained in the Report.

In April 1994, the review team (a consultant and three Commission staff members) returned to Mornington Island and spent five days talking to local residents and service providers, as well as contacting all government departments and agencies mentioned in the original Report.

The results of this review process will be released in late 1994.

Baryulgil Review

In 1990, the Race Discrimination Commissioner released a report about the problems facing the Aboriginal communities of Baryulgil and Malabugilmah (NSW) from past asbestos mining in the area. She revisited the area in 1992 and made a commitment to keep a 'watching brief' on progress towards rehabilitating the area and improving the conditions for local residents.

In February 1994, two Commission staff revisited the townships for discussions with community representatives. Since that time, they have contacted government departments and other agencies involved in service provision in and around the area. The results of their investigations will be published as the *Baryulgil Review* in late 1994.

The State of the Nation Report on People of Non-English Speaking Background

In early December 1993, the federal Attorney-General tabled the first *State of the Nation Report on People of Non-English Speaking Background* prepared by the Race Discrimination Commissioner. It received wide and positive coverage in the mainstream and ethnic press.

This landmark report was a comprehensive overview of major areas of disadvantage suffered by people of non-English speaking background in Australia today. The most crucial problem was unemployment. Specific disadvantages included the segregation of immigrant workers within vulnerable manufacturing sectors of industry; their lack of mobility within and between industry sectors; and lack of appropriate training schemes and labour market programs for either potential workers or retrenched ones.

Other areas covered in the Report were problems experienced by older people of non-English speaking background; the specific needs of refugees and asylum seekers; and racism in relation to young people of non-English speaking background.

After the Report's release, a consultative process was immediately begun to determine issues to be considered in the second *State of the Nation Report*. This is currently in preparation and its topics include an examination of public housing with

relation to people of non-English speaking background; young people of non-English speaking background and the juvenile justice system; and small and/or emerging communities.

The second *State of the Nation Report on People of Non-English Speaking Background* will be tabled in November 1994.

Filipino Deaths Research Project

Following requests from a Filipino community organisation and concerned individuals, the Race Discrimination Commissioner undertook a research project to investigate the deaths and disappearances in recent years of a number of Filipino women in Australia. A significant number of these deaths were domestic/spousal homicides.

Preliminary research has established that the rate of domestic homicide where Filipino women are the victims is significantly higher than the rate for all Australian women. Further research is being undertaken to establish the contributing factors to this homicide rate and to offer strategies to address key issues of concern.

It is expected that the final report of this project will be released early in 1995.

COMPLAINT INVESTIGATION

Table 19 shows that 458 complaints were accepted as within jurisdiction of the RDA during the year.

While employment-related complaints constitute the largest percentage (263 or 57.4%) of matters dealt with under the Act, there was also a significant number of complaints (140 or 30.6%) relating to the provision of goods and services.

Table 20 shows the ethnicity of complainants. 103 complaints were received from Aboriginal and Torres Strait Islander people representing 22.5 percent of the total number of complaints received. 158 (or 34.5%) of complaints were lodged by complainants from non-English speaking backgrounds.

As has been the case in previous years, men were more likely than women to lodge complaints under the RDA. As Table 21 outlines, of the 458 complaints received under the Act, 235 (51.3%) were from men and 167 (36.5%) were from women. 8 complaints (1.8%) were lodged by groups/organisations. For some complaints these data were not recorded.

The majority of RDA complaints were made about respondents from the private sector. Table 21 indicates that 352 or 77 percent of complaints were against non-government and private organisations.

Table 19 Complaints lodged under the Racial Discrimination Act (1975) by ground of complaint and location — 1 July 1993 to 30 June 1994

	Central Qld		NT	Tas	ACT	Vic	SA	WA TOTAL	
Land/ housing/ accommodation	5	2		2		11	13		33
Access to goods and services, places & facilities	9	10	6	1		48	61	5	140
Employment	31	7	10	5	15	126	63	6	263
Advertising/media									0
Incitement to unlawful acts									0
Education	3					5	2		10
Other									
TOTAL	11			1					12
	59	19	16	9	15	190	139	11	458

Table 20 Complaints lodged under the Racial Discrimination Act (1975) by ethnicity of complainant — 1 July 1993 to 30 June 1994

	Central Old		NT	Tas	ACT	Vic	SA	WA TOTAL	
Aboriginal and Torres Strait Islander peoples	8	4	8	3		34	43	3	103
Non-English speaking background	24	1	5	5		62	60	1	158
English speaking background	5		3	1		23	36	7	75
Association	1								1
Not recorded	21	14			15	71			121
TOTAL	59	19	16	9	15	190	139	11	458

Table 21 Complaints lodged under the Racial Discrimination Act (1975) by category of complainant and respondent — 1 July 1993 to 30 June 1994

Category of Complainant									
	Central	Qld	NT	Tas	ACT	Vic	SA	WA	TOTAL
Female	13	7	8	3	5	64	66	1	167
Male	37	9	5	6	10	85	73	10	235
Group/organisation	3	2	3						8
Not recorded	6	1				41			48
TOTAL	59	19	16	9	15	190	139	11	458

Category of Respondent									
	Central	Qld	NT	Tas	ACT	Vic	SA	WA	TOTAL
Commonwealth	18	2	3	1	12	6	9	5	56
State	13	3		2			28	4	50
Other	28	14	13	6	3	184	102	2	352
TOTAL	59	19	16	9	15	190	139	11	458

Table 22 provides a breakdown of the outcomes of complaints finalised or referred for hearing during 1993/1994. 111(35.4%) complaints were resolved through conciliation and 85 (27.1%) were discontinued because the complainant withdrew or lost contact with the Commission. 21 complaints (6.7%) were referred to the Commission for a formal hearing.

Table 22 Outcome of complaints closed or referred for hearing under the Racial Discrimination Act (1975) — 1 July 1993 to 30 June 1994

	Central	Qld	NT	Tas	ACT	Vic	SA	WA	TOTAL
Conciliated	4	18	1	2	1	30	53	2	111
Withdrawn	7	3	4	4		21	4	2	45
Conciliation failed — not referred for hearing						6			6
No contact from complainant	3	6	1	2			28		40
Declined	4	4	1		2	36	17	2	66
Outside jurisdiction			1				7		8
Referred elsewhere				1			11	5	17
Referred for hearing	5	3				11	1	1	21
TOTAL	23	34	8	9	3	104	121	12	314

Case Studies

The following case studies illustrate typical complaints lodged under the *Racial Discrimination Act* and their outcomes.

Case study I: RDA — Employment

A Greek man employed at a branch of a large organisation alleged race discrimination. He claimed that for a number of years he was overlooked for overtime opportunities. He stated that his supervisor when allocating overtime would not roster him. The supervisor allegedly called him a 'wog' and a 'whingeing wog' to his workmates. He claimed his supervisor did not want 'wogs' or Vietnamese people in his work area.

The matter was settled by conciliation and the supervisor apologised verbally in addition to providing a written apology to the man. The organisation agreed to provide counselling services to the man and to review the process of overtime allocation. The organisation has begun to schedule training on anti-discrimination issues for all employees and agreed to provide a support system for victims of harassment.

Case Study 2: RDA — Employment

A woman complained that she had been refused re-employment in a child-minding organisation because of her race. She had been previously employed by the organisation and had resigned because of pregnancy.

The respondent denied the allegations, stating that 50 percent of their caregivers were of non-English speaking backgrounds. The response drew attention to a number of answers given by the complainant at her interview which were regarded as unsatisfactory. It was further stated that care was taken in the make-up of the interview panel to avoid any bias on account of the complainant's previous employment. A copy of the interview report was provided to the Commission, and it was found to contain no references of any kind to the complainant's race or cultural background.

The complainant was asked to substantiate her complaint but was unable to do so. The complaint was declined as lacking in substance.

REFERRALS TO INQUIRY

Table 23 RDA Matters Determined 1 July 1993 to 30 June 1994

Name	Area of Discrimination	Handed Down
Murray & Elvie Bull v Robyn & Eric Kuch	in provision of land housing & accommodation (but s.9 generally)	19 July 1993
Bell v Aboriginal and Torres Strait Islander Commission, Gray & Brandy	in employment (s.15)	22 December 1 993
Langer v Correctional Services Division, Department of Justice (Vic) and Attorney-General of the Commonwealth	s.9 equal opportunity to be offered equal access to certain administrative and statutory programs of an ameliorative nature to minimise negative effects of imprisonment	12 October 1993
Murray v Forward & Merit Protection Review Agency	s.9 equal treatment before tribunals and al other organs administering justice	17 September 1993
Colakovski v Delphin & Ors of Victorian Police	s.9 equal treatment by law enforcers	3 March 1994
Laher v Barry James Mobile Cranes Pty Ltd	in employment (s.15)	3 March 1 994
Power v Hyllus Mans Aboriginal Community School Inc. & Baksh & Briggs & Mathysen & Wirrpanda	in employment (s.15)	18 April 1 994
Lofti v Department of Primary Industry and Australian Quarantine and Inspection Service	in employment (s.15)	29 April 1994
Nagasinghe v Women's and Children's Hospital Adelaide	in employment (s.15)	30 June 1994

Laher v Barry James Mobile Cranes Pty Ltd

The complainant was employed as a crane driver with Barry James Mobile Cranes Pty Ltd. The complainant alleged that he had been discriminated against in the allocation of equipment and work on the basis of his ethnic origin. The complainant alleged that he was dismissed for a minor infraction of the rules, in contrast to other employees (of English speaking backgrounds) who were not punished for more **serious** offences.

In addition, the complainant alleged that his employer was vicariously liable for the offensive racist comments and behaviour of his fellow employees. He alleged that the management had failed to curb comments such as 'Go home where you came from' and had failed to remove a notice in the staff room which used overtly derogatory terms in relation to the complainant's ethnic origin, including the word 'Frog'. The notice remained in a conspicuous place in the staff room for approximately 3 months.

The complaint could not be conciliated and the matter was referred to a public inquiry. The Inquiry Commissioner held that unlawful discrimination based on ethnic origin is not usually overt and will have to be inferred from the entire circumstances. In addition, the Commissioner held that the test for unlawful discrimination based on ethnic origin is an objective test and thus the intention or motive of the discriminating party is irrelevant.

The Commissioner held that the complainant had failed to establish that he was allocated equipment and work on the basis of his ethnic origin. The Commissioner accepted that the respondent's conduct was explained by business concerns. The Commissioner also held that the complainant had failed to establish that his dismissal was the result of unlawful discrimination.

The Commissioner held that the complainant had established that he had been subjected to racist remarks, which the respondent had failed to curb. The complainant was awarded the sum of \$1,000 in damages.

Colakovski v John Delphin and Others of the Victorian Police

The complainant was employed as a taxi driver. In the course of his work he attended an Italian restaurant and was seized by police. He alleged that the police asked him his nationality and implied that he looked Italian and therefore may have been involved in illegal gambling at the restaurant. The complainant alleged that the respondent's actions amounted to discrimination on the basis of race or ethnic origin.

The Victorian Commissioner for Equal Opportunity decided not to inquire into the complaint as it was lacking in substance. The complainant advised that he wished the matter to be referred to a public hearing.

At the public inquiry the Police (the respondents) gave evidence that they were in the vicinity of the restaurant in order to investigate and raid an illegal gambling racket. As a result of the complainant's behaviour and appearance, the respondents thought that the complainant may have been acting as a 'look-out' for the racket. After seizing the complainant and listening to his explanation, the police apologised and released him.

The Inquiry Commissioner held that the complainant had not established that he was discriminated against on the basis of race or ethnic origin. The Commissioner held that the complainant's misfortune was because he was identified as the look-out man. Further, the Commissioner held that it is not unlawful to merely identify a person as belonging to a wider racial group. The complaint was dismissed.

Manfred Langer v the Correctional Services Division (Department of Justice [Victoria]) and the Attorney-General of the Commonwealth

The complainant was a German national who was convicted for the importation of drugs and sentenced to 12 years' imprisonment. He complained to the Commission that, being a federal prisoner liable to deportation at the conclusion of his sentence, he was being denied access to certain rehabilitation programs which were designed to facilitate a prisoner's reintegration in the community. He alleged that this denial was on the basis of his national origin.

The complaint could not be conciliated and the matter was referred to a public hearing.

The President considered however that the discriminating factor was not national origin but citizenship. The ground of citizenship is not proscribed by the RDA. Further, the International Convention on the Elimination of All Forms of Racial Discrimination scheduled to the Act states that the Convention does not apply to distinctions, exclusions, restrictions or preferences made by a state party between citizens and non-citizens. Effectively, this means that domestic law which distinguished between citizens and non-citizens is not contrary to the RDA.

Mr Langer was also prevented from being considered for the pre-release scheme during the final six months of his term because of regulation 5(2) of the *Crimes Legislation Amendment Act (No. 2) 1990* which stated that a federal offender liable to deportation is not eligible to participate in certain prescribed pre-release schemes. As this was a later enactment in time to the RDA it overrode its operation. Consequently it was immaterial whether there had been discrimination on the basis of national origin.

In any event, the President commended to the relevant authorities the important principle that, regardless of whether a prisoner is a citizen of this country or not, the community has a direct and significant interest in the well-being and rehabilitation of all who are detained in its gaols, both morally and under international treaty. He suggested that Mr Langer, who was a model prisoner, informally be given some benefits which would otherwise not be available to him.

Bell v the Aboriginal and Torres Strait Islander Commission (ATSIC), Gray and Brandy

Mr Bell complained to the Commission that he had been racially abused by a fellow employee at ATSIC, Mr Harry Brandy, and that ATSIC had failed to take appropriate action.

On 16 February 1990 Mr Bell was an applicant for a position in the then Department of Aboriginal Affairs. The only other applicant was Mr Harry Brandy, who was of Aboriginal descent. While Mr Bell was awaiting his interview, Mr Brandy approached Mr Bell and used racially abusive language to Mr Bell, a person of non-Aboriginal descent. The words were said loudly and in front of other people. One of the witnesses, Mr Ian Maxwell whose evidence to the Inquiry was accepted in full, described Mr Brandy's conduct as very heated, aggressive and physically threatening.

Shortly thereafter Mr Bell notified the Departmental Head and the Division Head seeking disciplinary action against Mr Brandy. The Departmental Head failed to take any appropriate action. The failure to adequately address Mr Bell's concerns was seen by Mr Bell as support for Mr Brandy and as possibly damaging to any long-term career prospects in the Aboriginal portfolio.

The Inquiry Commissioner found that statements which identified a non-Aboriginal person in a derogatory way in the context of an organisation whose entire function is the promotion of Australia's indigenous peoples, were clearly identifying, abusing and threatening Mr Bell by reference to his race. The Commissioner found that Mr Brandy's conduct amounted to a breach of sections 9 and 15 of the RDA. However, as Mr Brandy was not acting on behalf of ATSIC, his breach could not be attributed to it.

The Commissioner found that a distinction was made by ATSIC in determining what action should be taken on Mr Bell's complaint. The Commissioner also found that the conduct of the Departmental Head and ATSIC in failing to rely upon the independent evidence of Mr Maxwell, in failing promptly to require Mr Brandy to apologise, in failing to render the workplace safe for Mr Bell and in continuing to attribute fault to Mr Bell where there was none on his part, all amounted to conduct involving a restriction upon him based on race. This had the effect of impairing the enjoyment by him on an equal footing of the right to just and favourable conditions of work and so was a breach of the RDA, even though there was no intent.

ATSIC has appealed the Commission's decision and the appeal is pending.

EDUCATION AND PROMOTIONAL ACTIVITIES

The Race Discrimination Commissioner and staff within the Race Discrimination Unit undertook a heavy schedule of speeches, conferences, seminars and community meetings throughout the year as a way of keeping in touch with community concerns and opinions on a variety of subjects.

For the release of the *State of the Nation Report on People of Non-English Speaking Background*, separate briefing sessions were held with the members of the Indochinese communities, the Lebanese community and government service providers.

The linguistic skills of the Race Discrimination Unit enabled the broadcast of over twenty scripted interviews in Greek and Turkish on the SBS radio network and other community radio stations during the year. The interviews covered the provisions of the RDA in particular and the role and function of the Commission in general.

Youth Anti-Racism Campaign

To capitalise on the success of the 'Different Colours, One People' campaign, the Race Discrimination Commissioner would like to see the campaign ideals firmly anchored within the school system. To that end, the Race Discrimination Unit has systematically begun approaching Departments of School Education throughout Australia to establish a network of those involved in anti-racism policies and grievance procedures at a school level. It is envisaged that such a network will be able to share resources and eliminate any duplication of effort.

Race Discrimination Commissioner Speaking Engagements

The Commissioner has undertaken a wide range of speaking engagements during 1993/1994. These were:

in July 1993

- an address in Brisbane to the Conference on Indigenous People on *Racial Discrimination and Self Determination*;
- a keynote address at the Forum on Interpreting, Ecumenical Migration Centre, Melbourne;



Race Discrimination Commissioner Irene Moss promoting the Different Colours One People campaign.

- a keynote address to the Children's Services Multicultural Forum in Adelaide;
- a keynote address to the Youth Against Racism Forum in Adelaide;
- an address to the Liberal Women's Council in Sydney on *The Mabo Debate*.

in August 1993

- a Foundation Day address at International House in Sydney on *Australia Post Mabo*;
- an address at Liverpool Skillshare on *Different Colours One People*;
- an address at the Women and Management dinner in Sydney on *Glass Walls and Glass Ceilings*;
- an address at the launch of the Different Colours One People campaign in Sydney;
- an address at the launch of the Different Colours One People campaign in Melbourne.

in September 1993

- a keynote address at the Anti-Racism Educators Conference in Brisbane;
- an address on IYWIP Day to Sarah Redfern High School, Minto;
- an address to Hebrew University, Melbourne on *The Mind of a Racist*.

in October 1993

- an address in Sydney on Anti-discrimination (homosexual vilification) legislation.
- an address at the AIESEC Seminar at Griffith University on *Different Colours One People*;
- an address to Plan International, Sydney University on *Global Aids Issues*;

in November 1993

- an address to the Health for a Multicultural Australia Conference in Sydney on *Human Rights and Health Issues*;
- an address to the Migrant Employment Taskforce Seminar in Sydney on *Discrimination and Migrant Employment*;

in December 1993

- an address to the Australian Council of Jewry in Melbourne on *Where to From Here? Issues in Racial Vilification Legislation*;
- an address at the Australian Council of Churches Conference in Sydney on *An Aboriginal Bill of Rights?*;
- an address and a workshop at the Federation of Ethnic Communities' Council of Australia National Conference in Perth on *The State of the Nation Report on People of Non-English Speaking Background*.

in February 1994

- a keynote address to the Australian Chinese Forum in Sydney;
- as the convenor for the How Do We Manage Cultural Diversity session at the Ideas for Australia Conference in Sydney;
- an address at the launch of the Access and Equity in English Language Services Report at the Eastern Suburbs Migrant Action Group;
- an article for *The Age* newspaper on *Are Australians Racist?*

in March 1994

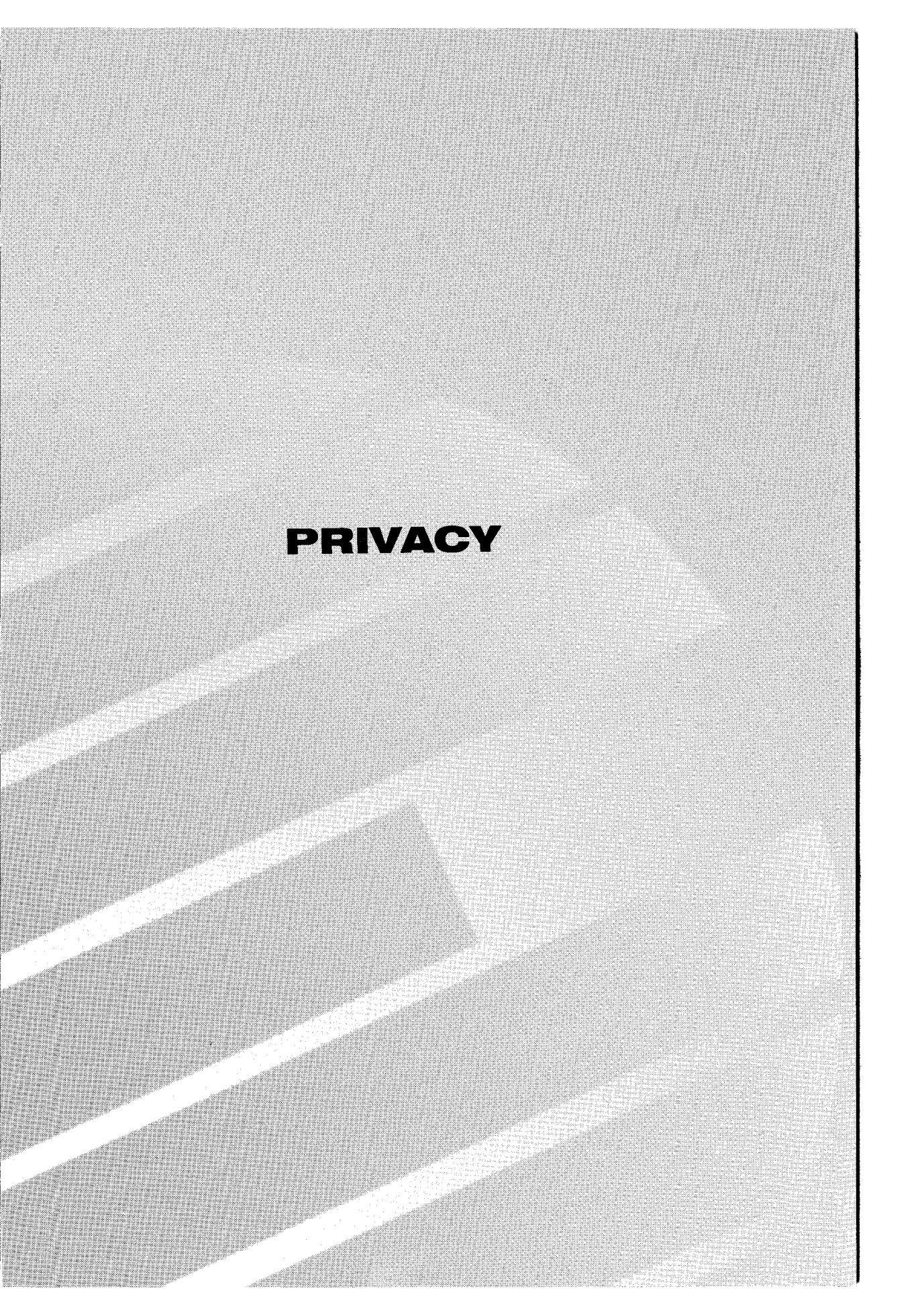
- an address to the National Conference on Equal Opportunity Law and Practice in Adelaide on *Racial Vilification.. An Overview*;
- an address on International Women's Day to the SBS Women's Network in Sydney on *Equal Employment Opportunity*;

in April 1994

- an address in Granville at the launch of the Bureau of Immigration and Population Research/Association of NESB Women of Australia study on Gender Equity and Australian Immigration Policy;
- an address to the Australian Chinese Forum/Ethnic Communities' Council of NSW Joint Forum in Sydney on *Indigenous and Ethnic Australians*.

in May 1994

- a keynote address at the Vietnamese Women's First National Conference in Cabramatta;
- an address at the launch of *The Water Report*.



PRIVACY

PRIVACY COMMISSIONER

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

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

Statement from the Privacy Commissioner

There have not been any significant amendments to federal privacy laws during 1993/1994.

The *Privacy Act* includes a set of standards (Information Privacy Principles) which addresses personal information handling practices within federal administration; regulates the use of tax file numbers throughout the community; and lays down controls over the collection, use and dissemination of consumer credit information.

During the year, my office received a consistent number of inquiries and complaints each week. Approximately 44 percent related to credit information and 12 percent to Information Privacy Principles.

My audit program was quite extensive and its main focus this year was on the practices of credit providers in handling consumer credit information. The program also included a comprehensive computer security survey of 152 federal and ACT Government service agencies.

As a result of Parliament extending the sunset clause in the *Data-matching Program (Assistance and Tax) Act 1990* I will continue to monitor data-matching conducted under that Act until at least 1996.

Privacy inquiries and complaints are handled by a special unit within the Privacy Branch of the Commission. The unit maintains a good working relationship with privacy contact officers and with representatives of credit reference agencies and major credit providers. This relationship has assisted in the resolution of the majority of complaints, which have been regarded as having substance, within a reasonable time frame. I made two determinations under s.52 of the Act during the year.

Privacy issues were addressed at State government level during the reporting year. A *Privacy and Data Protection Bill 1994* has been drafted in New South Wales and is currently being considered by a Select Committee of the New South Wales Parliament. My staff had the opportunity to provide comments on the proposed Bill.

Support for the Privacy Commissioner's function is primarily provided by the Privacy Branch of the Commission. The work of the Privacy Commissioner and the branch is dealt with in greater detail in a separate *Annual Report on the Operation of the Privacy Act* made under section 97 of the Act.

The following report provides a brief outline of the major privacy activities of the year.

MAJOR PROJECTS FOR 1993/1994

Federal Agencies and Parliamentary Committees

The Privacy Branch continued to give regular advice to federal agencies concerning their obligations under the Information Privacy Principles and the Commissioner made a number of submissions to Parliamentary inquiries. A complete list is contained in Attachment Three on page 247. Significant issues included the following.

Data-Matching Guidelines

General data-matching guidelines were issued in July 1992 and the Privacy Commissioner indicated at that time that he would monitor their operation for 12 months and then make recommendations to the Attorney-General with regard to the possibility of incorporating guidelines into the *Privacy Act 1988*.

As an initial step towards reporting to the Attorney-General on data matching, the Privacy Branch conducted a survey of data-matching programs involving Commonwealth agencies. Almost all agencies responded. In December 1993 a discussion paper on the operation of the data-matching guidelines was circulated to all agencies involved in data-matching and individuals and organisations with an interest in privacy. The comments received, and the Branch's experience in administering the guidelines, will be considered in a report to the Attorney-General early in 1994/1995 and in discussions with agencies and other interested parties on possible changes to the guidelines. Some of the initial findings were conveyed to the House of Representatives Standing Committee on Legal and Constitutional Affairs to

assist in its inquiry into the protection of confidential personal and commercial information held by the Commonwealth.

Outsourcing

Advice on information technology outsourcing was developed during the year under the auspices of the Privacy Advisory Committee. The Attorney-General's Department, the Departments of Finance, Administrative Services, Veterans' Affairs and Social Security, and the ACTU, were consulted. The advice will be published early in 1994/1995.

Medicare and Pharmaceutical Benefits Guidelines

Upon the *National Health Amendment Act 1993* receiving Royal Assent on 9 June 1993, the scope and nature of the guidelines to be issued by the Privacy Commissioner for the conduct of the Medicare and Pharmaceutical Benefits programs were clarified under the new section 135AA of the *National Health Act 1953*. Complementary amendments were made to the *Privacy Act*. Section 13 was amended to make a breach of the guidelines an 'interference with privacy' and therefore grounds for complaint, and Section 27(1) was amended to include the function of issuing the guidelines.

In developing the guidelines, the Privacy Commissioner consulted the Health Insurance Commission, the Department of Human Services and Health, representatives of the pharmaceutical and medical professions and other relevant organisations. The *Medicare and Pharmaceutical Benefits Programs Privacy Guidelines* were tabled in Parliament on 25 November 1993 and came into effect on 15 April 1994. They provide for standards for the storage and management of information stored on computer concerning claims made by individuals under the two programs.

The Privacy Commissioner intends to review the guidelines after 12 months of operation.

An amendment to the guidelines was tabled on 23 February 1994 and came into effect on 13 May 1994. The amendment sets out the circumstances in which the Health Insurance Commission can receive old claims information from the Department of Human Services and Health and specifies security, destruction and record keeping requirements for that information.

Health Insurance Commission

The Privacy Commissioner provided comments to the government on the Health Legislation (Powers of Investigation) Amendment Bill concerning the powers of the Health Insurance Commission to require information to be given, to enter and inspect premises and to copy and seize documents. The Privacy Commissioner also outlined his concerns in evidence to the Senate Legal and Constitutional Affairs Committee on 11 February 1994. Amendments to the Bill were subsequently made which took account of many of the issues raised by the Privacy Commissioner.

Health Communications Network

This is a joint initiative of the Australian Health Ministers Council to facilitate the transmission of health care data between service providers and others involved in the health care system. The Privacy Commissioner provided ongoing advice to the Department of Human Services and Health and to a consortium of consultants which is still developing the proposal.

Caller Identification Services Trial

In February 1994, Telecom began a trial of caller identification services in Wauchope, NSW. Research, including questions on privacy issues, was conducted before and during the trial and will be conducted at its conclusion. The Privacy Commissioner was represented on a consultative committee to advise on the trial. Business and consumer interests are also represented on the committee. The trial will be completed early in 1994/1995.

Telecommunications Voice Monitoring Guidelines

Following controversy during the year about Telecom's monitoring and recording of customers' telephone conversations, the Privacy Commissioner was asked to provide advice on Telecom's corporate privacy policy on voice monitoring guidelines. The Privacy Commissioner liaised with the Telecommunications Industry Ombudsman, Mr Warwick Smith, and made a number of suggestions for improving the guidelines. These were reflected in the final document, which was released by Mr Smith on 29 April 1994.

0055 Telephone Services

Following media coverage of the issue, the Senate Select Committee on Community Standards examined the question of the need for privacy standards in respect of a

reverse telephone directory (number to name) service offered through Telecom's 0055 information service. On 11 October 1993, the Privacy Commissioner lodged a submission to the Committee detailing the privacy issues arising from reverse directories in general. The Committee's findings, released in December 1993, closely matched the recommendations made in the Privacy Commissioner's submission.

Privacy and People with Disabilities

The Privacy Commissioner and the Victorian Public Advocate jointly sponsored a study of the privacy needs and concerns of people with disabilities. The report of the study, *Private Lives?*, was launched by the Attorney-General in Melbourne on 4 August 1993 and has been widely distributed. It contains a series of recommendations designed to increase awareness of the personal, relational and informational privacy issues encountered by people with disabilities.

The paper has also been distributed in New Zealand by the New Zealand Privacy Commissioner. The New Zealand edition includes a supplement focusing on laws and issues specific to that country.

The Privacy Commissioner and the Victorian Public Advocate intend to collaborate further in 1994/1995 to follow up the recommendations of the report.

NHMRC Guidelines

During 1993/1994, the Australian Health Ethics Committee began to review the NHMRC Guidelines, which were due to lapse on 30 June 1994. When it became apparent that the review would not be completed by this time, the Privacy Commissioner approved an extension of the period for which the Guidelines will remain in force, until 31 December 1994.

Credit Reporting

An amendment to s.18N(1)(bd) of the *Privacy Act* came into force on 24 December 1993. The amendment concerns disclosures by credit providers to State and Territory authorities which operate mortgage assistance schemes.

A review of the Credit Reporting Code of Conduct, issued by the Privacy Commissioner under Section 18A of the *Privacy Act*, began in February 1993. An options paper was prepared in consultation with the Credit Reporting Consultative Group. The paper and the review were advertised in July 1993 and the public was invited to comment by September 1993. An issues paper was then developed, summarising the comments received and canvassing possible changes. The review is expected to be completed early in 1994/1995.

Tax File Number Guidelines

The most recent version of the annotated Tax File Number Guidelines, intended to assist those affected in understanding the guidelines, was circulated in early 1993. The Privacy Commissioner provided general advice on the application of the guidelines throughout the year.

Old Convictions

Part VIIC of the *Crimes Act 1914* gives the Privacy Commissioner jurisdiction in relation to the use and disclosure of certain categories of old and spent criminal conviction information. Throughout the year, the Commissioner continued to promote the spent convictions scheme and to provide educative material to the government, private organisations, and the public generally, to assist in developing a greater understanding of the scheme. Two requests for exclusion were received late in the reporting year for consideration by the Privacy Commissioner.

International Data Protection Conference

The Privacy Commissioner attended an International Data Protection and Privacy Commissioners' Conference in Manchester on 27-30 September 1993. Issues discussed at the conference included the European directive on data security, genetic testing, use of multi-purpose identification numbers, and data security in telecommunications. The Privacy Commissioner presented a paper titled *Privacy Implications of Genetic Testing: Australian Developments*.

COMPLIANCE ACTIVITIES

Audits

A comprehensive program of auditing compliance with the Information Privacy Principles, Tax File Number (TFN) Guidelines and credit reporting provisions was undertaken throughout the year.

The audit focus during this year was primarily on credit information held by credit providers.

13 Information Privacy Principles audits, 6 TFN audits and 32 credit information audits were undertaken during the reporting year. Most of the TFN and credit

information audits were conducted by consultants under the direction of compliance staff.

In May 1994 an IPP4 audit, in the form of a survey focusing on computer security, was commenced. A Computer Security Questionnaire was sent to 152 agencies, including ACT Government service agencies. Auditors also undertook examinations of conditions attached to three Public Interest Determinations to ensure compliance by relevant agencies.

Investigations

A number of matters, some of which attracted media attention, were investigated. These matters related to TFNs, the Information Privacy Principles and credit reporting. Most of these matters required no further action as they were either outside the Privacy Commissioner's jurisdiction, involved no breach of the privacy legislation, or the Commissioner was satisfied with action taken or procedures implemented to prevent recurrence.

Personal Information Digests

In accordance with Information Privacy Principle 5, the Commissioner published and distributed the 1993 Commonwealth and Australian Capital Territory Digests in May 1994.

MONITORING THE DATA-MATCHING PROGRAM

The Information Technology Standards Section of the Privacy Branch, located in Canberra, monitors compliance with the privacy safeguards of the *Data-matching Program (Assistance and Tax) Act 1990*. The participating agencies are the Australian Taxation Office, and the Departments of Social Security; Employment Education and Training; Veterans' Affairs and Housing and Regional Development (First Home Owners Scheme).

The Matching Agency which is staffed by specially designated officers of the Department of Social Security, undertook 5 matching cycles in 1993/1994. In each cycle the records of 14 million individuals are matched and produce on average 24,847 payment matching discrepancies and 60,701 income matching discrepancies.

Payment matches are investigated to ensure that an individual is only receiving benefits to which he/she is entitled and income matches are investigated to ensure that the individual's income that is declared to the Australian Taxation Office is within the limits for benefits which are means tested.

All agencies involved in the program must present comprehensive reports on their data-matching activities to both Houses of Parliament by the end of October each year. *The Data-matching Act* contained a sunset clause which was to terminate the Act on 22 January 1994. In view of a government amendment to remove the sunset clause, in December 1993 the Privacy Commissioner reported to the Minister for Social Security on the performance of the program and recommended the retention of the sunset clause.

The Act was amended in December 1993 retaining the sunset clause until 22 January 1996 and requiring all agencies to report to both Houses of Parliament in October 1994 and 1995.

The Privacy Commissioner's staff have continued inspections of the procedures and practices for investigating data-matching discrepancies in State, area and regional offices of participating agencies. This year staff inspected 50 offices and as a result agencies have modified their procedures in accordance with the Commissioner's recommendations.

Other monitoring activities conducted during the year have included:

- reviews of the procedures for handling data that is used by the program within each participating agency;
- checks of the computer code that is used in the program against the matching rules that are specified in the Technical Standards Report to ensure that the program is performing to specifications;
- examinations of the sampling procedures used by each agency for selecting cases for further investigation; and
- reviews of the computer security within the matching agency.

Generally, agencies have complied with the technical requirements of the Act and guidelines. The savings generated from reductions in benefits have continued to fall below expectations.

COMPLAINT INVESTIGATION

During the year 751 written inquiries/complaints were received. Of these 143 were assessed as potentially involving an interference with privacy. This is a significant

reduction on the number received in the previous reporting year and is due in part to the firmer stance taken in accordance with section 41(1)(b) of the Act where complaints were not accepted if the complainant had not initially complained to the respondent.

Credit reporting complaints continue to represent a substantial proportion of all complaints received. Complaints by category were:

- 55 Credit Reporting
- 81 Information Privacy Principles
- 6 Tax File Numbers
- 1 Spent Convictions

250 complaints were resolved during the year, 2 complaints were finalised by Privacy Commissioner Determinations pursuant to section 52 of the Act; 99 were resolved by negotiation after the agency or respondent conceded that there had been a breach of the Act and undertook remedial action. In 97 cases it was established that there had not been an interference with the privacy of the complainant. 4 complaints were referred to other agencies, and in 48 cases the complaint was withdrawn or lapsed. [see Table 24].

Table 24 Outcome of complaints closed under the Privacy Act 1988 — 1 July 1993 to 30 June 1994

Conciliated	99
Withdrawn	48
No contact from complainant	0
Declined	97
Referred elsewhere	6*
TOTAL	250

*Includes 2 matters referred to the Privacy Commissioner for determination under Section 52 of the Privacy Act 1988.

Remedial action generally consisted of an apology to the complainant together with revised procedures (including staff training) to minimise the risk of a future breach of the Act. In a number of cases specific action was taken in relation to the complainant, such as amending personal records, providing additional security in relation to those records, adjusting benefits or the payment of monetary compensation for loss or damage to the complainant (including hurt or embarrassment).

A significant proportion of credit reporting complaints related to alleged unauthorised disclosures of personal information by credit providers. A number of these complaints have been found to be substantiated, although there was no case where the Privacy Commissioner was of the view that the disclosure was made knowingly or recklessly.

Many other credit complaints were related to the contents of credit information files held by credit reporting agencies. The Privacy Commissioner found that a significant number of these complaints were without substance.

The Privacy Hotline received in excess of 14,000 calls on the toll-free number in the reporting year, compared with 17,000 the previous year. Approximately 67 percent of calls specifically related to the jurisdiction of the Privacy Commissioner. Of these calls, approximately 66 percent related to credit reporting issues. A significant number of the calls came from solicitors, accountants and other professional advisers. The balance of the inquiries did not specifically relate to the Privacy Commissioner's jurisdiction, but did raise broad privacy related issues.

EDUCATION AND PROMOTIONAL ACTIVITIES

Community Survey

During May 1994, a national survey of attitudes about privacy was conducted on behalf of the Privacy Commissioner by the Roy Morgan Research Centre and the results are pending. Previous surveys were conducted in 1989, 1991 and early 1993. The results of these surveys assist in developing community awareness projects and in formulating policy advice.

Launch of Private Sector Training Package

A private sector training package *The Management of Personal Information — Protecting Your Business and Your Clients* was launched on 8 December 1993 in Sydney. The package includes a number of training modules, visual aids, case studies and a video.

Federal Privacy Handbook

In December 1992 the Privacy Commissioner released the *Federal Privacy Handbook: A Guide to Federal Privacy Law and Practice*. The handbook is a reference document which contains the federal *Privacy Act* plus related statutes, regulations, guidelines, determinations, codes of conduct, compliance notes and case

law. It also contains information on international developments in the area of privacy law.

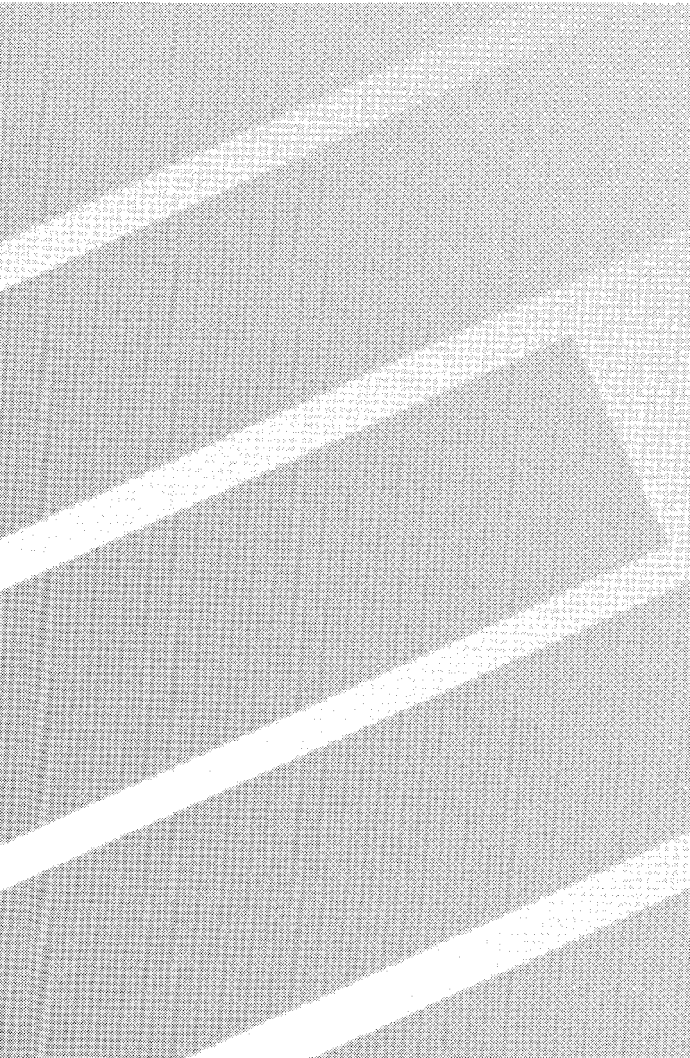
It has been widely circulated in both the public and private sectors and is updated on a regular basis to take account of ongoing developments in privacy law. Updates in 1993 and May 1994 included new legislation, guidelines, and comprehensive summaries of advice provided by the Privacy Commissioner on credit reporting.

Privacy Commissioner's Major Speaking Engagements

The Commissioner delivered a number of speeches throughout the year. Details may be found in the *Sixth Annual Report on the Operation of the Privacy Act*.



THE YEAR IN REVIEW



Regional Offices

QUEENSLAND ANTI-DISCRIMINATION COMMISSION AND THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

Commonwealth/State Cooperation

The functions of the Queensland Anti-Discrimination Commission and the federal Human Rights and Equal Opportunity Commission are performed from joint offices in Brisbane, Rockhampton and Cairns in the framework of a cooperative agreement between the Federal and Queensland Governments.

This arrangement provides a coordinated approach to anti-discrimination and human rights issues in Queensland as well as a single point of contact on relevant State and federal laws.

The State Manager, who performs the functions of the Anti-Discrimination Commissioner, reports regularly to the Queensland Attorney-General on certain matters.

The Legislation

The Queensland Anti-Discrimination Commission (QADC) and the Anti-Discrimination Tribunal were established by the *Anti-Discrimination Act 1991 (Queensland)* which was proclaimed on 30 June 1992. The sections on superannuation and insurance did not become operative until 9 December 1992.

The Act aims to promote equality of opportunity for everyone by protecting them from unfair discrimination in various areas of public life, from sexual harassment and from conduct such as discriminatory advertising and victimisation.

Commission functions

The main functions of the Anti-Discrimination Commission are:

- to inquire into and attempt to conciliate complaints of discrimination and sexual harassment;
- to carry out investigations relating to discrimination;

- to examine legislation to determine whether it is inconsistent with the purposes of the Act and to report on these matters to the Attorney-General;
- to undertake research and educational programs to promote the purposes of the Act;
- to consult with relevant organisations on ways of improving services and conditions affecting disadvantaged groups;
- when requested by the Attorney-General, to research and develop additional grounds of discrimination and to make recommendations for their inclusion in the Act;
- to promote an understanding, acceptance and public discussion of human rights in Queensland; and
- to intervene, where appropriate, in court proceedings involving human rights issues.

Grounds for complaint

If people are treated unfairly in the areas covered by the Act because of any of the following personal attributes, they can lodge complaints with the Commission:

- sex
- marital status
- pregnancy
- parental status
- breastfeeding
- age
- race
- impairment
- sexual harassment
- religion
- political belief or activity
- trade union activity
- lawful sexual activity
- association with, or relation to, someone identified on the basis of any of these attributes.

The areas covered in the Act are:

- work
- education
- goods and services

- accommodation
- superannuation and insurance
- disposition of land
- club membership and affairs
- administration of State laws and programs
- local government

Sexual harassment provisions

The Act prohibits sexual harassment in any situation. Sexual harassment is broadly defined to include any unwelcome sexual conduct that is offensive, humiliating or intimidating.

Major Projects for 1993/1994

Overview

In the 1993/1994 year, the second year of the operation of the *Queensland Anti-Discrimination Act*, the Commission consolidated its operations in a range of areas including complaint handling and community education services, preparing a strategic plan for its future operations, consolidating its budgetary position and advising on legislative changes.

In implementing both State and federal Acts, the Queensland Anti-Discrimination Commission handled 14,641 telephone inquiries, dealt with 1439 written inquiries and 394 formal complaints and conducted more than 200 education sessions.

In terms of complaints lodged under the *Queensland Anti Discrimination Act*, Table 25 outlines the area and ground of complaints. Table 26 describes the category of complainant and respondent. Table 27 summarises the outcome of complaints closed or referred for hearing during 1993/1994.

Strategic Plan

In early 1994 the Commission produced a strategic plan based on four goals. These were to:

- promote equal opportunity and reduce discrimination by increasing the understanding and acceptance of human rights;

- provide redress for people who have been discriminated against through delivery of an effective and responsive inquiry, complaint handling and public hearing service;
- develop a model cooperative working arrangement between the Commonwealth and Queensland governments; and
- develop and support staff potential, performance and productivity.

The plan develops a series of strategies for achieving each goal together with action projects and performance indicators.

The plan also recognises the important need to upgrade and prioritise access to its services for Aboriginal and Torres Strait Islander peoples in Queensland.

Table 25 Complaints lodged under the Queensland Anti-discrimination Act 1991 by area and ground of complaint — 1 July 1993 to 30 June 1994

	Accom- modation	Admin- istration of State laws	Education	Employ- ment	Goods and Services	Insurance	Outside specified areas*	TOTAL
Age	1			18	1	1		21
Association				1				1
Impairment	2	5	7	31	9			54
Marital status				4	1			5
Pregnancy		1		27				28
Political activity		1		2				3
Political belief	1							
Parental status	3	1		2	1			54
Race	5			17	18			4
Religion				3				27
Sex	2	14	1	22	2			
Sexual harassment	1		1	78	2		9	90
Lawful sexual activity		1		3	3	2		9
Trade union activity								0
TOTAL	15	23	9	208	37	3	9	304

*Under the *Queensland Anti-discrimination Act 1,991* sexual harassment may occur in any area of life and is not confined to specific areas.

Table 26 Complaints lodged under the Queensland Anti-discrimination Act 1991 by category of complainant and respondent — 1 July 1993 to 30 June 1994

Category of Complainant		Category of Respondent	
Male	84	Queensland Government	65
Female	186	Private enterprise	239
Group/organisation	8		
Other	26		
TOTAL	304	TOTAL	304

Table 27 Outcomes of complaints closed under Queensland Anti-discrimination Act 1991 — 1 July 1993 to 30 June 1994

Conciliated	148
Withdrawn	88
No contact from complainant	99
Declined	
Outside jurisdiction	
Referred elsewhere	
Referred for hearing	13
TOTAL	348

Changes to the Queensland Anti-Discrimination Act: Abolition of Forced Retirement in Queensland

In June 1994, significant changes were made to the *Queensland AntiDiscrimination Act* through which compulsory age retirement was abolished, with some exemptions. This meant that both private and public employers will no longer be able to retire people on the basis of age in Queensland. These new provisions come into effect from 1 July 1994 overcoming a significant area of employment discrimination previously existing in Queensland.

Human Rights Network for Schools

The Human Rights Network for Schools is a joint initiative of the Department of Education and the Commission. It began on Human Rights Day 1992 and has since operated in Brisbane, Rockhampton and Cairns. The aim is to create a network of teachers and students who can act as anti-discrimination contacts and advocates in their schools. Each school has nominated two students and a teacher who attends workshops every six months.

In February 1994 more than 150 students and teachers from public and private schools participated in interactive drama and small group workshops in Brisbane focusing on the theme of anti-racism.

Dealing with Racist Violence

The extent of racist violence in the Australian community was documented in the *Report on the National Inquiry Into Racist Violence 1991* by the federal Race Discrimination Commissioner. As a result of this report, and as part of the Community Relations Strategy, a training package *Dealing with Racist Violence* was developed by the Commission. It targets service providers such as community workers, counsellors, emergency workers and police and aims to help such providers recognise the impact that hate and racism have in assault, harassment and abuse. The Commission conducted six half-day workshops for service providers such as police, hospital and community workers, rape crisis centre staff and youth services in Brisbane, Logan, Ipswich, Gold Coast and Cairns.

Eliminating Sexual Harassment Training Package

The growing number of women lodging sexual harassment complaints prompted the Commission to develop a new training package for managers and supervisors. The aim is to help managers understand the impact of sexual harassment on performance and productivity in the workplace and take preventative steps to deal with it.

The Commission has conducted 7 half-day training familiarisation sessions in Brisbane and Cairns with more than 70 participants from 50 public and private sector organisations. It is envisaged that companies will use the package in-house to educate their managers and supervisors to set preventative policies in place and deal with sexual harassment effectively.

Tracking Your Rights

The Aboriginal and Torres Strait Islander Social Justice Commissioner's National Education Strategy provided the opportunity for the North Queensland regional office to initiate a series of visits to Aboriginal and Torres Strait Islander communities in the region. These visits included Yarrabah, Camooweal, Murray Island, Townsville, Charters Towers, Mount Isa, Mareeba, Cairns and Kowanyama. These visits have provided an opportunity to deliver and assess the effectiveness of the *Tracking Your Rights* community education package.

Training workshops on *Tracking Your Rights* were also conducted with Aboriginal and Torres Strait Islander community workers throughout southern Queensland, including Brisbane, Cunnamulla, Charleville, Cherbourg and Ipswich.

The Commission on the move

In May the staff of the Commission moved offices to 27 Peel Street in South Brisbane. Although the distance to the new premises was not great, the improvement in space and amenities was significant. The Commission staff have moved into private offices, essential for their confidential work. Conference room and library facilities are better provided in the new offices as are the new client reception areas which provide more space and better surroundings for clients and staff.

Queensland Anti-Discrimination Tribunal

The Tribunal has a number of functions:

- Providing opinions to the Anti-Discrimination Commissioner as requested.
  - During the past year the President of the Tribunal has provided opinions concerning such matters as superannuation and the compulsory retirement provisions which were subsequently amended.
- Hearing applications for exemption.
  - The Tribunal has been dealing with an exemption application by developers whose planning application was subject to a condition that all purchasers into the development be over the age of 50.
- Reviewing the Commissioner's decision to reject complaints as frivolous, vexatious, misconceived and lacking in substance.
- Hearing functions under the Queensland Anti-Discrimination Act 1991.
  - In March 1994 the Tribunal travelled to Cairns, Townsville and Rockhampton for hearings in a variety of matters dealing with allegations of discrimination in taxi services, race discrimination in pre-work, pregnancy discrimination at work and sexual harassment at work. A sample case study appears below.
- The President referred several matters back to the Anti-Discrimination Commissioner for further (successful) attempts at conciliation.
- In November 1993 the Tribunal rules and forms were gazetted assisting the continued smooth running of the Tribunal.
- The Tribunal is grateful for the use of court facilities in regional centres including the Family Court in Cairns and Townsville, the local Court in Townsville, the Supreme Court in Rockhampton and the Maroochydhore District Court.
- The Tribunal President and Registrar have spoken to practitioners about the work of the Tribunal in Cairns, Townsville and Brisbane.
- In April 1994, the Tribunal President and Registrar attended a national Discrimination and Equal Opportunities Tribunals conference in Perth.

Case Study I: O'Neill v Steiler — Race Discrimination-Employment

In April 1994, the tribunal heard a case in which an Aboriginal man alleged that he had been discriminated against on the basis of his race as a potential employer had refused him a job interview.

The complainant said that he had been referred by the CES for a position as a windmill assistant, but when he arrived for interview he was told the position had already been filled. The CES officer involved gave evidence that the potential employer later indicated to her that he would not employ or work with a person of Aboriginal background. The respondent, Mr Steiler did not give evidence in his own defence.

Giving her decision in June, the President found for the complainant and awarded him nearly \$20,000 composed of approximately \$4,000 in lost wages and \$15,000 for the pain and humiliation caused him by the respondent's behaviour.

In making the award, the President noted 'This is a serious and significant case of blatant race discrimination... Mr Steiler's prejudice denied Mr O'Neill a job for which he was objectively suited and which, if he had not been Aboriginal, he would have almost certainly obtained.'

This matter is the first race complaint to be heard by the Queensland Anti-Discrimination Tribunal, and involved one of the highest awards yet made for race discrimination in Australia.

Interventions

On 22 March 1994 the Anti-Discrimination Commissioner sought to intervene in a matter before the Criminal Justice Commission. The Commissioner, Justice Stewart, was holding an inquiry into the conduct of staff at the Basil Stafford Home for disabled residents.

The Anti-Discrimination Commissioner appeared in order to support the application of Queensland Advocacy Incorporated that the residents of the home be formally represented at the inquiry. While unsuccessful at first instance before Mr Justice Stewart the application was granted on appeal to the Supreme Court, enabling the residents to be represented at the inquiry.

Case Studies

The following case studies illustrate typical complaints lodged under the *Queensland Anti-discrimination Act* and their outcomes.

Case study I: Impairment

A man complained that an airline company did not allow passengers who travelled on discount airfares to be accompanied by their guide dogs. The policy of the airline at the time was to place the dog in the hold unless full economy fare was paid. The man complained on the basis of discrimination on the grounds of impairment. In conciliation, the airline agreed to policy changes which meant that people with guide dogs would have access to the forward cabin, usually reserved for first class passengers, and to discount airfare passengers accompanied by guide dogs.

Case study 2: Lawful sexual activity

Two women were kissing as a bus pulled up. As they boarded the bus they requested a family ticket. The driver told them that the family pass was only available to adults with children. The women disputed this with the driver saying they had purchased this type of ticket before. The driver asked them to leave the bus. The women complained that they had been discriminated against on the grounds of lawful sexual activity. This matter was successfully conciliated and resulted in the bus service locating the driver involved and counselling him. The women received an apology and were reimbursed for the taxi fare they incurred after they were refused bus travel.

Education and Promotional Activities

Staff of the Commission conducted more than 200 speaking engagements, training and awareness sessions and workshops in the past year to a wide range of audiences. This included public and private sector employers and staff, community groups and academic institutions. The aim of these community education activities is to raise awareness of human rights issues and rights and responsibilities under anti-discrimination laws.

Publications

The Commission considers publications an important way of reaching people and advising them of their rights and responsibilities under the legislation. Publications are developed in response to identified needs.

In the past 12 months the Commission has updated all publications and has produced several new ones. Information sheets have been produced about racism at work and applying for a job as well as a wall-sized 'rights card' for tenants. These are in addition to information sheets on a range of issues which had previously been distributed about discrimination and harassment.

Thousands of the Commission's posters have been distributed to employers, unions, educational institutions and community groups. In the past year three more posters were designed and added to the range already available. A poster about discrimination on the basis of pregnancy was commissioned. A new race discrimination poster focusing on Aboriginal people was designed by an Aboriginal artist and a poster in Creole targeting discrimination issues relevant to Torres Strait Islanders was designed by a Torres Strait Islander.

Newsletter

The quarterly newsletter *Under One Sun*, on the work of the Queensland Commission has continued to be distributed to a wide range of organisations and individuals. The newsletter aims to increase community awareness of the work of the Commission, relevant discrimination issues, legal matters and resources.

In addition, the Brisbane office is coordinating the preparation and production of the twice yearly national newsletter *Agender* on behalf of the Sex Discrimination Commissioner.

AUSTRALIAN CAPITAL TERRITORY (ACT)

HUMAN RIGHTS OFFICE

Commonwealth/Territory Cooperation

The ACT Human Rights Office was established in 1991 by agreement between the ACT Government and the Commonwealth. The office is jointly funded by the ACT and the Commonwealth and is staffed and administered by the Human Rights and Equal Opportunity Commission. The Human Rights Office (HRO) implements the *ACT Discrimination Act 1991* and handles complaints within the ACT under the federal discrimination laws.

The HRO was delegated to handle complaints under the *Disability Discrimination Act* from 8 February 1994.

ACT Discrimination Act 1991

The *ACT Discrimination Act* came into force on 20 January 1992. The Act makes discrimination on the following grounds unlawful:

- sex;
- sexuality;
- transsexuality;
- marital status;
- race;
- pregnancy;
- status as parent or carer;
- religious or political conviction;
- impairment;
- membership or non-membership of an association or organisation of employers or employees;
- age;
- profession, trade occupation or calling; and
- association with a person who has one of these attributes.

Sexual harassment, racial vilification and victimisation are also unlawful under the Act.

The Act operates in the areas of employment, education, access to premises, the provision of goods and services, accommodation and clubs.

ACT Discrimination Commissioner

The ACT Discrimination Commissioner, Professor Phillip Alston, has a range of functions which are set out in the *ACT Discrimination Act*. These functions include the hearing of complaints made under the Act as well as functions concerned with the promotion of the aims and objectives of the Act.

During 1993/1994 Professor Alston was absent for two periods. Dr Rosalie Balkin was appointed Acting Discrimination Commissioner on 15 January 1993 for a period of twelve months. Ms Robin Burnett was appointed Acting Discrimination Commissioner from 1 May 1994 to 30 June 1994.

Major Projects for 1993/1994

Extension of the Coverage of the Act

The *ACT Discrimination Act* was amended during 1993/1994 to include two new grounds for complaint. Discrimination on the basis of age was included as a ground for complaint from 4 March 1994. Discrimination on the basis of profession, trade occupation or calling was included as a ground for complaint from 14 May 1994.

Investigation of Complaints

The HRO received 131 new complaints during 1993/1994. This represents an increase of 98.5 percent in the number of complaints during 1992/1993.

Complaints lodged under federal legislation are outlined in Table 1 (page 30). Complaints lodged under the *ACT Discrimination Act* are outlined in Table 28 and Table 29. As in 1992/1993, there continued to be a higher number of complaints in the area of employment and on the grounds of sex, sexual harassment and impairment.

47 complaints were resolved in 1993/1994. The majority of these complaints were resolved by conciliation. Complaints not resolved by conciliation were either declined, referred for hearing or withdrawn by the complainant.

Outcomes of complaints lodged under federal legislation are outlined in Table 3 (page 31). Complaints lodged under the *ACT Discrimination Act* are outlined in Table 30.

Conciliation agreements between the parties during 1993/1994 varied considerably according to the circumstances of the parties. Agreements commonly included undertakings such as the giving of formal apologies, changes in work practices, opportunities for training, the provision of references and the payment of monetary compensation.

More detail on complaints resolved by the HRO may be found in the *ACT Discrimination Commissioners Annual Report to the ACT Government*.

Table 28 Complaints lodged under the ACT Discrimination Act 1991 by area and ground of complaint — 1 July 1993 to 30 June 1994

	Employ- ment	Education	Access to premises	Goods/ services/ facilities	Clubs	Accomm- odation	TOTAL
Sex	8	2	1	2	1	1	15
Sexuality	1						1
Marital status	1						
Status as parent/carer	4						4
Pregnancy	3						3
Race	2	1		3			6
Religious/political conviction	2						2
Impairment	13	5		9	1	2	30
Association							0
Sexual harassment	6			1			7
Racial vilification							0
Union membership/ non membership	1						1
TOTAL	41		1	15	2	3	70

Table 29 Complaints lodged under the ACT Discrimination Act 1991 by category of complainant and respondent — 1 July 1993 to 30 June 1994

Category of Complainant		Category of Respondent	
Male	24	ACT Government	16
Female	46	Private enterprise	54
Group/organisation			
TOTAL	70	TOTAL	70

Table 30 Outcome of complaints closed under the ACT Discrimination Act 1991
—1 July 1993 to 30 June 1994

Conciliated	25
Withdrawn	7
No contact from complainant	10
Declined	2
Outside jurisdiction	
Referred elsewhere	
Referred for hearing	3
TOTAL	47

Referrals to Formal Hearing

There were three hearings of complaints under the *ACT Discrimination Act* in 1993/1994. The first, which was also the first hearing under the Act, was heard by Acting Commissioner Balkin on 2 December 1993.

The case involved allegations by a television journalist of Dutch extraction, Ms Wilhelmina Lyffyt, against her employer, Capital Television Pty Ltd. Ms Lyffyt alleged that she had been prevented from continuing to act as a back-up news reader because of her Dutch accent. The case was dismissed by the Acting Commissioner who found that the complainant had not proved on the balance of probabilities that the unfavourable treatment was on account of her race.

Two further cases were heard by Commissioner Alston in 1993/1994. One case involved allegations of discrimination on the grounds of impairment in the provision of goods and services. The second case involved allegations of discrimination on the ground of pregnancy in the area of employment. Decisions had not been handed down on these cases as at 30 June 1994.

Review

Section 94 of the *ACT Discrimination Act* provides for the review by the ACT Administrative Appeals Tribunal of certain decisions of the Discrimination Commissioner.

The first application for a review of a decision by the Commissioner was lodged in 1993/1994.

The complaint had involved allegations of sex discrimination in employment. Following consideration of the complaint the Acting Discrimination Commissioner declined the matter on the basis that the complaint had not been substantiated.

The Administrative Appeals Tribunal commenced hearing the complainant's application for a review of the matter on 10 June 1994 and a further hearing date was scheduled for the 1994/1995 reporting year.

Conciliation and Confidentiality

A very important issue was raised by the ACT Administrative Appeals Tribunal's review of the complaint mentioned above. On 10 June 1994 the President of the Tribunal ordered that the notes taken during the HRO's conciliation conference be made available to the Tribunal and the parties. This means that, unlike the federal discrimination laws, the *ACT Discrimination Act* does not provide specific protection for anything said or done during conciliation. The need for such protection is to be considered by the ACT Attorney-General's Department.

Education and Promotional Activities

In view of the increased complaint workload, the resources of the HRO have been concentrated on the resolution of complaints. Nevertheless, the office undertook projects and activities designed to increase awareness of human rights and anti-discrimination issues.

The major project for the year was the launch of the HRO community bus. The bus, which is owned and operated by ACTION Buses was decorated so as to highlight the rights of individuals under the *ACT Discrimination Act*. The bus travels on Canberra's bus routes and the contact details for the HRO are prominently displayed.

The bus was launched on 10 December 1993, International Human Rights Day, by the ACT Chief Minister, Rosemary Follett.



A major event for the ACT Human Rights Office was the launch of a community bus by the ACT Chief Minister, Rosemary Follett.

Officers of the HRO undertook speaking engagements on 45 occasions in 1993/1994. These engagements involved a range of groups in the ACT including community groups, disability organisations, students, unemployed people, unionists, and ACT and Federal Government agencies. The office also contributed to training sessions run by government agencies for equal employment opportunity officers and sexual harassment contact officers.

In addition the office distributed hundreds of pamphlets, posters, stickers and magnets.

HRO staff attended a large number of meetings with government and non-government organisations to discuss human rights issues and to raise awareness of the role of the HRO.

HRO staff also handled 2,092 personal, written and telephone inquiries during 1993/1994.

NORTHERN TERRITORY

The 1992/1993 year was one of change and growth for the Northern Territory regional office, with the departure of a Regional Director in July, the appointment of her successor in December, the opening of the Northern Territory Anti-Discrimination Commission in August and a rapid growth in complaint numbers in the new year.

Community Education

After a disrupted second half of 1993, community education and liaison became the major thrust of planning for the first half of 1994. Within the resource constraints of the office, a proactive, targeted community education plan was developed, focusing particularly on potential complainants, potential intermediaries and on regional and remote areas throughout the Northern Territory.

Part of the community education strategy involved identifying the government and non-government services most likely to refer people to the Commission and offering training and information to these agencies. The aim of such training and information was to ensure a higher level of appropriate identification of discrimination problems and appropriate referral to the Commission.

A large number of invitations were received to give talks and lectures, conduct in-service training and contribute to workshops. These invitations included a pleasing increase in opportunities to address defence personnel, university and TAFE students, trade union members, staff of government departments and community organisations.

The office developed and implemented a plan which involved regular travel to regional centres to deal with existing complaints, advertised 'inquiry clinics', community education and training activities. This approach to servicing regional centres received a very positive response at the centres visited from individuals, organisations and the media.

The community education activities of the office were assisted by the visits to the Northern Territory by the Sex Discrimination Commissioner, the Aboriginal and Torres Strait Islander Social Justice Commissioner and a number of Commission project and policy staff.

The office's activities in the area of community education highlighted the current lack of awareness in the community about human rights legislation and the functions of the Commission. The value of a vigorous program of community education

throughout the Northern Territory and the need to expand this program to the extent that resources will allow were clearly demonstrated.

The regional office library, pamphlet and publication collection continues to have high usage by students, other individuals and organisations seeking information about a variety of topics. A number of Commission publications have created a great deal of interest including the *Aboriginal and Torres Strait Islander Social Justice Commissioner's First Report*, the Human Rights Commissioner's *Report of the National Inquiry into the Human Rights of People with Mental Illness*, the *Race Discrimination Commissioner's Water Report* and the Sex Discrimination Commissioner's *Submission to the Senate Inquiry into Sexual Harassment in the Australian Defence Force*.

As in previous years, the Northern Territory regional office continues to maintain a high level of community involvement, Commission staff being members of a range of Territory and national committees and boards.

Complaint Handling

The first half of 1994 saw a sharp rise in the number of written complaints being received by the office, resulting in a 300 percent increase in complaint numbers on the 1992/1993 year. The office was able to meet the challenge of the increased workload in a manner which was efficient, effective and appropriate. Part of the office's response involved a review of complaint handling procedures. Where possible, urgent complaints were fast tracked, especially in situations where a complainant remained in the same workplace as the respondent(s). More emphasis was placed on face-to-face interviews with complainants and respondents early in the complaint handling process, more thorough investigations of complaints were undertaken and matters were moved to conciliation conferences as quickly as possible once investigations were complete. The co-facilitation of difficult interviews and conciliation conferences was also introduced. Although more labour intensive, these changes to complaint handling procedures appear to have resulted in more satisfactory outcomes and processes for all parties.

Details of complaints dealt with by the Northern Territory office are contained in the summary tables in the chapter on complaint handling in this report.

The office continued to offer appropriate assistance in the form of information and referrals to inquirers who contact the Commission by telephone, in person or by letter. Where appropriate, the office has adopted a policy of early intervention which involves inquirers being given information about the legislation and encouraged to attempt to resolve the matter before lodging a formal complaint. The office has received feedback on a number of matters which have been successfully resolved in this manner.

The office has continued to receive a range of inquiries which raise issues of social justice, particularly for Aboriginal people. It is very pleasing to now have the option of utilising the Aboriginal and Torres Strait Islander Social Justice Commissioner's office for assistance with, or action on, these matters.

Complementing its own examination of complaint handling processes, the regional office has appreciated the opportunity to participate in the Commission's Complaint Handling Review and also to have input into the Joint Review of the Commission. The office looks forward to the final reports of these reviews and also the opportunity to be involved in other national projects of the Commission.

In summary, a commitment to the human rights of a culturally diverse and geographically scattered population remains the focus of the Northern Territory regional office's activities.

TASMANIA

The year of 1993/1994 has been marked by a substantial increase in formal complaints accompanied by a continuing large scale demand for advice and information on equal opportunity, human rights and discrimination matters. This, combined with a significant program of continuing education and contact with the Tasmanian community has meant that activity within the Tasmanian regional office reached record levels during the year.

The increase in formal complaints partly resulted from the coming into operation of the *Disability Discrimination Act* and complaints under this new legislation have come forward regularly. There has also been a significant increase in complaints under the *Sex Discrimination Act* with complaints lodged under this Act almost doubling compared with the previous year. A large proportion of these complaints involved sexual harassment. The majority of all complaints registered continue to be resolved by conciliation.

Details of complaints dealt with by the Tasmanian office are contained in the summary tables in the earlier chapter on complaint handling.

Education and Promotional Activities

Throughout the year the Commission received an increasing number of invitations to conduct seminars and to address audiences across the whole spectrum of the community with such activities often occurring several times a week. The groups involved include government departments and agencies, a variety of non-government and community organisations, trade unions, schools, colleges and the University and a range of private sector and industry groups.

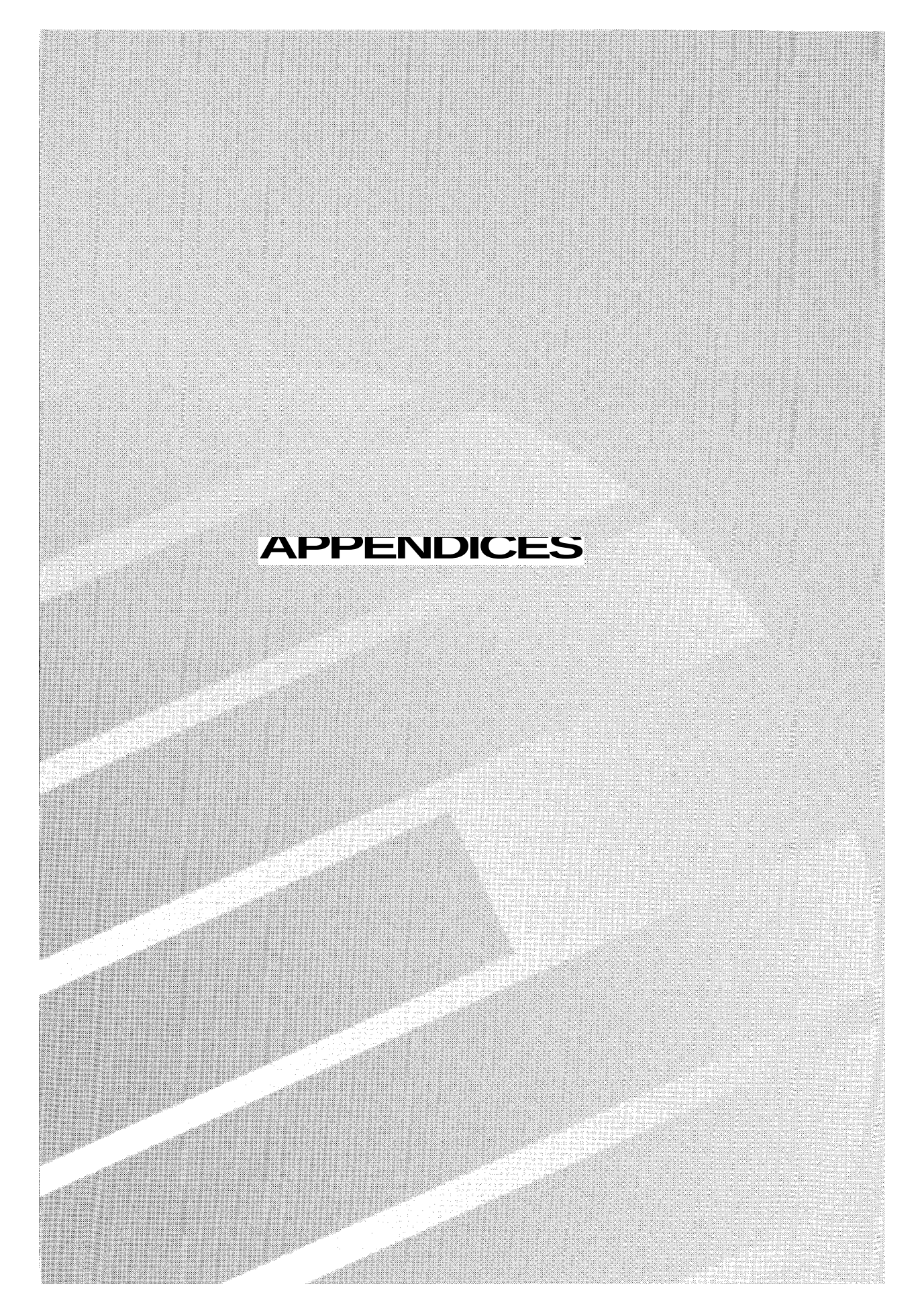
As the regional office serves the whole of Tasmania, staff regularly travelled from Hobart to the north and north-west of the State to ensure a good coverage of all population centres.

Activities for Human Rights Week held in December each year have assumed a degree of significance within the Tasmanian community. With the assistance of a committed organising committee of non-government organisations, Human Rights Week was well received with presentations in both Hobart and Launceston accompanied by good media coverage.

Significant Human Rights Developments

During the year a number of human rights issues have arisen. An appeal to the United Nations Human Rights Committee by a Hobart man in relation to Tasmanian State laws on homosexuality attracted nationwide media attention.

Early in 1994 the State Government announced that it was to take action in relation to the provision of its own sex discrimination legislation. This action follows a number of years of debate in relation to the need for State anti-discrimination legislation. It is understood that the foreshadowed legislation is currently being drafted and will be introduced into the State Parliament later in 1994.



APPENDICES

APPENDIX ONE

Staffing Overview

The *Public Service Act 1922* governs the Commission's staffing arrangements. the Commission's staffing level as at 30 June 1994 was 188 (not including the President and Commissioners). 181 of these staff positions are full-time and 7 staff are part-time.

During the financial year 1993/1994:

- 19 new staff were permanently appointed to the Commission.
- 15 new staff were promoted or transferred from other APS departments and agencies (this figure does not include staff on temporary transfer).
- 68 new staff were engaged as temporary employees under section 82AD of the *Public Service Act*.
- 4 employee initiated and 1 management initiated permanent part-time work proposals were approved.
- 1 home-based work proposal was approved.
- 43 new positions were created.
- 22 staff resigned/were transferred or promoted.
- 83 positions were advertised in the Gazette and/or press.

The Commission's staffing profile within classification levels appears at Table 31.

SES Staffing

As at 30 June 1994, the Commission's SES staffing profile consisted of 2 SES Band 2 positions and 4 SES Band 1 positions which were filled by 2 female officers and 4 male officers.

Senior staffing changes during 1993/1994 were:

- Mr Kieran Pehm was appointed to the position of Senior Executive Band 1, Assistant Secretary Complaint Handling;
- Ms Zrinka Johnston was promoted to the position of Senior Executive Band 2, Queensland State Manager;
- Mr Tom McKnight was transferred to the position of Senior Executive Band 1;

- Mr Nigel Waters, Senior Executive Band 1 took up a 12 month temporary transfer with the Administrative Review Council within the Attorney-General's Department in Canberra; and
- Mr Bill Chapman, Senior Executive Band 1 took up a 3 month temporary transfer with the Law Reform Commission.

Table 31 Commission's staffing profile within classification levels as at 30 June 1994

Classification	MALES					FEMALES					TOTAL
	NSW	Qld	Tas	NT	ACT	NSW	Qld	Tas	NT	ACT	
Commissioners	2				1	2					5
SES Band 2						1	1				2
SES Band 1	3										3
Legal 2	1										1
Legal 1	2					5	1				8
SOG B	3				2	6	1				12
SOG C	8	2	1		1	16	1		1	1	31
SPO Grade C						1					1
Senior ITO C	1										1
PO Grade 1						1					1
ASO 6	13	3				19	6		1		42
ITO 2	1				1						2
A505	3					8	1				12
ASO 4	3					11	4	1		2	21
ITO 1	1										1
ASO 3	2	1				20	3	1	1	1	29
ASO 2	2					13	3			1	19
ASO 1	1					2					3
TOTAL	47	6	1	0	4	105	21	2	3	5	194

The above table includes 7 PPTW staff and 24 temporary staff.

Summary Tables

Performance pay

Number of eligible individuals:

SES: 5

SENIOR OFFICERS: 51

Percentage distribution

SES: Unallocated as at 30 June 1994		
SENIOR OFFICERS B & Equivalent		
Rating	Amount	% Distribution
5	\$4,898	10%
4	\$3,918	80%
3	\$2,939	10%
2	\$Nil	0%
SENIOR OFFICERS C & Equivalent		
Rating	Amount	%Distribution
5	\$2,045	14%
4	\$1,636	50%
3	\$1,227	32%
2	\$Nil	4%

- Total amount paid in 1993/1994 financial year: \$74,127.45
- The net eligible expenditure on staff training for 1993/1994 was \$363 207, comprising 183 staff members and 785.5 person days.
- During 1993/1994, 47 consultants were engaged. Total expenditure on consultants was \$1,203,103.30.

APPENDIX TWO

Financial Statements

AUSTRALIAN NATIONAL AUDIT OFFICE

Level 7
130 Elizabeth Street
Sydney New South Wales 2000

our ref N94/575

13 September 1994

Mr Brian Burdekin
Human Rights Commissioner
Human Rights and Equal Opportunity Commission
GPO Box 5218
SYDNEY NSW 2001

Dear Mr Burdekin

FINANCIAL STATEMENT 30 JUNE 1994
AUDIT REPORT

The audit of the above statement prepared in accordance with sub-section 50(2) of the Audit Act 1901 has been completed.

Attached is the report on the audit together with a copy of the financial statement.

Yours sincerely

David C. McKean
Executive Director



our ref;

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

INDEPENDENT AUDIT REPORT

Scope

I have audited the financial statement of the Human Rights and Equal Opportunity Commission for the year ended 30 June 1994.

The statement comprises:

- Aggregate Statement of Transactions by Fund
- Detailed Statement of Transactions by Fund
- Statement of Supplementary Financial Information
- Notes to and forming part of the Financial Statement, and
- Certificate by the Human Rights Commissioner and Executive Director

The Human Rights Commissioner and the Executive Director are responsible for the preparation and presentation of the financial statement and the information contained therein. I have conducted an independent audit of the financial statement in order to express an opinion on it.

The Commission employs a cash basis of accounting whereby revenue is recorded when it is received and expenses are recorded when they are paid. Certain assets and liabilities are reported by way of schedule to the financial statement (Statement of Supplementary Financial Information) as required by the Financial Statement Guidelines for Departmental Secretaries (Modified Cash Reporting).

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 statement is free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statement, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial statement is presented fairly in accordance with Australian Accounting Concepts and Standards applicable to public sector reporting entities

employing a cash basis of accounting, and statutory requirements, so as to present a view which is consistent with my understanding of the Commission's operations and certain assets and liabilities.

The audit opinion expressed in this report has been formed on the above basis.

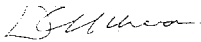
Audit opinion'

In accordance with sub-section 51(1) of the Audit Act, I now report that the financial statement, in my opinion:

is in agreement with the accounts and records kept in accordance with section 40 of the Act

is in accordance with the financial statement guidelines made by the Minister for Finance, and

presents fairly, in accordance with Statements of Accounting Concepts and applicable Accounting Standards and with the Guidelines, the transactions of the Commission for the year ended 30 June 1994 and certain assets and liabilities as at that date.



David C. McKean
Executive Director

Sydney

13 September 1994

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION
FINANCIAL STATEMENTS
1993-94

CONTENTS	PAGE
Certification of the Financial Statements	2
Aggregate Statement of Transactions by Fund	3
Detailed Statement of Transactions by Fund	4-6
Statement of Supplementary Financial Information	7
Notes to the Financial Statements	8-12
Glossary of Terms	13-16

STATEMENT BY THE HUMAN RIGHTS COMMISSIONER
AND
PRINCIPAL ACCOUNTING OFFICER

CERTIFICATION

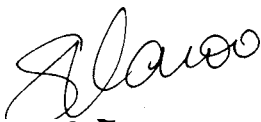
We certify that the financial statements for the year ended 30 June 1994 are in our opinion:

in agreement with the Commission's accounts and records;

have been prepared in accordance with the disclosure requirements of the Financial Statements Guidelines for Departmental Secretaries (Modified Cash Reporting).

Signed 
Dated 10/9/94

Brian Burdekin
Human Rights Commissioner

Signed 
Dated at 1st of 1994

Sema Varova
Executive Director

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

AGGREGATE STATEMENT OF TRANSACTIONS BY FUND FOR THE YEAR ENDED 30 JUNE 1994

This Statement shows aggregate cash transactions, for which the Commission is responsible, for each of the three funds comprising the Commonwealth Public Account (CPA).

1992-93 ACTUAL	Notes	1993-94 BUDGET	1993-94 ACTUAL
	CONSOLIDATED REVENUE FUND (CRF)		
<u>1,252,781</u>	RECEIPTS ²	<u>1,184,000</u>	<u>1,739,135</u>
Nil	Expenditure from Special Appropriations	Nil	Nil
<u>13,001,145</u>	Expenditure from Annual Appropriations	<u>19,013,000</u>	<u>18,285,170</u>
<u>13,001,145</u>	Total Expenditure from CRF	<u>19,013,000</u>	<u>18 285 170</u>
 LOAN FUND			
Nil		Nil	Nil
 TRUST FUND			
Nil	Balance 1 July 1993	1,382	1,382
4,011	Plus: Receipts	35,000	6,502
2,629	Less: Expenditure	35,000	3,443
<u>1,382</u>	Balance 30 June 1994	<u>1,382</u>	<u>4,441</u>

The above Aggregate Statement of Transactions by Fund is to be read in conjunction with the accompanying Notes.

DETAILED STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1994

This statement shows details of cash transactions for which the Commission is responsible in respect of Consolidated Revenue Fund (CRF) and the Trust Fund. (The Commission was not responsible for any transactions of the Loan Fund).

CONSOLIDATED REVENUE FUND(CRF): -

The Constitution requires that an appropriation of moneys by the Parliament is required before any expenditure can be made from CRF. Appropriations follow two main forms, namely, Special Appropriations (Standing Appropriations) and Annual Appropriations.

The Commission is responsible for the following expenditure items:

1992-93 ACTUAL \$	SUB- PROGRAM 3.1	Notes	1993-94 APPROPRIATION \$	1993-94 ACTUAL \$
RECEIPTS TO CRF				
1,181,636	Section 35 Receipts		1,184,000	1,733,270
<u>71,145</u>	Miscellaneous		<u>80.000</u>	<u>5.865</u>
<u>1,252,781</u>	Total Receipts to CRF		<u>1,264,000</u>	<u>1,739,135</u>
EXPENDITURE FROM CRF				
12,137,145	Appropriation Act No 1		(16,945,000	17,126,170
	Section 35 receipts	² {	1,733,270	
Nil	Appropriation Act No 3		275,000	275,000
<u>864,000</u>	Appropriation Act No 2		<u>884.000</u>	<u>884,000</u>
<u>13,001,145</u>	Total Expenditure from Annual Appropriations	²	<u>19,837,270</u>	<u>18,285,170</u>

1992-93 ACTUAL \$	SUB- PROGRAM 3.1	Notes	1993-94 APPROPRIATION \$	_1993-94 ACTUAL \$
Running Costs (144.1)				
	Annotated	2		
5,836,629	- Salaries and Related Expenses		7,628,000	8,143,233
	Section 35 receipts		707,000	
4,014,839	- Administrative Expenses		6,565,000	6,894,172
	Section 35 receipts		878,116	
1,925,147	- Property Operating Expenses (POE)		2,284,000	2,237,017
	Section 35 receipts		148,154	
13,437	- Legal Services		22,000	21,644
11,790,052	Total Running Costs	2	18,232,270	17,296,066
Other Services (144.2)				
343,762	- Community Relations Strategy (01)		93,000	93,000
	Aboriginal Deaths In Custody (02)			
3,331	- Legal and Field Officer Training		628,000	12,104
347,093	Total Other Services		721,000	105,104
Payment to or for the States And the Territories (812.01)				
864,000	Payments under co-operative arrangements with the States		884,000	884,000
13,001,145	Total Expenditure from CRF		19,837,470	18,285,170

		BUDGET	ACTUAL
OUTLAYS			
13,001,145	Total Expenditure from CRF	19,013,000	18,285,170
	Less Receipts to be Offset		
<u>1,252,781</u>	Within Outlays	<u>1,264,000</u>	<u>1,739,135</u>
<u>11,748,364</u>	Total Outlays From CRF	<u>17,829,000</u>	<u>16,546,035</u>

TRUST FUND

Other Trust Moneys

Legal Authority - Section 60, Audit Act 1901.

Purpose - For the receipt of moneys temporally held in trust for other persons.

1992-93 ACTUAL	SUB- PROGRAM 3.1	1993-94 BUDGET	1993-94 ACTUAL
Nil	Balance 1 July 1993	1,382	1,382
4,011	Receipts	35,000	6,502
<u>2,629</u>	Expenditure	<u>35,000</u>	<u>3,443</u>
<u>1,382</u>	Balance 30 June 1994	<u>1,382</u>	<u>4,441</u>
Represented by:			
1,382	Cash	1,382	4,441
Nil	Investments	Nil	<u>Nil</u>

The above Detailed Statement of Transactions by Fund is to be read in conjunction with the accompanying Notes.

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION
STATEMENT OF SUPPLEMENTARY FINANCIAL INFORMATION
AS AT 30 JUNE 1994

1992-93 \$'000	Notes	1993-94 \$'000
		21
	CURRENT ASSETS	
41	Cash	3 110
208	Prepayments	14
Nil	Receivables	4
<u>249</u>	Total Current Assets	<u>J45</u>
	NON-CURRENT ASSETS	
<u>825</u>	Property, Plant and Equipment	5 <u>1.471</u>
	CURRENT LIABILITIES	
37	Creditors	6 250
<u>984</u>	Provisions	7 <u>1,437</u>
<u><u>1,021</u></u>	Total Current Liabilities	<u>1,687</u>
	NON-CURRENT LIABILITIES	
<u>209</u>	Provisions	7 <u>229</u>

The above Statement of Supplementary Financial Information is to be read in conjunction with the accompanying Notes.

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1994

NOTE 1: STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

- (a) The financial statements have been prepared in accordance with the Financial Statements Guidelines for Departmental Secretaries (Modified Cash Reporting) last amended by the Minister for Finance.
- (b) The financial statements have been prepared:

on a cash basis with the exception of the Statement of Supplementary Financial Information which includes certain accrual-type information; and

in accordance with the historical cost convention.

They do not take account of changing money values or, except where stated, current values of non-current assets.
- (c) Employee entitlement provisions and depreciation of assets are reported for the first time in accordance with the Financial Statements Guidelines for Departmental Secretaries (Modified Cash Reporting). Comparatives for the previous year have been included.
- (d) Amounts shown in the Aggregate Statement of Transactions By Fund and the Detailed Statement of Transactions by Fund have been rounded to the next lower, or the next higher dollar. Amounts in the Statement of Supplementary Financial Information have been rounded to the nearest \$1,000.
- (e) Non-current assets are carried at cost of acquisition less depreciation. Minor assets having a unit cost less than \$2,000 have not been accounted for in the Statement of Supplementary Financial Information. Depreciation is calculated on a straight line basis.
- (f) Liabilities relating to superannuation with respect to officers or employees of the Commission have not been accounted for in the Statement of Supplementary Financial Information.
- (g) Provision for long service leave is recognised after five years of service and classified into current and non-current. The current portion relates to officers with greater than 10 years service and the non-current portion for officers less than 10 years service. Annual leave provision represents the actual liability at 30 June.

NOTE 2: RUNNING COSTS

The appropriation which was annotated pursuant to Section 35 of the **Audit** Act 1901 to include the crediting of certain receipts including those from sale of publications and training packs and

the Queensland and ACT Governments under cooperative arrangements and joint projects with the Office of Legal Aid and Family Services (OLAFS).

The nature of the cooperative arrangements were that receipts were fully retained by the Commission to directly offset expenditure incurred. The total annotation for running costs under the Queensland and ACT cooperative arrangements in 1993-94 was \$1,258,391 (\$1,008,862 in 1992-93) and \$143,414 from OLAFS (nil in 1992-93).

	1993-94	1992-93
Net appropriation 144.1	16,499,000	13,620,000
Add Receipts deemed appropriated	<u>1,733,270</u>	<u>1,181,636</u>
Annotated appropriation	18,232,270	14,801,636
Amount expended	<u><u>17,296,066</u></u>	<u><u>11,790,052</u></u>

NOTE 3: CASH ON HAND AND AT BANK

These sums were balance held in cash advance accounts and unbanked collections as at 30 June 1994.

	1993-94	1992-93
Cash on hand	19,937	11,344
Cash at bank	L411	<u>29,409</u>
Total cash on hand and at bank	<u><u>21,348</u></u>	<u><u>40,753</u></u>

NOTE 4: RECEIVABLES

Category	Overdue By	1993-94	1992-93
		\$	\$
Trade Debtors	Over 60 days	3,231	Nil
Other Commonwealth departments	Over 60 days	15	Nil
Other Commonwealth Controlled entities	Less than 30 days	6,839	Nil
	Over 60 days	<u>3,900</u>	Nil
Total Receivables		13,985	MI

NOTE 5: PROPERTY, PLANT AND EQUIPMENT

All assets have been valued at the cost price and comprise as follows:

Furniture and Fittings- at cost	50,472	50,472
-less accumulated depreciation	<u>26,897</u>	<u>19,600</u>
	23,575	30,872
Computer Equipment(i) - at cost	1,532,086	944,708
-less accumulated depreciation	<u>633,771</u>	<u>529,564</u>
	898,315	415,144
Office Equipment -at cost	341,332	242,276
-less accumulated depreciation	<u>114,727</u>	<u>77,235</u>
	226,605	165,041
Leasehold Improvements- at cost	397,576	252,602
-less accumulated depreciation	<u>75,287</u>	<u>38,204</u>
	322,289	214,398
Total	<u>1,470,784</u>	<u>825,455</u>

(i) Computer equipment includes computer software.

NOTE 6: CREDITORS

Trade Creditors	Not overdue	182,479	32,169
	Overdue less than 30 days	4,271	Nil
	Overdue 30-60 days	<u>31]</u>	<u>Nil</u>
		187.061	32.169
Other Departments	Not overdue	10,806	100
	Overdue less than 30 days	<u>445</u>	<u>Nil</u>
		11.251	100
Other Commonwealth Controlled Entities	Not overdue	<u>5j282</u>	<u>4,49Q</u>
Total Creditors		<u>249,594</u>	<u>36,759</u>

1993-94

1992-93

NOTE 7: PROVISIONS FOR EMPLOYEE ENTITLEMENTS**Current**

Annual Leave	899,594	608,488
Long Service Leave	537,675	375,437
	<u>1,437,269</u>	<u>983,925</u>

Non-current

Long Service Leave	<u>228,626</u>	<u>208,953</u>

NOTE 8: FORWARD COMMITMENTS

The Commission had the following commitments as at 30 June 1994 and 1993 which are payable as follows:

Item	Not later than 1 yr		1 yr to 2 yrs		2 yrs to 5 yrs		Later than 5 yrs		Total	
	\$,000		\$,000		\$,000		\$,000		\$'000	
	93-94	92-93	93-94	92-93	93-94	92-93	93-94	92-93	93-94	92-93
Capital	Nil	87	Nil	Nil	Nil	Nil	Nil	Nil	Nil	87
Current	1 282*	1 Q2 ⁹	1J22	285	6 075	285	9 059	Nil	17,536	L4
	<u>1 282</u>	<u>1 166</u>	<u>1 J</u>	285	<u>6 075</u>	285	<u>9,059</u>	Nil	<u>17,536</u>	<u>1,736</u>

NOTE 9: ACT OF GRACE PAYMENTS

No payments were made for the financial years 1993-94 and 1992-93 pursuant to authorisation given under section 34A of the Audit Act 1901.

NOTE 10: WAIVER OF RIGHTS TO PAYMENT OF MONEYS

No payments were waived during the financial years 1993-94 and 1992-93 under subsection 70C(2) of the Audit Act 1901.

NOTE 11: AMOUNTS WRITTEN OFF

An amount of \$46 was written off during the financial year 1993-94 (nil in 1992-93) under subsection 70C(1) of the Audit Act 1901.

NOTE 12: LOSSES AND DEFICIENCIES IN PUBLIC MONEYS AND PROPERTY

There were no losses or deficiencies recorded during the financial years 1993-94 and 1992-93 under Part XII of the Audit Act 1901.

NOTE 13: RESOURCES RECEIVED FREE OF CHARGE

During the 1993-94 and 1992-93 financial years, the Commission received services free of charge from some Commonwealth departments and agencies. It was not practical to estimate the cost of minor services. The expenditure for the services was met from the appropriations of the departments and agencies concerned. The major services received include the following:

Department of Finance: The provision of accounting and budgetary services in the form of the computerised finance ledger and payroll services at an estimated cost of \$11,200.

NOTE 14: GUARANTEES AND UNDERTAKINGS

There were no guarantees or undertakings given by the Commonwealth.

NOTE 15: LTNACQUITTED ADVANCES

There were no unacquitted advances as at 30 June 1994.

NOTE 16: CONTINGENT LIABILITIES

There were no known contingent liabilities as at 30 June 1994.

APPENDIX: GLOSSARY OF TERMS

Above the Line/Below the Line transactions: The 'line' is the Budget balance (i.e. surplus or deficit). The levels of revenue and outlays determine the level of the Budget balance and are therefore referred to as 'above the line' transactions. Financing transactions involve the investment of Budget surpluses or the financing of Budget deficits and are therefore referred to as 'below the line' transactions.

Act of Grace Payments: Section 34A of the Audit Act 1901 provides that, in special circumstances, the Commonwealth may pay an amount to a person notwithstanding that the Commonwealth is not under any legal liability to do so.

Administrative Expenses: Includes not just expenditure on office based activities but all operational expenditure (excluding salaries). The item includes both direct costs and overhead expenditure: it includes, inter alia, minor capital expenditure (i.e. items less than \$250,000) which is considered part of ordinary annual services; it does not include, inter alia, major capital expenditure, grants, loans or subsidies.

Annual Appropriations: Acts which appropriate moneys for expenditure in relation to the Government's activities during the financial year. Such appropriations lapse on 30 June. They are the Appropriation Acts.

Appropriation: Authorisation by Parliament to expend public moneys from the Consolidated Revenue Fund or Loan Fund for a particular purpose, or the amounts so authorised. All expenditure (ie outflows of moneys) from the Commonwealth Public Account must be appropriated ie authorised by the Parliament. The authority for expenditure from individual trust accounts is provided under the Audit Act 1901 or an Act establishing the trust account and specifying its purposes. See also 'Annual Appropriations' and 'Special Appropriations'

Appropriation Act (No 1): An act to appropriate moneys from the Consolidated Revenue Fund for the ordinary annual services of Government.

Appropriation Act (No 2): An Act to appropriate moneys from the Consolidated Revenue Fund for other than ordinary annual services. Under existing arrangements between the two Houses of Parliament this Act includes appropriations in respect of new policies (apart from those funded under Special Appropriations), capital works and services, plant and equipment and payments to the States and the Northern Territory.

Appropriation Act (Nos 3 and 4): Where an amount provided in an Appropriation Act (No 1 or 2) is insufficient to meet approved obligations falling due in a financial year, additional appropriation may be provided in a further Appropriation Act (No 3 or No 4). Appropriations may also be provided in these Acts for new expenditure proposals.

Audit Act 1901: The principal legislation governing the collection, payment and reporting of public moneys, the audit of the Public Accounts and the protection and recovery of public property. Finance Regulations and Directions are made pursuant to the Act.

Below the Line Transactions: See 'Above the Line' Transactions.

Commonwealth Public Account (CPA): The main bank account of the Commonwealth, maintained at the Reserve Bank in which are held the moneys of the Consolidated Revenue Fund, Loan Fund and Trust Fund (other than the National Debt Sinking Fund).

Consolidated Revenue Fund (CRF); Loan Fund; Trust Fund: The three Funds comprise the Commonwealth Public Account (CPA):

CRF - The principal working fund of the Commonwealth mainly financed by taxation, fees and other current receipts. The Constitution requires an appropriation of moneys by the Parliament before any expenditure can be made from the CRF. These follow two forms:

- (i) annual appropriations consisting of Supply Acts (nos 1 and 2), the Supply (Parliamentary Departments) Act, the Appropriation Acts (Nos 1-4) and the Appropriation (Parliamentary Departments) Acts (Nos 1 and 2) (the Supply Acts relate to the first five months of the financial year and are subsumed by the corresponding Appropriation Acts); and
- (ii) special or standing appropriations.

Loan Fund - Authority for its establishment comes from the Audit Act 1901. All moneys raised by loan on the public credit of the Commonwealth are credited to the Loan Fund. Expenditures from the Loan Fund require an appropriation by Parliament and are limited to the purpose(s) for which moneys were originally raised as specified.

Trust Fund - Essentially comprises trustee funds (termed 'Heads of Trust') established under s.60 of the Audit Act (ie moneys held in trust for the benefit of persons or bodies other than the Commonwealth); trust accounts established under s.62A of the Audit Act (ie working accounts covering certain government agencies and certain other accounts in the nature of 'suspense accounts'); and trust accounts established under other Acts to meet future expenditure.

Payments into the Trust Fund may be by way of appropriation from the CRF or Loan Fund or direct credit of private moneys. Expenditure from the Trust Fund is appropriated for (and limited to) the specific purposes of each trust account, or head of trust, by the Audit Act or the Act establishing the trust account or head of trust. Unlike the used portion of annual appropriations, trust account balances - as with 'special' or 'standing' appropriations - do not lapse at the end of the financial year.

Legal advice is to the effect that investments, and the liquidation of those investments, involve 'expenditure' and 'receipts' for the purposes of subsection 50(2) of the Audit Act and that the balances of the Trust Fund should be reduced by the amount of investments outstanding at 30 June. In the interests of informative reporting, the financial statements have been designed so as to include explicit investment information. In particular, information concerning expenditure and receipts has been split as between investment and non-investment activities so as to provide

'notional' balances taking into account the value of the investments, and a 'cash' balance after account is taken of investment transactions.

Expenditure: The total or gross amount of money spent by the Government on any or **all** of its activities (ie the total outflow of moneys from the Commonwealth Public Account including both 'above the line' and 'below the line' transactions) (c.f. 'Outlays'). All expenditure must be appropriated ie authorised by the Parliament, (see also 'Appropriations'). Every expenditure item is classified to one of the economic concepts of outlays, revenue (ie offset within revenue) or financial transactions.

Expenditure From Appropriation Classified as Revenue: Refers to expenditures which are netted against receipts. They do not form part of outlays because they are considered to be closely or functionally related to certain revenue items or relate to refunds of receipts and are therefore shown as offsets to receipts e.g. refunds or PAYE tax instalments, working capital advance to **the** Government Printer.

Loan Fund: See 'Consolidated Revenue Fund'

Ordinary Annual Services: See 'Appropriation Act (No 1)' and 'Appropriation Act (No 2)'.

Outlays: An economic concept which shows the net extent to which resources are directed through the Budget to other sectors of the economy after offsetting recoveries and repayments against relevant expenditure items ie outlays consist of expenditure net of associated receipt items. Outlays are 'above the line' transactions. The difference between outlays and revenue determines the Budget balance (ie surplus or deficit). See also 'Appropriations'; 'Expenditure from appropriations classified as revenue'; 'Expenditures from appropriations classified as financing transactions'; and 'Receipts offset within outlays'.

Receipts: The total or gross amount of moneys received by the Commonwealth (ie the Commonwealth Public Account). Every receipt item is classified to one of the economic concepts of revenue, outlays (ie offset within outlays) or financing transactions. See also 'Revenue'.

Receipts not offset within outlays: Receipts classified as revenue'. See also 'Revenue'.

Receipts offset within outlays: Refers to receipts which are netted against certain expenditure items because they are considered to be closely or functionally related to those items.

Revenue: Items classified as revenue are receipts which have not been offset within outlays or classified as financial transactions. The term 'revenue' is an economic concept which comprises the net amounts received from taxation interest, regulatory functions, investment holdings and government business undertakings. It excludes amounts received from the sale of government services or assets (these are offset within outlays) and amounts received from loan raised (these are classified as financing transactions). Some expenditure is offset within revenue eg refunds of PAYE instalments and the operating expenditure of budget sector business undertakings. See also 'Receipts'.

Trust Account Transactions Affecting Outlays: Refers to the movement in trust account balances. Outlays measure the net extent to which resources are directed from the Commonwealth Public Account (i.e. through the Budget) to other sectors of the economy. Accordingly, the transactions of the CRF, the Trust Fund and Loan Fund are consolidated and inter-fund transfers

disregarded. Thus expenditure from the CRF under an appropriation to a trust account would not in itself contribute to outlays, but the expenditure undertaken from the trust account to outlays, but the expenditure undertaken from the trust account would. Consequently, in reconciling the level of outlays to the level of expenditure, it is necessary to adjust the latter for the movements in trust account balances which are classified to outlays.

Trust Fund: See 'Consolidated Revenue Fund'.

APPENDIX THREE

List of Publications

The following publications were produced by the Commission in 1993/1994.

Pamphlets

ILO III: Protection Against Discrimination in Employment and Occupation
Your Guide to the Sex Discrimination Act 1984

SDA 1984: Sexual Harassment — Knowing Your Rights
How You Can Use the Disability Discrimination Act
Act Against Disability Discrimination

Reports

Report of the National Inquiry into the Human Rights of People with Mental Illness
The Water Report: Report on the Provision of Water and Sanitation in Remote
Aboriginal and Torres Strait Islander Communities

Superannuation and the Sex Discrimination Act 1984: Current
Status and Future Directions

Unrewarded: Women in Community Services. A review of overaward payments in
Victorian local government

State of the Nation Report on People of Non-English Speaking Background
Aboriginal and Torres Strait Islander Social Justice Commissioner's First Report 1993
A Guide to the 1992 Amendments to the SDA 1984

SDA 1984: Future Directions and Strategies

Submission to the Senate Standing Committee on Foreign Affairs, Defence and
Trade: Inquiry into Sexual Harassment in the Australian Defence Force

Streetwise Comic: Hands Off

Agender Newsletter

Posters

Don't Judge What I Can Do By What You Think I Can't

You Don't Have To Live With It (Sexual harassment in accommodation)

No Sexual Harassment

Kits

Best Person for the Job: A Training Package for Managers and Supervisors

It's Good Business Sense: Making Cultural Diversity Work For Your Business

Diversity Makes Good Business: A Training Package for Managing Cultural
Diversity in the Workplace

Management of Personal Information: A Training Package for Managers and
Supervisors

APPENDIX FOUR

Contact Details for Further Information

Copies of the 1993/1994 Annual Report are also available in alternative formats including audio tape, computer disc, braille and large print.

If additional copies of this report are required (including alternative formats), or any other publication of the Commission, the reader should contact:

Education and Promotion Unit

Human Rights and Equal Opportunity Commission

Telephone: (02) 284 9600

Toll Free: 1 800 021 199

TTY: 1 800 620 241

Fax: (02) 284 9611

If any additional information is required on the content of the report, the reader should contact:

Martin Fletcher

Policy Coordination, Planning and Evaluation Unit

Telephone: (02) 284 9600

Toll Free: 1 800 021 199

TTY: 1 800 620 241

Fax: (02) 284 9611

The Commission library which is open to the public by appointment is located at:

Level 8

Piccadilly Building

133 Castlereagh Street

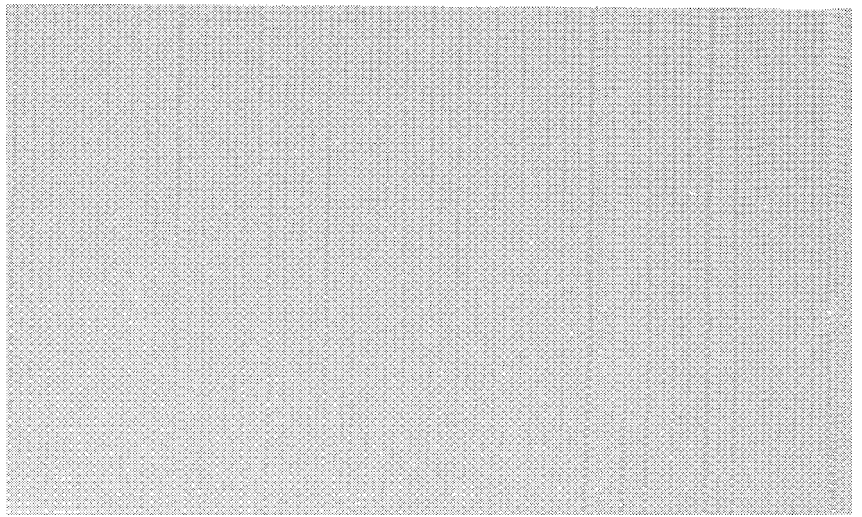
Sydney NSW 2000

Telephone: (02) 284 9600

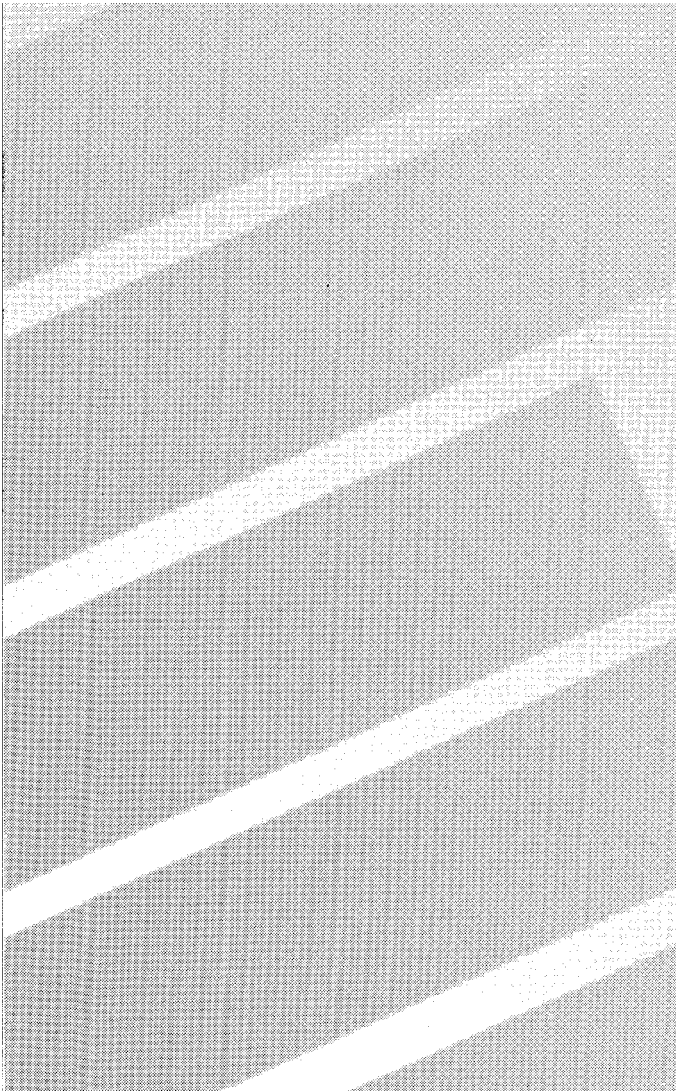
Toll Free: 1 800 021 199

TTY: 1 800 620 241

Fax: (02) 284 9611



ATTACHMENT ONE



INDUSTRIAL DEMOCRACY

The Commission's policy on industrial democracy is to ensure that staff are fully able to contribute to the efficient operation of the Commission. It asserts that staff will enjoy a better quality of working life if they are involved in the decision-making process and that in this way the Commission can provide a more effective service to the public. The Commission is therefore committed to the involvement of its staff through the industrial democracy procedures outlined below.

The Human Rights Commissioner as executive head is responsible for industrial democracy matters within the Commission. The position of Director Corporate Services has as part of its functions the responsibility for implementing industrial democracy principles and practices in the workplace. This responsibility is shared in a general sense by all staff of the Commission through the Consultative Council.

Major Priorities 1993/1994

The Commission's main industrial democracy priorities were to review the Human Resource Development (HRD) Plan; to continue the involvement of staff in the Joint Review of the Commission; to continue the involvement of staff in the relocation of Central Office through the Accommodation Committee; and make information on all new and revised human resource management policies and practices available to staff for consideration and comment. These objectives were met.

Significant Activities 1993/1994

The joint union/management Consultative Council (established four years ago) met quarterly. The Council comprises equal numbers of union and management members, and regional office management and staff are represented.

The following sub-committees of the Consultative Council operated during 1993/1994:

- Industrial Democracy Sub-Committee (this sub-committee is also responsible for HRD matters);
- Equal Employment Opportunity Sub-Committee;
- Occupational Health and Safety; and the
- Accommodation Sub-Committee.

The Industrial Democracy sub-committee developed and implemented the Policy on the Use of Consultants; revised the Consultative Council Charter; revised the

Policy on Union Membership; developed industrial democracy targets for 1993/1994; revised the Human Resource Development Plan; and developed Probation guidelines.

Consultative Mechanisms

Apart from the Consultative Council, which is the peak management/union consultative forum, there are a number of other consultative mechanisms in the Commission:

- Commission meetings, to which staff have input by way of discussion papers and the minutes of which, except for items of a confidential or sensitive nature, are made available to staff.
- Branch/Section/Regional Office meetings, where senior officers involve their staff in the process of developing individual programs, tailored to the relevant work area.
- Project/Work Group meetings, where planning, implementing and monitoring specific projects takes place.
- Union meetings, where matters of industrial concern are discussed.
- A weekly Staff Notice, which informs staff of a wide variety of issues, including personnel matters and other items of interest.

Monitoring, Review and Evaluation

The Consultative Council is charged with responsibility for monitoring, review and evaluation of the progress and effectiveness of industrial democracy in the Commission.

Major Priorities 1994/1995

The major priorities for the coming year are to review a number of human resource management policies including the Staff Selection Handbook, Temporary Employment Policy, Higher Duties Policy and Studybank Guidelines; develop and implement the Induction Handbook and guidelines on Attendance, Flexitime and Overtime; complete an evaluation of Performance Appraisal; and develop the Industrial Democracy Plan for 1995-1997.

OCCUPATIONAL HEALTH AND SAFETY

The Commission continues to recognise and promote the importance of developing and maintaining healthy and safe working conditions in all workplaces of the Commission. The Commission's Occupational Health and Safety Policy and Agreement is available to all staff via the computer network or in hard copy.

The Commission's Occupational Health and Safety Sub-Committee (OH&S) of the Consultative Council continued to meet through 1993/1994 to discuss relevant issues and any concerns raised by staff.

As required under the OH&S legislation, health and safety representatives have been elected in the Commission's designated workplaces.

One dangerous occurrence was reported under section 68 of the *OH&S Act* and appropriate action taken.

FREEDOM OF INFORMATION

FOI Statistics

During the period of 1 July 1993 to 30 June 1994 the Commission received fourteen requests for access to documents pursuant to the *Freedom of Information Act*. Nine of these were for access to documents relating to complaints lodged by the applicant, two sought access to documents relating to complaints lodged by persons other than the applicant, two requested access to policy related documents and one requested documents regarding the Commission's Human Rights Awards of 1991.

ADVERTISING AND MARKET RESEARCH

Payments to Advertising Agencies

Pembertons Advertising Agency undertook work associated with the Disability Disability Awareness campaign were paid a fee which included a cost of \$30,000 for their creative head hours.

Payment to Market Research Organisations

Roy Morgan Research Centre Ltd:	\$39,000

Payments to Master Media Advertising Organisations

Master agency for non-campaign print advertising:	\$84,297

Master agency for print campaign, outdoor advertising, TV, radio and cinema:	\$26,449

Direct Mail Organisations

DAS Distribution

Packing of posters for Sexual Harassment mail out	\$ 3,574
Distribution of newsletter Under One Sun	\$ 2,476
Distribution of newsletter Agender	\$ 5,860
TOTAL PAYMENT TO DAS DISTRIBUTION	\$11,883

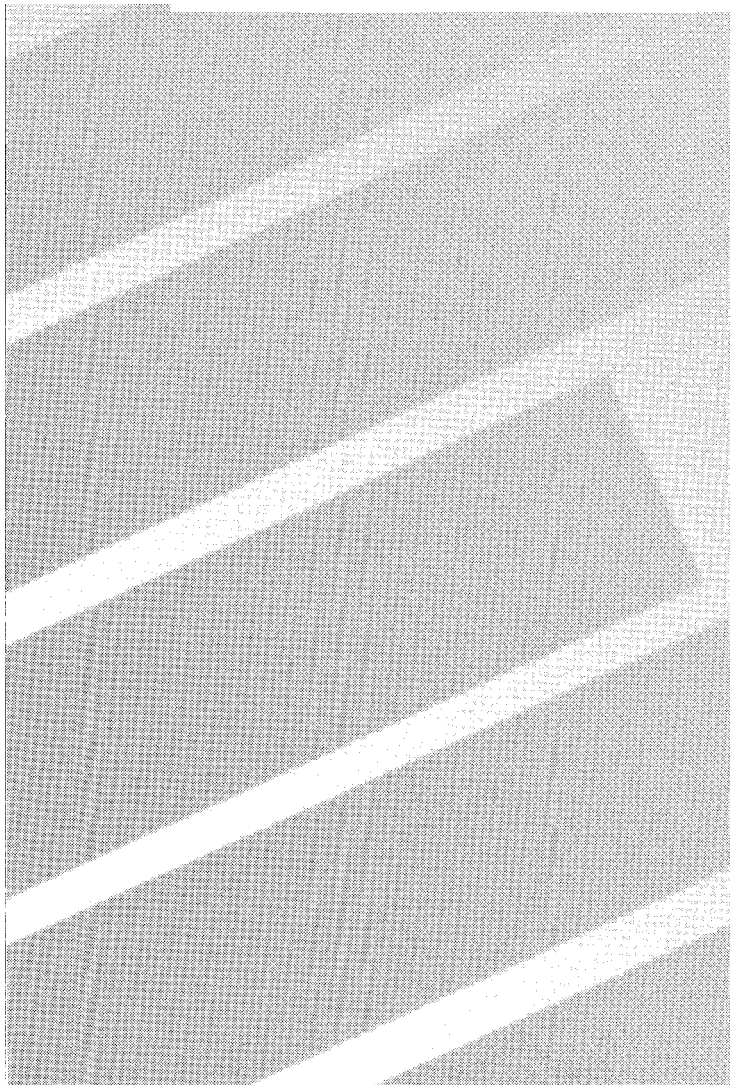
ATTACHMENT TWO

FINANCIAL AND STAFFING RESOURCES

SUMMARY

Table 32 Financial and Staffing Resources Summary (All Programs)

8(000) and actual staff years			
	<u>Actual (1992-93)</u>	<u>Budget (1993-94)</u>	<u>Actual (1993-94)</u>
Budgetary (Cash) Basis			
Components of Appropriations			
Program costs	1211	1605	989
(excl. running costs)			
Running costs	<u>11790</u>	<u>18232</u>	<u>17296</u>
Total Appropriations	13001	19837	18285
<u>Less</u> adjustments	<u>1253</u>		<u>1739</u>
Total Outlays	11748	19837	16546
Total Revenue	1253	1264	1739
Accrual Basis			
Program costs			
(excl. service delivery)	na	na	
Net cost of service delivery	na	na	
Program Costs	na	na	
Program revenues	na	na	
Total (allocated) assets	na	na	
Total (allocated) liabilities	na	na	
Staffing			
Staff years (actual)	154		177.4



LEGISLATION

Two pieces of legislation were introduced in the period 1/7/93 to 30/6/94 which affected the legislation administered by the Commission.

The Industrial Relations and Other Amendments Act 1993

The above Act came into force and amended the SDA by:

- (i) Allowing an aggrieved party to lodge a complaint alleging that a person had committed a discriminatory act under a determination of the Remuneration Tribunal. If it appears to the Commissioner that the Act is discriminatory she must refer the determination to the Remuneration Tribunal. The Commissioner may decline to refer the determination.
- (ii) The president may review a decision by the Commissioner to decline to refer the determination. The President must confirm or set aside the Commissioner's decision.

The Law and Justice Amendment Act 1993

The above Act came into force on 18 January 1994 and amended the DDA, *Privacy Act*, RDA and SDA.

The DDA, SDA and the RDA were amended by, inter alia, providing for the orders which a Federal Court might make on an application for review of the Commission's determination, which is out of time.

The SDA was also amended by delaying the commencement of the provisions relating to superannuation.

The *Privacy Act* was amended by expanding the circumstances in which credit providers may disclose personal information; altering the conditions for the lodgement and processing of representative complaints; providing for the award of damages in representative complaints; and providing for the registration and review of determinations in the Federal Court and the enforcement of determinations against Commonwealth agencies.

EQUAL EMPLOYMENT OPPORTUNITY

EEO Resources and Consultative Mechanisms

The Executive Director is the Senior Executive with overall responsibility for EEO matters within the Commission. The Personnel Manager has responsibility for EEO coordination and grievance handling within the Commission. In the regional offices, day-to-day responsibility for EEO falls to the Regional Directors.

Within its resources, the Commission assists other federal and State agencies, professional bodies and private companies with training on race, sex and disability discrimination; on cultural diversity in the workplace and on EEO requirements for managers and supervisors.

The consultative mechanism for EEO is part of the industrial democracy process. There is an EEO Sub-Committee of the Consultative Council which reports to that forum. The sub-committee consists of three management representatives and three union representatives.

Statistical Data

Table 33 shows the Commission's proportion of EEO group members in comparison with service-wide averages prevailing at June 1993. The Commission uses the NOMAD system to prepare the statistical data.

Achievements 1993/94

Major achievements included implementation of the EEO Plan; TTY (telephone typewriter for the deaf) training on the *Disability Discrimination Act* and disability awareness; development of the Commission's Language Register; payment of an allowance related to transport costs to 2 staff members with a disability; approval of an application for home-based work; advertising of vacancies in local regional press and targeted press (including peak disability bodies); and the appointment of 2 Aboriginal and Torres Strait Islander Administrative Service Officers Class 1.

Major Priorities 1994/1995

The major priorities for the coming year include completing and implementing the Action Plan under the *Disability Discrimination Act*; completing Workplace Harassment Guidelines; and development of Home-Based Work and Permanent Part-Time Work Policy and Guidelines.

The Commission is also one of a number of small agencies participating in the development of an Aboriginal and Torres Strait Islander recruitment and development strategy.

Table 33 Representation of **EEO** groups within classification levels as at 30 June 1994.

ASO Classification Equivalent	Total No of Staff	Staff with EEO Data	Women	NESB 1	NESB 2	ATSI	PWD
ASOC 1-4	77	59	67	6	3	4	1
		76%	87%	8%	4%	5%	1%
ASOC 5-6	54	40	35	4	3		2
		74%	65%	7%	5%		4%
SOG C-B (Including professional)	53	48	32	4		1	3
		90%	60%	7%		2%	6%
SES Bands 1 & 2	5	5	2				
		100%	40%				
Statutory Office Holders	5	5	2			1	1
		100%	40%			20%	20%
Total	194	157	138	14	6	6	7
		81%	71%	7%	3%	3%	4%
Average service-wide % as at June 1993			47.4%	4.5%	8.4%	1.3%	4%

Notes: NESB 1 - Persons born overseas; NESB 2 - Australian born with parents born overseas; ATSI - Aboriginal and Torres Strait Islander; PWD - Persons with a disability. Percentages based on total staff.

Occupational Group	Total No of Staff	Staff with EEO data	Women	NESB 1	NESB 2	ATSI	PWD
SES and Commissioners	10	10	4			1	1
ASO and related	131	99	98	10	6	4	3
Senior Officer	53	48	33	4		1	3
Total	194	157	135	14	6	6	7

Notes: NESB 1 - Persons born overseas; NESB 2 - Australian born with parents born overseas; ATSI - Aboriginal and Torres Strait Islander; PWD - Persons with a disability.

Representation of EEO groups in number of appointments for 1993/94.

<u>Appointments</u>	<u>Women</u>	<u>NESB 1</u>	<u>ATSI</u>	<u>PWD</u>
19	9	1	2	1

ACCESS AND EQUITY

In August 1994, the Commission submitted a full report to the Office of Multicultural Affairs on its access and equity performance for 1993/1994.

In terms of the major areas identified by the 1992 evaluation of the implementation of the access and equity strategy, highlights of the Commission report for 1993/1994 include:

Planning

The commitment of the commission to access and equity, as outlined in formal planning statements of the organisation, focuses on promoting equitable access to services, (See Access and Equity Plan 1991-1994; Corporate Plan 1993-1995; as an example of a program plan Queensland State Plan 1994/1995).

Examples of achievements in promoting the access of non-English speaking and Aboriginal and Torres Strait Islander peoples to services provided by the Commission include:

- a project of the Sex Discrimination Commissioner to promote awareness amongst Aboriginal and Torres Strait Islander women of the *Sex Discrimination Act*;

- the Aboriginal and Torres Strait Islander Social Justice Commissioner is coordinating the ongoing development of an information and intervention strategy and training program to assist Aboriginal and Torres Strait Islander communities resolve community conflicts involving human rights issues;
- the Disability Discrimination Commissioner has included a culturally specific outreach strategy as part of the *Disability Discrimination Act* awareness campaign.

Overall, the review of the access and equity performance of the organisation over the last twelve months suggests that the planning approach underlying any broad Commission strategy for achieving equity goals has not been systematic. This has meant that review processes and priority setting are not systematic across program

, areas.

Evaluation and Audit

The Joint Review

In terms of access and equity considerations, a major focus which has emerged is the effectiveness of cooperative arrangements with States and Territories. Cooperative arrangements provide for State and Territory agencies to handle complaints under federal legislation or, as is the case in Queensland and the ACT, for the Commission to be able to handle complaints under State/Territory legislation.

An important facet of these relationships is their role in promoting equitable access to human rights and anti-discrimination services of the whole Australian community, including the two target groups. The initial stage of the review has raised numerous issues about the effectiveness of such arrangements in promoting access to justice. Such issues will be considered as a separate part of the joint review, which will report to the Attorney-General in late 1994.

The Complaint Handling Review

In September 1993, the Commission initiated a review of the effectiveness of its complaint handling processes. Access and equity considerations have been central to the focus of the review. In particular, the review has examined the accessibility of the existing structures and procedures for receiving and investigating complaints.

Performance Indicators

The 1991-1994 Access and Equity Plan of the Human Rights and Equal Opportunity Commission states:

the Commission must set for itself and achieve high standards in the implementation of access and equity principles.

However, the Commission does not routinely collect any data which provides information on its access and equity performance. This is a shortcoming given the desire of the Commission to set and achieve high standards in its access and equity performance. This gap in part reflects the broader absence of an agreed set of corporate performance indicators.

Language Services

The Commission recognises the centrality of language as a barrier for people of non-English speaking background accessing our services.

As a general principle the Commission seeks to produce any written material in plain English. Interpreter and translation services are used as necessary.

As a provider of community education services, the Commission has recently produced two training packages which address the needs of non-English speaking peoples in the workplace:

- the training package *Diversity Makes Good Sense: Managing Cultural Diversity* is designed to assist managers and supervisors to manage cultural diversity in the workplace. Released in early 1994, 100 copies have been sold to date; and
- the development of a video based package titled *Its Good Business Sense* which is designed to assist small business to draw the fullest benefit from a multicultural work force.

Consultation

At an organisation wide level, the Commission undertook a formal national consultation with non-government organisations (NGOs) in November 1993. This consultation was attended by peak national NGOs, including groups representing the interests of people of non-English speaking background and Aboriginal and Torres Strait Islander peoples.

The Aboriginal and Torres Strait Islander Social Justice Commissioner consults extensively with Aboriginal and Torres Strait Islander communities throughout

Australia, in the development of his annual report and report under the *Native Title Act 1993*.

The Race Discrimination Commissioner consulted widely in the development of the 1993 *State of the Nation Report on People of Non-English Speaking Backgrounds*.

Participation

Apart from the consultative processes outlined above, the systematic inclusion of access and equity target groups on advisory, decision making and review committees associated with the Commission has not been a feature of its access and equity strategy. It should also be noted that the number of committees formally associated with the Commission is very limited.

Coordination

The Commission has recently initiated regular participation in the access and equity network, coordinated by the Sydney office of the Office of Multicultural Affairs (OMA). The Northern Territory regional office participates in a monthly meeting of the access and equity network, coordinated by the Darwin office of the OMA. The Aboriginal and Torres Strait Islander Soci4 Justice Commissioner participates in the Access and Equity IDC convened by OMA.

Special Focus: Access and Equity for South Sea Islanders

In August 1991, the Attorney-General requested that the Commission prepare a report on the situation of Australian South Sea Islanders. The Race Discrimination Commissioner prepared a report which was presented to the Attorney-General in January 1993. All recommendations of the report were ratified by Cabinet in July 1994.

HUMAN RESOURCE DEVELOPMENT

The Commission recognises that a planned investment in Human Resource Development (HRD) is in the interests of its future strategic direction and that training and development play an important role in maximising the potential of its staff. To that end a Human Resource Development Officer has been recruited to ensure that the Commission's training and development activities are more strategic in their focus and to ensure that staff have access to a wider range of activities to address their needs.

Training

Total salary expenditure for 1993/1994, including cooperative arrangements was \$8,143,283. Direct expenditure on training was \$363 207 (4.46 % of total salaries). The minimum training expenditure required was \$183 224.

As at 30 June 1994 there were 188 full time and 7 part time staff of whom 183 participated in training activities during the year. A total of 785.5 person days were devoted to training and development in 1993/1994, which represents an average of 3.9 days per staff member. The table below shows the participation of EEO groups in training, expressed in terms of person days of training.

Table 34 Participation of **EEO** groups, by office, in training expressed in terms of person days of training — 1 July 1993 to 30 June 1994.

	Women	People with a disability	ATSI	NESB
Queensland	49		2	7
Tasmania	1			1
Darwin	19.5	7		
ACT	31	2		
Central	414	7	10	61.5
TOTAL	513.5	16	12	69.5
% of total person days of training participation	65.4%	2%	1.5%	8.8%

Staff of the Commission have access to a variety of formal and informal training opportunities. The more significant issues are covered below.

The Commission's computer hardware and software systems were upgraded in 1993/1994, including the interconnection of all Central Office PC's to form a Local

Area Network (LAN). These changes resulted in a comprehensive PC training program for all Central Office staff which included training in new software, use of a network and a range of products such as electronic mail. In addition, a number of staff attended external, specialist computer skills courses, including spreadsheet applications. Computer staff and the HRD Officer also provide training in-house for staff on a variety of computer-related matters.

Regular induction sessions have been conducted for staff new to the Commission. These induction sessions have included an introduction to the commission; EEO and sexual harassment; OH&S; conditions of service and responsibilities of a staff member; and the PSU and union membership. The HRD Officer discusses individual computer training needs with new staff.

Throughout 1993/1994, staff attended courses such as Occupational Health and Safety for Managers and Supervisors, the *Industrial Relations Reform Act*, *Disability Discrimination Act*, TTY training, disability awareness training, project management, financial and human resource management.

During the reporting year, staff also attended work-related seminars and conferences which provided them with professional and technical development opportunities. These courses were conducted by various organisations including the Public Service Commission, Department of Finance, and the NSW Joint Agencies Training Committee.

Studies Assistance (Studybank)

Information sessions on Studybank were conducted and approved studies assistance was given to 36 staff members under the Studybank scheme.

Middle Manager Development

Two staff members participated in the Public Sector Management Course.

Internships with the Commission

Two interns came to work with the Commission from overseas, one from the Danish Centre for Human Rights who worked with the Sex Discrimination Unit and the other from Colombia University, New York to work in the Legal Services Section.

Overseas Placements

A Commission staff member has taken a six month internship with the United Nations Children's Fund in New York.

INTERCHANGE PROGRAM

No staff members have participated in the interchange program during 1993/1994.

CLAIMS AND LOSSES

Nil response.

PURCHASING

The Commission's purchasing procedures address a wide range of purchasing situations allowing managers to be flexible when making purchasing decisions while complying with current government policies.

The Commission uses the Australian Government Credit Card to purchase and pay for goods and services unless there are sound reasons for not using it.

All purchase arrangements exceeding \$2,000 were notified in the Commonwealth (Purchase and Disposal) Gazette.

A total of 159 purchase arrangements were not gazetted within three months due to resource constraints. Of this figure, 152 appeared in the Gazette of May 18, 1994 and 7 appeared in the Gazette of June 1, 1994.

IT Purchasing

The Commission has developed a strategic plan for information technology (IT) development which guides the priorities for purchasing. All IT purchasing procedures are consistent with Department of Administrative Services guidelines. This includes the use of period contracts, as appropriate.

PAYMENT OF ACCOUNTS

Number of accounts received during the year	4291
Number of accounts processed for payment received prior to the due date	0
Number of accounts processed for payment on the due date	3842
Number of accounts processed for payment within 30 days after the due date	448
Number of accounts processed for payment later than 30 days after the due date	1
Number of accounts <u>during the year</u> received during the year but not processed for payment	173

CONSULTANCY SERVICES

The Commission engages consultants when:

- there is a need for specialised skills or specialised knowledge and experience which is either not available in-house, or not available at the time required;
- existing resources are not adequate to meet the workload, especially when time is also a factor; or
- an acknowledged expert view is required, or an independent study is required.

The need for consultancies during 1993/1994 arose from either the lack of specialised, in-house knowledge, the inadequate resources and/or the timeframe allowed for the work. A summary table outlining major purpose, number and cost of consultants appears on page 245.

*Denotes consultancies publicly advertised

Research

David Allen	77,500.00
Research ATSI human rights and Native Title	
Sharon Brown and Barbara Bee	21,974.00
Devise training module for Hospitality, Women and the Law	
Fiona Buckman	11,950.00
*Review Queensland awards	
Ruth Callaghan	2,400.00
Research, Mental Illness	
Centre for Appropriate Technology	11,168.00
Research, Water Project	
Chris Cunneen	9,750.00
Mornington Review; Water Report; Community Relations Strategy data project	
Ann Fieldhouse	17,840.32
Research, Alcohol Project	
Geoff Langford	5,262.00
Research, Alcohol Project	
Frances Milne	3,000.00
NESB State of the Nation	
Jeannie Martin	2,950.00
NESB State of the Nation	
Rebecca Peters	8,600.00
Research, Mental Illness	
Ross & Hunt Consultancy Pty Ltd	2,100.00
Research, Mental Illness	
Hon J. H Wootten	18,148.00
Research, Aboriginal deaths in custody	
Total	192,642.32

Legal

Ms M Brenton	6,524.62
Provide legal advice re mental illness	
Phillip Tahmindjis	16,873.00
Provide legal advice to the Commission	
Total	23,397.62

Media

Mervyn Smythe & Associates	9,850.00
Media Services, Mental Illness	
Judy Brookman (Brookman Media Services)	18,609.03
*Media adviser to the Commission; media services in relation to the Water Report	
Margie Cook and Associates	25,602.32
Media services for the Mental Illness Report; Child sex laws; Cultural Diversity Package; SDA anniversary; NSW health budget initiatives; Water Report	
Pemberton Advertising	400,075.25
Research and develop materials and implement media strategy for DDA awareness campaign	
The Rea Francis Company	12,742.99
Provide media services for SDA 10th anniversary	
Jane Singleton Pty Ltd	36,645.00
Provide media consultancy services for the DDA awareness campaign	
Total	503,524.59

Community Relations Strategy

Hunters & Gatherers	14,587.55
Assist in management, strategic merchandising and implementation of DCOP Week	
Sonia Poorun	3,240.00
Provide administrative and marketing assistance for DCOP Week	
The Research Team	7,956.58
Community Relations Strategy projects	
Social Change Media	27,479.50
Finalise Community Relations Strategy youth project	
Total	53,263.63

Privacy

Coopers and Lybrand	5,857.94
*Conduct Privacy audits	

Deloitte Touche Tohmatsu	92,643.77
*Conduct Privacy audits	
Duesburys Chartered Accountants	29,201.05
*Conduct Privacy audits	
Duesburys Chartered Accountants (WA)	4,062.70
*Conduct Privacy audits in Western Australia	
Erica Greig	4,000.00
Review Registry systems in the Privacy Branch	
The Illawarra Technology Corporation Limited	11,646.00
Prepare technical papers and presentation on Privacy IT issues	
Library Locums	7,010.04
Review Privacy Branch Library	
OPTICON Australia Pty Ltd	4,440.00
Prepare technical papers and presentation on Privacy IT issues	
Price & Newman	5,152.50
*Conduct Privacy audits (WA)	
Queensland University of Technology	10,650.00
Prepare technical papers and presentation on Privacy IT issues	
The Roy Morgan Research Centre	39,024.00
Conduct public awareness and attitude survey	
Trimagic Software Pty Ltd	2,357.50
Design records management software for Privacy Branch	
Total	246,045.50

General

Distaff Associates	81,512.54
Devise and identify a standard set of data to be collected and collated by the Commission (for monitoring complaints) and to advise the Commission as to the best means for achieving data collection, storage and manipulation of the standard set of data. Conduct a survey to assess the level of satisfaction with complaint handling services.	
Eames Communications	2,000.00
Ortel production	
Judicial Commission	5,877.50
Anti-discrimination database	
Martyn Communications	22,400.00
Assist with development of SDA Superannuation Guidelines;	

address superannuation issues arising from Mental Illness Inquiry	
The Public Interest Advocacy Centre	30,000.00
Assist the Commission to improve/ensure effective outcomes or provide a service to the parties which better meets the objectives of the Commission in its complaint handling responsibilities.	
Vanessa McMahon	2,634.72
Assist Human Rights Commissioner in relation to meeting of human rights institutions in Geneva	
Streetwize Comics	28,100.00
Produce comic on sexual harassment	
Zarabay Pty Ltd	5,000.00
Women and enterprise bargaining	
Labour Market Alternatives	6,705.00
Women and enterprise bargaining	
Total	184,229.76
GRAND TOTAL	\$1,203,103.30

Table 35 Summary table of major purpose, number and cost of consultants
1993/1994

Purpose	Number	Cost
Research	13	192,642.32
Legal	2	23,397.62
Media	6	503,524.59
Community Relations Strategy	4	53,263.63
Privacy	12	246,045.50
General	10	184,229.76
TOTAL	47	1,203,103.30

CAPITAL WORKS MANAGEMENT

Nil response. The Commission had no capital works worth more than \$6m during the financial year.

FRAUD CONTROL

In November 1993 an internal auditor was appointed. An ongoing program of audit and fraud risk assessments, operational and compliance audits and performance audits has commenced.

An audit and fraud risk assessment was conducted for Corporate Services functions during the year which influenced the development of the revised Fraud Control Plan for the Commission. Risk assessments are continuing to be conducted for the rest of the Commission during 1994/1995. An important component of risk assessment is feedback to staff and management to raise awareness of risk management issues.

Functions that have been identified as a high risk for fraud have been audited by the Internal Audit Unit. Computer system security and processing controls associated with high risk functions have been revised. No fraud, or suspected fraud, has been identified.

The Commission has an established link with the Australian Federal Police and the Director of Public Prosecutions.

AUDITOR-GENERAL REPORTS

The only report relating to the Commission tabled during 1993/1994 was *Report No 29: 1992/93 Aggregate and Departmental Financial Statements 1991-92* (tabled 4 May 1993). An Asset Recording System was required to be introduced enabling reliable calculation of depreciation and diminishing asset values for the financial statements.

An asset system was purchased and implementation commenced during 1993/1994.

The Commission also provides the Attorney-General with advice regarding the Commission's internal management and review of issues raised in other tabled reports.

INQUIRIES BY PARLIAMENTARY COMMITTEES

Parliamentary Committee inquiries to which the Commission made submissions are as follows.

- Submission by the Commission (Sex Discrimination Commissioner) to the Senate Standing Committee on Foreign Affairs, Defence, and Trade. Inquiry into Sexual Harassment in the workforce, on sexual harassment in the Defence Services.
- Submission by Human Rights Commissioner to the Parliamentary Joint Standing Committee on Migration concerning Australia's policy and practice in the detention of asylum seekers.
- Submission by Human Rights Commissioner to the Senate Select Committee on Public Interest Whistle Blowing.

Submissions by the Privacy Commissioner included:

- Further submission to the House of Representatives Standing Committee on Banking, Finance and Public Administration Inquiry into Fraud on the Commonwealth in August 1993.
- Submission to the Joint Select Committee on Certain Family Law Matters (Child Support Scheme) in August 1993. Appeared before the Committee in September 1993.
- Appeared before the Parliamentary Joint Committee on the Australian Security Intelligence Organisation in October 1993.
- Submission to the Senate Select Committee on Community Standards inquiring into the Reverse Telephone Directory in October 1993.
- Appeared before the Senate Standing Committee on Legal and Constitutional Affairs on Rights and Obligations of the Media in November 1993.
- Appeared before the House of Representatives Inquiry into the Protection of Confidential Information (the Melham Committee) in November 1993.
- Submission to the Senate Select Committee on Public Interest Whistleblowing in December 1993. Appeared before the Committee in March 1994.

- Appeared before the Senate Standing Committee on Legal and Constitutional Affairs Hearing into the Health Legislation (Powers of Investigation) Amendment Bill in February 1994.

Submissions by the Aboriginal and Torres Strait Islander Social Justice Commissioner included:

- Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, sub-committee on Human Rights in May 1994.
- Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Commonwealth's Annual Report on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody in June 1994.

OMBUDSMAN COMMENTS

In the period July 1993—June 1994 there have been no reports to the Commission from the Ombudsman.

DECISIONS OF COURTS AND TRIBUNALS

The most significant case to impact upon the operation of the Commission is that of *Ellenbogen v Human Rights and Equal Opportunity Commission* (unreported, Federal Court No. NG 868 of 1992, delivered on 30 November 1993, Whitlam J). A summary of the case and its implications follows.

Ellenbogen v HREOC

Prior to the decision of *Ellenbogen*, the Commission adopted a practice that its staff should make an initial determination as to whether an 'inquiry' was within the jurisdiction of one of the Acts administered by the Commission, and thus should be accepted as a 'complaint'. Essentially the Commission officer considered whether the inquiry raised a ground of discrimination which was made unlawful by the relevant

Act. If the Commission officer determined that the inquiry did not raise a ground of discrimination under the Act, the potential complaint was rejected by the officer and the party informed. As the inquiry was not considered by the relevant Commissioner, the potential complainant had little recourse to address any grievance with the decision of the officer.

In *Ellenbogen* (see page 35 for a summary of the case) Whitlam J held that the Commission's practice did not allow the review provisions of the legislation to operate as intended.

Whitlam J held that the consequence of this broad interpretation of the term 'complaint' was that *Ellenbogen's* complaint should have been accepted by the Commission and then considered by the relevant Commissioner.

Effect on the Operation of the Commission

The consequence of *Ellenbogen* for the Commission is that virtually all matters now received by the Commission are accepted as 'complaints' and considered by the relevant Commissioner. The relevant Commissioner may decide to decline to inquire into the complaint if it is 'not unlawful' or 'misconceived', which may result in the complainant's application for a review of the decision by the President.

PRIVACY

Nil response. The Commission was not investigated by the Privacy Commissioner under section 30, nor served with determinations under section 52 or section 72 during the financial year.

ENVIRONMENTAL MATTERS

The Commission did not take any action under section 30(1) of the *Australian Heritage Commission Act 1975* during the financial year. The Commission did not take any action under the *Environment Protection (Impact of Proposals) Act 1974* during the financial year.

Buildings

The fitout brief for the Commission's Central Office relocation includes energy efficiency as a key component.

Table 36 Vehicles leased by the Commission 1993/1994

State	No. of vehicles	Type	Petrol Costs \$
<i>Fleet</i>			
New South Wales	1	1 x wagon	\$804.70
Queensland	3	2 x sedans; 1 x wagon	\$4,393.95
ACT	2	1 x hatch; 1 x sedan	\$688.47
Tasmania	1	1 x sedan	\$583.18
Northern Territory	1	1 x sedan	\$567.54
Sub-total	8		\$7,037.84
<i>SES Fleet</i>			
New South Wales	4	3 x sedans; 1 x wagon	\$3,712.14
Queensland	1	1 x sedan	\$834.80
Sub-total	5		\$4,546.94
<i>Statutory Office Holders</i>			
New South Wales	4	4 x sedans	\$4,133.99
ACT	1	1 x wagon	\$963.67
Victoria	1	1 x sedan	\$541.00
Sub-total	6		\$5,638.66
Total		14 sedans; 4 wagons;	\$17,223.44
	17	1 hatch	

Transport

The Commission leases a total of 17 vehicles nationally to service 194 staff. They are all leased on a two-year basis through DAS Fleet. Nine of those vehicles are leased under the SES Scheme for SES Officers and Statutory Office Holders as part of their salary packages.

The majority of the national fleet comprises small—medium size vehicles. Larger vehicles are leased where there is a need to travel long distances by car to promote the work of the Commission. No driver education programs were implemented.

PROPERTY USAGE

The Commission has seven offices in Australia, leasing and occupying a total area of 5177 square metres for its 194 staff and Commissioners. 70 percent is in central office in Sydney; 23 percent in other capital cities and 7 percent in regional areas. 89 percent of the total area leased is for officer accommodation and 11 percent is for public contact and special purpose areas.

Excluding public contact areas and special purpose areas (hearing rooms) the average area per officer is 23.75 square metres. Average national rent per square metre is \$321.28. Average national rent including outgoings is \$368.45 (major outgoings included are cleaning; repairs and maintenance; security; electricity and instalment outgoings).

The Commission's Central Office will relocate to an area of 4,915.40 square metres in leased premises in 1994/1995.

LIST OF ABBREVIATIONS

ACTU	Australian Council of Trade Unions
ADF	Australian Defence Forces
ATSISJC	Aboriginal and Torres Strait Islander Social Justice Commissioner
ATSI	Aboriginal and Torres Strait Islander
ATSIC	Aboriginal and Torres Strait Islander Commission
AYF	Australian Youth Foundation
CES	Commonwealth Employment Service
DDA	Disability Discrimination Act 1992
DEET	Department of Employment, Education and Training
HREOC	Human Rights and Equal Opportunity Commission
HREOC Act	Human Rights and Equal Opportunity Commission Act 1986
HRD	Human Resource Development
ICCPR	International Convention on Civil and Political Rights
IDC	Inter-Departmental Committee
ILO	International Labour Organisation
IPP	Information Privacy Principles
IYWIP	International Year of the World's Indigenous Peoples
NAILLS	National Aboriginal and Islander Legal Services Secretariat
NAPCAN	National Association for Prevention of Child Abuse and Neglect
NESB	Non-English Speaking Background
NGO	Non Government Organisation
NHMRC	National Health and Medical Research Council
OECD	Organisation for Economic Development
OH&S	Occupational Health & Safety
OMA	Office of Multicultural Affairs
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RDA	Racial Discrimination Act 1975
SDA	Sex Discrimination Act 1984
TFN	Tax File Number
UN	United Nations
VCCL	Victorian Council for Civil Liberties

COMPLIANCE INDEX

AIDS TO ACCESS

	iii
Table of contents	155
Alphabetical index	252
List of abbreviations	217
Contact details	

CORPORATE OVERVIEW

Structure of organisation	17
Description of program structure	17
Significant developments	30
Social justice and equity	17, 234
Internal and external scrutiny	24, 241

PROGRAM ELEMENT REPORTING

Human Rights	43
Race Discrimination	133
Sex Discrimination	67
Aboriginal and Torres Strait Islander Social Justice	117
Disability Discrimination	93
Privacy	153

STAFFING OVERVIEW

Staffing summary	193
Senior Executive Service information	193, 195

SUMMARY STATEMENTS

Performance pay	195
Staff training	238
Consultants	241
Financial Statements (Appendix Two)	196
Industrial democracy	221
Occupational Health and Safety	223
Freedom of information	223
Advertising and market research	224
Legislative enactments	231

Access and equity	234
Equal Employment Opportunity	232
Interchange program	240

FINANCIAL MATTERS

Claims and losses	240
Purchasing	240
Information Technology Purchasing	241
Payment of Accounts	241
Consultancy services	241
Capital works management	246
Fraud control	246
Reports by the Auditor	246
Inquiries by Parliamentary Committees	247
Comments by the Ombudsman	248
Decisions of Courts and Tribunals	248
Privacy	249
Environmental matters	249
Property usage	251

INDEX

A

Aboriginal and Torres Strait Islander Social Justice

iii-iv; 6; 11; 13; 17; 22; 47; **117-131**; 119; 136; 174; 185-187; 215; 235-237; 248
 access and equity 21; 150; 234-237
 ACT Discrimination Act 1991 vi; 20; 29-31; **179-184**
 ACT Discrimination Commissioner 180-181
 ACT Human Rights Office **179-184**
 age discrimination 52
 Australian Defence Force 36; 46; 77; 89; 91; 186; 215

case studies

38; 59; 82; 85; 89; 106-107; 143; 164; 176

community relations strategy

129; 174; 224; 242-243; 245

complaint handling

iii; 17; 20; 22; 24; 27; **29-38**; 101; 171-172; 186-188; 193; 235; 244
 45; 70; 91; consultants vi; 83; 130; 158; 161; 195; 241; 245

Convention on the Rights of the Child

9; 46; 51-52; 54-56; 61-62; 123

cooperative arrangements

19; 22-23; 29; 47; 97; 235; 238

corporate overview

17-25

data protection

156; 160

data-matching guidelines

156

Declaration on the Rights of Disabled Persons

8; 57-58

Declaration on the Rights of Mentally Retarded Persons

8; 57

Different Colours One People

148-150; 243

Disability Discrimination Act 1992

5; 10-11; 14; 20; 23; 29; 53; 58; 95; 98; 104-106; 109;
 111; 114; 179; 188; 215; 232-233; 235; 239

Disability Discrimination Commissioner

iii; 6; 12; 20; 47; **95-96**; 99-102; 109-110; 114; 235

Disability Standards

14; 53; 98-99; 101-103

education and promotion

iii-iv; 60; 183; 188; 217

EEO vi; 72; 77; 83; 90; 96; 99; 107; 150; 184; 221; 232-234; 238-239

external litigation

35

Federal Privacy Handbook	164
financial statements	196; 246
fraud control	24; 246
freedom of information	223
functions of the Commission	
iii-vi; 11-13 ; 17; 19-20; 22; 24; 45-46; 53; 100; 122-124; 169; 175; 180; 185	
Health Communications Network	158
HIV/AIDS	108
homeless children	52
HREOC Act	v; 29; 34-36; 56; 58-59; 99
human resource development	24; 22-1-222, 238
Human Rights Commissioner	
iii; 6; 19; 34-35; 45; 48; 50-56 ; 60; 186; 221; 245; 247	
industrial democracy	69; 221-222; 232
International Covenant on Civil and Political Rights	
7; 10; 51-52; 54; 56; 58; 122-123	
international instruments	6-7; 11; 62; 126
interventions	38-42
legislation	
iii; v; 11-12; 14; 19-21; 23; 29; 31-34; 36-37; 42; 46-49; 51-52; 54; 58; 73-75; 77;	
79-80; 91; 95; 97-98; 102; 104; 107; 111; 115; 119; 128-129; 137; 146; 150; 158;	
161; 165; 169-170; 180; 185-186; 188-189; 231	
legislative review	100
library	3; 25; 175; 186; 217; 244
media activities	17; 19
mental illness	19; 45-46; 48-51 ; 54; 60-65; 109; 186; 215; 242-243; 245
migration and refugee issues	21, 34; 52; 57; 61; 100-101; 136; 139; 148; 150
Mornington Island	139; 242
Native Title Act 1993	4; 127; 237

0

- objectives 5; 9-10; 47; 74; 101; 110; 112; 124-126; 180
- occupational health and safety 42; 221; 223; 239
- OECD guidelines 10
- old convictions 12; 160; 163
- organisational structure iii; **17-18**; 47; 63
- overview iii-iv; **15-25**; 29; 193

- performance pay 195
- President iii-vi; 36-37; 47; 56; 86-87; 109-110; 146; 175-176; 183; 193; 231; 249
- prisons 34; 53; 119-120; 144; 146
- Privacy Act 1988 3; vi; 10-11; 14; 29-30; 33; 155-157; 159; 163-165; 231
- Privacy Commissioner iii-vi; 11-12; 14; 21; 29; 47; **155-165**; 247; 249
- promotional activities iii-iv; 13; 177; 183; 188
- public awareness 101; 110; 114; 244
- public inquiries 19
- publications iii-iv; 89; 97; 110; 177; 186; 215
- purchasing 86; 240-241

- Queensland Anti-discrimination Act vi; 29-31; 171-173; 175-176
- Queensland Anti-discrimination Commission **169-178**

- Race Discrimination Commissioner iv; 6; 12; 20; 35; 47; 135; **138-140**; 148; 174; 186; 237
- Racial Discrimination Act 1975 5; 9; 11-12; 14; 29; 97; 119; 141-143
- racist violence 122; 136-137; 174
- regional offices iv; 21; 29-30; 32; 56; 104; 162; **169-189**; 232
- religion 8-9; 57-58; 62; 119; 170; 172
- retrenchment 139
- Royal Commission into Aboriginal Deaths in Custody 120; 122; 126; 129; 136; 248

- senior staffing 193
- Sex Discrimination Act 1984 5; 10-12; 14; 21-22; 29; 42; 69-71; 75; 77; 79-82; 89-90; 102; 188; 215
- Sex Discrimination Commissioner iii; 6; 12; 21-22; 37; 47; 69; **71-73**; 75-77; 79; 90; 178; 185-186; 234; 247
- social justice iii-v; 13; 61-62; 64; 121-122; 124; 128; 135; 187
- speaking engagements 90; 114; 131; 148; 165; 177; 184

sports	95
staffing overview	iv; 193; 227
superannuation	51; 77; 89-91; 169; 171; 175; 231; 244-245
tax file numbers	215; 155; 160; 163
Tracking Your Rights	10; 130; 174
	12;
United Nations	126; 189; 240
	46; 51; 54-56; 62; 82; 215; 242-243
Water Report, The	20; 136-138; 151; 186;

