

**HUMAN
RIGHTS
COMMISSION**

HUMAN RIGHTS COMMISSION

Annual Report 1981-82

VOLUME 1

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10 December 1981 - 30 June 1982

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This Annual Report of the Human Rights Commission consists of two volumes. Volume 1 is the Report of the Human Rights Commission for the period from the Proclamation of the *Human Rights Commission Act* 1981 on 10 December 1981 to 30 June 1982 and includes the Report from the Commissioner for Community Relations for that period. As indicated in the Preface Volume 2 contains a report from the Commissioner for Community Relations for the period from 1 July to 9 December 1981.

Human Rights Commission

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Canberra City

The Hon. N.A. Brown, Q.C., M.P.
Acting Attorney-General
Parliament House
Canberra, A.C.T. 2600

Dear Minister,

I have pleasure in enclosing with this letter the Report of the Commission on its operations from its establishment on 10th December 1981 to 30th June 1982. Pursuant to subsection 29(1) of the *Human Rights Commission Act* 1981, the Report covers the operations of the Commission under both of the Act and the *Racial Discrimination Act* 1975.

Volume 2 of the attached Report covers the operations of the Commissioner for Community Relations under the Racial Discrimination Act for the period 1st July to 9th December 1981, and is presented in compliance with subsection 29(2) of the Human Rights Commission Act.

Yours sincerely,

*Chairman
for and on behalf of
the Human Rights Commission*

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THE FUNCTIONS OF THE COMMISSION

Section 9 of the *Human Rights Commission Act* 1981 reads:

9.(1) The functions of the Commission are:

- (a) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to any human rights, and to report to the Minister the results of any such examination;
- (b) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and—
 - (i) where the Commission considers it appropriate to do so—endeavour to effect a settlement of the matters that gave rise to the inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect a settlement of those matters—to report to the Minister the results of its inquiry and any endeavours it has made to effect such a settlement;
- (c) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights;
- (d) when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument;
- (e) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;
- (f) to promote an understanding and acceptance, and the public discussion, of human rights in Australia and the external Territories;
- (g) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting human rights and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
- (h) to perform—
 - (i) any functions conferred on the Commission by any other enactment;
 - (ii) any functions conferred on the Commission pursuant to any arrangement in force under section 11; and

- (iii) any functions conferred on the Commission by any State Act or Northern Territory enactment, being functions that are declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commission; and
 - (j) to do anything incidental or conducive to the performance of any of the preceding functions.
- (2) The Commission shall not—
- (a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purpose of paragraph (1)(a) or (b) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups of persons in order to enable them to enjoy or exercise human rights equally with other persons; or
 - (b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1)(a) or (b) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a).
- (3) For the purpose of the performance of its functions, the Commission may work with and consult appropriate non-governmental organisations.

PREFACE

The Annual Report is seen by the Commission as a means of presenting to the Parliament and the public an overview of its operations as well as information about specific activities that it has undertaken during the period concerned.

This report is designed to provide a general idea of the scope of the Commission's operations, the subject matter with which it deals, and the way it carries out its functions: along with references, whenever appropriate, to particular tasks under way.

The Commission takes the view that its operations should, whenever possible, be aimed at producing practical results. Accordingly, the theme of this report is the action-orientation of the Commission in the performance of its functions.

A word of explanation is necessary concerning the form of the report. Section 29 of the *Human Rights Commission Act* 1981 provides as follows:

29.(1) The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of its operations under this or any other Act or under any State Act or law of a Territory during the year that ended on that 30 June.

(2) The first report of the Commission shall include a report of the operations of the Commissioner for Community Relations under the *Racial Discrimination Act* 1975 for the period that commenced immediately after the end of the year to which the last report furnished by the Commissioner for Community Relations under that Act related and ended immediately before the commencement of this Act.

In accordance with section 29, this report of the Commission includes, as Volume 2, a report prepared by the Commissioner for Community Relations to cover his operations under the *Racial Discrimination Act* 1975 for the period 1 July -9 December 1981.

Volume 1 incorporates a general report by the Commission of its activities. However, in recognition of the separate statutory office of Commissioner for Community Relations, the Commission has included, as Part C, a report from him for the period 10 December 1981 - 30 June 1982. The Commission proposes that future annual reports of the Commission will, in similar fashion, incorporate reports from the Commissioner for Community Relations and any other statutory office-holder operating under the Commission's auspices.

PART A: GENESIS

CHAPTER ONE

THE ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION

What are Human Rights?

For the Commission, human rights are relatively well defined. They are the rights and freedoms described in the four international human rights instruments annexed as schedules to the *Human Rights Commission Act 1981*.¹ They cover also the rights enshrined in Part II of the *Racial Discrimination Act 1975*,² which in its turn is based on the International Convention on the Elimination of All Forms of Racial Discrimination.

The first of the international human rights instruments annexed to the Human Rights Commission Act, the International Covenant on Civil and Political Rights (ICCPR), involves the Commission in a broad range of civil and political rights. These are set out in Parts I, II and III of the ICCPR and include the rights of all people to:

- privacy;
- marriage and family;
- their own language, culture and religion;
- participation in public affairs;
- freedom of expression, movement, association and assembly;
- protection of their inherent right to life;
- liberty and security of person;
- freedom from degrading treatment or punishment; and
- equal treatment with others under the law.

Under the second human rights instrument annexed to the Act, the Declaration of the Rights of the Child, the Commission is concerned with the rights of children. The Declaration proclaims that all children have a right to:

- a name and nationality;
- opportunities to develop fully in conditions of freedom and dignity;
- adequate care, affection and security, including pre-natal and post-natal care;
- education;
- special treatment, education and care if handicapped; and
- protection against cruelty and neglect.

The third instrument annexed to the Act is the Declaration on the Rights of Mentally Retarded Persons. The Declaration proclaims that all intellectually disadvantaged people have a right to:

¹No. 24 of 1981.

²No. 52 of 1975 as amended.

- proper medical care and therapy;
- economic security;
- education, training and work and trade union membership;
- a qualified guardian; and
- review of procedures which may deny them these rights.

The final international human rights instrument annexed to the Act is the Declaration on the Rights of Disabled Persons. The Declaration proclaims that all disabled persons have a right to:

- respect;
- family and social life;
- economic security;
- education, training, employment and trade union membership; and
- protection from discriminatory treatment.

Under the Racial Discrimination Act, it is made unlawful to discriminate on grounds of race. Race is defined as including colour, descent and national or ethnic origin. Part II of the Act makes it unlawful to discriminate on grounds of race in:

- doing any act which involves such discrimination;
- refusing access to places and facilities;
- transactions in land or providing accommodation;
- refusing to provide goods and services;
- restricting entry to trade unions;
- employing, or dismissing a person;
- public advertisements; and
- inciting the doing of an unlawful act.

While the Commission thus has a fairly clearly defined, if somewhat diffuse, group of rights and freedoms with which to work, it operates in a much wider field. Human rights nowadays range across all concerns—from the rights of the unborn child through rights to employment, education, welfare and the rights of the aged. Thus the Commission is at work in a complex, changing, kaleidoscopic field. Its task is to clarify for the Government any particular human rights issues related to its charter which it believes require some change in law or practice. These issues, once identified, will be forthrightly exposed to the Government and, pursuant to section 30 of the Human Rights Commission Act, to the Parliament. Similarly, it will bring to the attention of the Government and Parliament, through its reports on the administration of the Racial Discrimination Act, situations where unlawful racial discrimination has been identified, and its observations on those situations.

Human rights are a subject of continuing debate. In many cases, they relate to matters of political sensitivity and affect the fundamental rights and liberties of individuals and entrenched interests. The Commission is accordingly always likely to be involved in some form of controversy. Accepting a particular human right as a basis for action is likely to require action, or a change in a pattern of action, by a holder of power—governmental or proprietary. As such, claims of human rights tend to include some challenge to existing arrangements and to evoke resistance. The position is exacerbated by the fact that it is usually the less privileged—the economically weak, those suffering from disabilities and the generally unorganised members of the community—who most require recognition and protection of their rights.

This particular aspect of human rights action is common to all societies, including Australia. Australian society is probably more willing, and better geared than most, to increase the enjoyment of human rights by the less influential. However, the protection of human rights in Australia involves problems peculiar to us which need to be understood if effective progress is to be made in the improvement of human rights.

The peculiar problems are:

- a federal constitution which lacks entrenched rights;
- the existence of eight sovereign political entities; and
- the interrelationships of the two Houses of the Federal Parliament.

Each of these means that the promotion of human rights has dimensions of complexity not existing in many other countries. It is partly because of these added dimensions of difficulty that the Commission has an important role. Its reports to the Government proposing changes in law or practice will be framed having in mind the fact that Australia has no Bill of Rights; the existence of many governments with plenary powers whose approach to human rights may not always be the same; and the undoubted difficulty of obtaining agreement to legislation embodying human rights proposals. Consistent with its statutory charter, the Commission sees itself as a moderator in the process of finding acceptable and viable options that would improve the observance of human rights.

The International and Local Setting

Though international concern with human rights is by no means a mid twentieth century innovation, there is no doubt that since the Second World War, there has been a growing impetus towards their recognition and enforcement in international and domestic law. Looking back, three stages in this process can now be recognised. The first was the adoption by the United Nations General Assembly, in December 1948, of the Universal Declaration of Human Rights. The Universal Declaration did not create international law on human rights binding nation States; rather, it was a general declaration defining the human rights which ought to be respected. It was a goal for nations to achieve.

The second stage in this process of the recognition of human rights in international law was the making of major Covenants on human rights. Covenants are international agreements of an especially solemn kind which are binding on the countries that ratify them. The two Covenants associated with the Universal Declaration are the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (ICCPR), and with the Optional Protocol to the ICCPR they form the International Bill of Rights. The two Covenants were adopted by the General Assembly of the United Nations in December 1966 and became operative in 1976. The ICCPR, which is annexed to the Human Rights Commission Act, did not come into force until 1976 when the required number of thirty-five ratifications or acceptances was obtained. Australia ratified this Convention in 1980. Together with the three Declarations referred to earlier, the Convention provides the norms towards which the Human Rights Commission seeks to adjust and modify Australian laws and practices.

The other principal part of the Commission's charter is another international instrument, that adopted by the General Assembly of the United Nations on 21 December 1965. It is the International Convention on the Elimination of All Forms of Racial Discrimination, which ultimately came into force in January 1969, although it was not ratified by Australia so as to bind this country until 1975. It is annexed to the Racial Discrimination Act, which is also administered by the Commission.

The third stage in this process is the establishment of domestic measures and machinery for the implementation of the instruments. The *Racial Discrimination Act* 1975 and the *Human Rights Commission Act* 1981 are measures associated with the implementation of Australia's obligations in international law in respect of the recognition of human rights.

Legislative History

Though the Parliament has adopted a largely bipartisan approach to human rights legislation, and has obviously felt the need for legislation on this topic, individual legislators have differed substantially over the years as to the form such laws should take. As early as 21 November 1973 the then Attorney-General, now Mr Justice Murphy of the High Court of Australia, introduced two Bills, the Human Rights Bill and the Racial Discrimination Bill, though both lapsed without further debate when that session of Parliament was later prorogued. A modified Racial Discrimination Bill was reintroduced on 4 April 1974, but it again lapsed without debate on the dissolution of Parliament. Ultimately the Racial Discrimination Bill 1975 was passed and came into force in October of that year. Its purpose was to implement the International Convention on the Elimination of All Forms of Racial Discrimination, and this was done by, amongst other things, making discrimination based on race, colour, descent or national or ethnic origin unlawful, and by making provision for the office of the Commissioner for Community Relations. The Commissioner's principal tasks were to conciliate in disputes involving racial discrimination, and to promote the purposes of the Act within Australia.

It was not, however, until 1981 that a Human Rights Commission Bill became law. The process commenced in 1977 when a Bill was introduced which lapsed with the dissolution of Parliament in that year. A further Bill was introduced in 1979, but it became the subject of considerable controversy and conflict between the Senate and the House. It was different from the 1977 Bill principally in that provision was made for processes of conciliation to be undertaken in association with the investigation of complaints. The 1981 Bill, which finally emerged as the *Human Rights Commission Act* 1981, was in most respects the same as the 1979 Bill. However, three further international instruments with significant implications for important groups in the community were annexed as schedules in addition to the ICCPR. These were the Declaration of the Rights of the Child, the Declaration on the Rights of Mentally Retarded Persons, and the Declaration on the Rights of Disabled Persons.³

Apart from extending the mandate of the Commission in this way, action was taken to co-ordinate the administration of the Racial Discrimination Act with the other work of the Commission. Amendments were made to the Racial Discrimination Act in order to enable this to be done. The result was a co-ordinated legislative and administrative approach to the promotion of human rights in Australia as had been envisaged as far back as 1973, when the Human Rights Bill was first introduced into Parliament.

On 10 December 1981, Human Rights Day, the Human Rights Commission Act was proclaimed, signalling Australia's commitment to the work of giving greater recognition to human rights. A ceremony attended by representatives of the Australian and international community was held in the Senate Chamber at Parliament House to commemorate the event. Speeches were delivered by the Prime Minister, the Attorney-General, and the first Chairman of the Human Rights Commission, Justice Roma Mitchell. In his speech, the Prime Minister pointed to the strong guarantees for human rights provided by common law and statute law, and to the Government's concern that Australia maintain its reputation internationally as a country which preserves and promotes human rights. He said:

The Human Rights Commission has been established in fulfilment of an election commitment. It represents a unique approach to issues of human rights, and it has the capacity to make an innovative contribution to the advancement of rights in Australia. In considering questions of rights the Commission has for its points of reference a number of international statements of rights, including the International Covenant on Civil and Political

³ For a summary of the content of these declarations see pp. 1 - 2.

Rights, the Declaration of the Rights of the Child, the Declaration on the Rights of Mentally Retarded Persons, and the Declaration on the Rights of Disabled Persons. And let me add that ratification by Australia of a future United Nations Convention on the Rights of the Child would not detract from the Commission's obligations under the 1959 Declaration of the Rights of the Child.

This adds up to an imaginative and broad-ranging charter, and it is plain that the framework within which the Commission's deliberations may take place is indeed relatively unconfined. I have no doubt that for Australia, the Human Rights Commission represents a commitment to human rights which is far more profound, relevant and effective than any alternative measure. For the functions and powers of the Commission are based four square upon the fundamental realities of the acceptance and development of human rights in civilised communities.

In her speech the Chairman assured the Prime Minister that the Commission would respond positively and constructively to the challenge extended to it and would interpret its charter broadly, fearlessly and publicly.



Members of the Human Rights Commission

Standing (left to right)

Mr P.H. Bailey, O.B.E. (Deputy Chairman), Mrs E. Geia, Professor P.J. Boyce, Mrs N.C. Ford, Professor Manuel Aroney, O.B.E.

Seated (left to right)

Ms E. Hastings, Dame Roma Mitchell, D.B.E. (Chairman), Mr C.D. Gilbert

The Commissioners

The Attorney-General, Senator Durack, announced the appointment of the first members of the Human Rights Commission on 25 September 1981. Justice Roma Mitchell, C.B.E., was Chairman, Mr P. H. Bailey, **O.B.E.**, Deputy Chairman, and the

other members were Associate Professor Manuel Aroney, O.B.E., Professor P. J. Boyce, Mrs N. C. Ford, Mrs E. Geia, Mr C. D. Gilbert and Ms E Hastings. Each of the Commissioners brings a special area of expertise to the work of the Human Rights Commission.

Justice Mitchell has been a Judge of the Supreme Court of South Australia since 1965. Prior to that, she was the first woman barrister in Australia to become a Queen's Counsel, taking silk in 1962. Her record of community activity includes serving as Deputy Chancellor of the University of Adelaide, and as Deputy National Chairman of the Winston Churchill Memorial Trust. She was created Dame Commander of the Order of the British Empire in the Queen's Birthday Honours List of 1982.

The Deputy Chairman, Mr Bailey, a former Rhodes Scholar for the State of Victoria, brought to the Human Rights Commission a long record of administrative achievement in the Commonwealth Public Service. He was Deputy Secretary to the Department of the Prime Minister and Cabinet prior to appointment in 1974 as a member of the Royal Commission on Australian Government Administration. In 1979 he was appointed Special Adviser on Human Rights in the Attorney-General's Department, and in 1980 he became Head of the Human Rights Bureau.

Professor Aroney is Associate Professor of Inorganic Chemistry at the University of Sydney. He was formerly a member of the National Ethnic Broadcasting Advisory Council and of the Board of the Special Broadcasting Service. He is a member of the Executive of the Ethnic Communities' Council of New South Wales and a member of the Australian Institute of Multicultural Affairs.

Professor Boyce, formerly a Professor of Political Science and Head of the Department of Government in the University of Queensland, is now Professor of Politics in the University of Western Australia and is an Executive Member of the Australia-New Zealand Foundation.

Mrs Ford, a solicitor from Traralgon, Victoria, is Deputy Chairman of the National Status of Women and Decade Committee of the United Nations Association of Australia, as well as an Occasional Member of the Victorian Equal Opportunity Board. She is a Past National President of the Australian Federation of Business and Professional Women, a Member of the Tertiary Education Commission Advanced Education Council, and a former Commissioner of the Victoria Post-secondary Education Commission. She also sits on the Australian Bicentennial Authority Victorian Council.

Mrs Geia is a member from the Queensland Electoral District of the National Aboriginal Conference and a member of the Aboriginal Development Commission. She is also President of Abis Community Co-operative Society Limited, an organisation which administers housing, hostel, sporting, welfare and educational programs for the Aboriginal and Islander communities of Townsville and district.

Mr Gilbert is a Senior Lecturer in Constitutional and Administrative Law in the University of Queensland. He has worked for the International Year of Disabled Persons Committee, and has for some time been actively concerned with human rights issues.

Ms Hastings is a Counsellor at La Trobe University, Melbourne. She was a member of the Executive Committee of the Victorian IYDP Committee, and is an Executive Member of the Yooralla Society of Victoria, the Paraplegics and Quadraplegics Association (Victoria), and Disabled Peoples International (Australia) in Victoria.

In his speech at the inauguration of the Human Rights Commission on 10 December 1981, the Prime Minister, in congratulating the Commissioners on their appointment, pointed out that the four men and the four women chosen were drawn widely from around Australia, and represented a cross-section of a society which includes **Aboriginal and ethnic communities.**

The members of the Commission have seen their role as twofold. First, they gather about every five or six weeks to deliberate as a Commission and set policy for the development of its work and activities. Second, coming from widely separated parts of Australia, they represent in those regions and in the context of the communities of which they are a part, the cause of the Commission and its concern for human rights. The Commission has been active. There were preliminary meetings in October and November 1981 and six meetings of the Commission between 10 December and the end of June (May was the only month in which there was not a meeting). To enable full attention to be given to the policy issues before it, the Commission has adopted the practice of holding two day meetings and of basing consideration of the substantial part of its business on papers prepared and circulated beforehand.

With the functions of the Commissioner for Community Relations coming under the auspices of the Human Rights Commission, the attendance of Mr Grassby for a period of discussion at five of its meetings was welcomed by the Commission. These discussions have provided an opportunity for members of the Commission to gain from the Commissioner's considerable experience in dealing with racial discrimination. In turn, the Commission has been able to talk about its existing and proposed activities with the Commissioner.

As will appear in later sections of this report, each Commissioner has also been personally active between meetings in her or his own State. Meetings have been addressed, seminars attended, papers delivered and one Commissioner accompanied a community relations team in its visits to Victorian towns. The Chairman has on a number of occasions appeared at national forums. A list of the substantial contacts made by Commissioners with organisations is contained as Appendix 1.

Commissioner for Community Relations

One of the most important consequences of the establishment of the Commission on 10 December 1981 was the bringing together under the Human Rights Commission of the statutory functions of the Commissioner for Community Relations and the Human Rights Commission. This was achieved by amendment of the Racial Discrimination Act. By the amendment the Commission is given the functions conferred on the Commissioner for Community Relations by section 20 of the *Racial Discrimination Act* 1975. However, except where the office of the Commissioner is vacant or the Commissioner is absent from duty, the function of inquiring into alleged infringements of the Racial Discrimination Act is to be performed by the Commissioner on behalf of the Commission.⁴

The Commission has welcomed the opportunity to co-operate with the Commissioner for Community Relations, the Hon. A. J. Grassby, in the important task of eliminating racial discrimination and promoting the cause of human rights generally. It had early and constructive discussions with the Commissioner, who over the past seven years has had wide experience in handling racial discrimination problems, and has met with him at all except one of its meetings during the year.

The Commissioner has co-operated fully with the Commission. The effect of the merger of the two offices has been to expand the resources available within the area as a whole. The Commission has always given a high priority to the handling of complaints and when restrictions on staffing and expenditure were announced by the Government in February indicated that racial discrimination matters would receive the highest priority. The Commission intends that there will be no diminution in the effort put into resolving problems of racial discrimination and promoting the purposes of the Racial

Section 20A of the *Racial Discrimination Act* 1975 as amended.

Discrimination Act throughout the community. Later in this report there are notes on the support given by the Commission to programs, such as the Whole Town projects, which were begun by the Commissioner, and the Commission is looking to augment the conciliation team available to the Commissioner.

The Commission records its appreciation of the friendly and generous way in which the Commissioner for Community Relations has co-operated with it during a process of change that cannot but have been difficult for him. It believes the problems have been minimised and that the opportunities created by the broad ranging charter now given to the Commission, and by the focus on problems of racial discrimination embodied in the continued operation of the Commissioner, can be used for the successful advancement of the cause of human rights in Australia.

CHAPTER TWO

WHAT THE COMMISSION DOES

Persuasion, Conciliation and Reform

The Commission does not have powers of enforcement. Accordingly, it must rely for a large part of its effectiveness on its capacity to persuade and conciliate. Because of the lack of direct powers of enforcement, the Commission can operate more informally than could a body such as a court which can award damages, give directions and make and enforce orders. It is also able to combine, in a way that most judicial and other enforcing agencies cannot, a role as a listener, investigator, researcher and persuader. These activities form the central core of the Commission's functions. They form a common thread in both the Human Rights Commission Act and the Racial Discrimination Act. The overall objective of the Commission is either to obtain a new and better balancing of rights through the processes of persuasion and conciliation, or to make proposals to the Government, and through it to the Parliament, for changes in law and practice. In this way, the Commission works as an agent for change and reform, either by consent of those immediately involved or through the executive and legislative powers of the Government and the Parliament.

In the case of the ICCPR and the three Declarations annexed with it to the Human Rights Commission Act, the Commission is provided with international obligations against which to compare existing Commonwealth laws and practices. Where it finds inconsistencies between the two, its task is to propose changes to bring law and practice into line with human rights standards. These human rights instruments are not directly enforceable in the courts, as a Constitutional Bill of Rights would be. Rather, they have a declaratory force, providing standards in relation to which the Commission can exercise its powers to persuade, conciliate and recommend reform. It is then left to the Government and the Parliament to decide what administrative and legislative action should be taken to implement the recommendation of the Commission.

Broad opposition within the Australian community to racial discrimination encouraged the adoption in the Racial Discrimination Act of more direct means to combat its various forms. Discrimination based on race, colour, descent or national or ethnic origin is made unlawful. Even so, a person who feels discriminated against has no right to go directly to the courts. Before this can be done, the Human Rights Commission, through the Commissioner for Community Relations, must inquire into the act complained of and try to settle the differences between the parties. Only if this attempt at settlement fails, can a person aggrieved by an act of discrimination go to the courts.¹

In the following sections of this chapter each of the various complementary ways in which the Human Rights Commission goes about its work is described.

¹ The procedures which relate to the manner in which complaints of racial discrimination are handled come under ss. 22 and 24 of the Racial Discrimination Act.

Reviewing Commonwealth Laws

One of the main tasks of the Commission is to review Commonwealth laws from a human rights perspective. It examines them to see whether they are inconsistent with or contrary to any of the human rights described in the ICCPR or the three Declarations annexed to the Human Rights Commission Act. An example of one review by the Commission is described in Chapter 5, in relation to Commonwealth laws dealing with crimes.

When the Commission has examined a Commonwealth law from a human rights perspective under section 9(1Xa) of the Act its task is to report to the Attorney-General. Under section 16 of the Act the Commission must include in its report to the Attorney-General recommendations for any amendments necessary to the law to ensure that it is no longer inconsistent with or contrary to any human right. These reports are to be made public by being laid before each House of Parliament shortly after they are received by the Attorney-General.¹

The Commission may, of its own initiative, examine existing laws of the Commonwealth from a human rights perspective. If he considers it desirable, the Attorney-General may refer proposed laws, in the form of Bills, or draft Bills, for the consideration of the Commission, so that it can report in a similar way. The advantage of this provision of section 9 of the Act is that human rights considerations can be taken into account in the drafting stage of law making. The Commission is thus able to assist the Parliament to take account of human rights issues when framing legislation. An example of this type of examination is described in Chapter 5. There is to be found an analysis of how the Human Rights Commission has been able usefully to intervene to enable human rights considerations to be taken into account before a draft A.C.T. Ordinance becomes law.

Recommending New Human Rights Laws

The Commission is not confined to looking at existing laws, or draft laws. It may, under section 9(1)(c), also make reports to the Attorney-General as to new laws that should be made or action taken by the Commonwealth on matters relating to human rights.

In Chapter 5 there is an example of an investigation begun by the Commission of an apparent gap in the existing law in the A.C.T. It has been suggested that there is no offence where a foetus is killed either during the process of birth or so late in the pregnancy that a stillbirth, rather than a miscarriage, is procured.

In such cases, the task of the Commission is to recommend, not to usurp the functions of the legislature in law making. The duty and responsibility for making new laws rests firmly with the Parliament.

Complaints

The Commission is by no means restricted to proposing changes in the law. It is also concerned directly with people and their problems.¹ It deals with a constant flow of complaints that an act or practice of the Commonwealth is inconsistent with or contrary to one of the general human rights found in the international instruments it administers. Furthermore, through the Commissioner for Community Relations, it deals with complaints of infringements of the Racial Discrimination Act.¹ In both instances the

¹ Under the requirement of s. 30 of the Human Rights Commission Act, the Attorney-General must table reports made to him by the Commission within fifteen sitting days.

¹ Section 9(1)(b) of the Human Rights Commission Act confers the Commission's complaint handling power, and s. 9GX0 its promotional power.

^o The Commission's powers to handle complaints of racial discrimination rest on s. 20 of the Racial Discrimination Act.

task of the Commission is to try to achieve a settlement. On general human rights matters, if a conciliated settlement proves impossible or, in rare cases, inappropriate, the Commission is required to make recommendations in a report to the Attorney-General on the matter. There is no similar requirement in the Racial Discrimination Act, but the Commission will, where it considers that appropriate, include in reports to the Attorney-General on human rights matters, issues related to racial discrimination. The effect of such a report, of course, is to bring a matter to public notice, through its tabling in Parliament, and, perhaps, discussion there. This publicity itself may result in changes in the attitudes, not only of the parties concerned, but also of the community at large. In the case of complaints under the Racial Discrimination Act which do not result in a conciliated settlement satisfactory to both parties there is a further course open. This is for the complainant to seek the assistance of the courts in enforcing his or her rights.'

A decision of the High Court of Australia in May 1982 had significant implications for the work of the Human Rights Commission in the administration of the Racial Discrimination Act. The case is usually known as the *Koowarta* case (*Koowarta v. Bjelke-Petersen and Others; State of Queensland v. The Commonwealth of Australia*; 11 May, unreported at 30 June 1982). The High Court upheld the validity of two important sections of the Act: section 9, which makes racial discrimination unlawful throughout Australia, and section 12, which prohibits racial discrimination in connection with land dealings. Land dealings include such matters as tenancies of houses, sales of farms and other interests such as business accommodation. The judgment is being examined and the Commission proposes to include a summary and commentary on the *Koowarta* case in its forthcoming newsletter *Human Rights*. It believes it is important that this judgment and its implications for the work of eliminating racial discrimination in Australia be made widely and continuously known.

The Commission has received and is considering another complaint about a situation similar to the one that gave rise to the *Koowarta* case.

The Commission considers it to be most important that everyone realises that racially discriminatory acts are unlawful throughout Australia.

The Commission need not wait for a formal complaint to be made to it before it acts. If it becomes aware of some act or practice of the Commonwealth, its officers or instrumentalities, which seems to involve possible inconsistencies with human rights, it may conduct its own inquiries, even though no complaint has been made, and either report to the Attorney-General or, if it is appropriate, try to achieve any settlement necessary.⁶

There is a third way in which the Commission may act in this field. The Attorney-General may ask the Commission to examine a Commonwealth act or practice from a human rights perspective.'

Promoting Awareness of Human Rights

As has been pointed out before, the various human rights contained in the international instruments administered by the Human Rights Commission are not directly enforceable in the courts. In a sense, they are rights in the process of formation, rather than rights which have the force of law. The Commission recognises that as there are no laws in operation but goals to achieve, a great deal of its work must be devoted towards working with the community to improve public awareness of human rights issues. The legislature

⁶ Before a complainant may bring civil proceedings that person must have received a certificate from the Commissioner or a member of the Commission certifying that a compulsory conference under s. 22(1) of the Racial Discrimination Act has failed to settle the matter. This certificate, and proceedings instituted pursuant to its issue, are under s. 24 of the Racial Discrimination Act.

^{*} The power to perform a function of s. 9(1)(b) in this way arises under s. 10(3)(c) of the Human Rights Commission Act.

['] The power to perform a function of s. 9(1Xb) in this way arises under s. 10(3)(a) of the Human Rights Commission Act.

has, indeed, stressed the importance of this role for the Commission by enacting section 9(1XD) of the Human Rights Commission Act, which requires the Commission:

to promote an understanding and acceptance, and the public discussion, of human rights in Australia and the external Territories.

The ways in which the Commission has tackled the task of promoting an awareness and recognition of human rights in Australia are described later in this annual report:

- Chapter 6 describes the purpose of issuing the Human Rights Commission newsletter; the work of the Commission's Resource Centre in teaching human rights; the technique adopted for improving community relations in particular towns; and the Public Inquiry into Freedom of Expression in Australia.
- Chapter 7 sets out the Commission's progress in establishing and developing contacts with non-government organisations in the human rights field.
- Chapter 8 describes the practical and project oriented nature of the Commission's research.

Volume 2 of this report, which contains a report from the Commissioner for Community Relations for the period 1 July - 9 December 1981, makes reference to the promotional and educational activities of the Commissioner in relation to racial discrimination. The work of the Commissioner in this respect since 10 December 1981 has been, consistent with the amended Racial Discrimination Act, carried out as part of the functions of the Human Rights Commission.

Working with the States

The Human Rights Commission Act confines the Commission's concerns to Commonwealth law and practice. As such, it is in conformity with the Government's Federalism Policy, which has as its main feature a recognition of the role of the individual States of the Commonwealth in the nation's political system. By section 11 of the Act, the Commission is empowered, under arrangements made by the Attorney-General with a State Government or the Government of the Northern Territory, to operate in association with State agencies. It is the Commission's hope that it will be possible, in each State and the Northern Territory, to develop co-operative arrangements with kindred State and Territory institutions that will give the public access to one office for the handling of human rights complaints; that will be less costly administratively than the operation of joint offices; that will avoid the inevitable and time-consuming jurisdictional and other disputes associated with the separate operation of bodies with similar and somewhat overlapping functions; and that will facilitate a national rather than a Commonwealth or regional approach to human rights problems.

The Commission records that although most States had indicated a willingness to co-operate with the Commonwealth, and with the Commission itself, in the promotion of human rights, it has so far not been possible to effect any specific arrangements with any particular State or agency. In part, this is a result of a federal system in which there are frequent elections which cut across arrangements being developed at the administrative level. In part, the reasons are due to differences between Federal and State Governments which have their impact on the work of the Commission. In part, this is also due to the fact that several States are themselves revising their own machinery for equal opportunity or anti-discrimination. The Commission records its hope that in the next financial year it will be possible either to make effective arrangements with the States and the appropriate agencies, or to develop its own presence in each State. It believes that the cause of human rights will not be well served if all complaints have to be routed to Canberra. Rather, it is desirable that a person close to complainants is able to take up their problems direct, and to explore what ways there are of resolving the difficulties. It

would only be when issues of principle arise which would require changes in law or general departmental practice, that the complaint would need to be sent through to the head office of the Commission in Canberra, where research facilities are available and policy issues can be taken up.

The Commission recognises that there is a fund of goodwill in the States. It has appreciated the opportunities there have been for consultation and co-operation with the Anti-Discrimination Board in New South Wales, the Counsellor for Equal Opportunity in New South Wales, and the Commissioners for Equal Opportunity in Victoria and South Australia. While recognising the legal and other difficulties it looks to continued co-operation with these agencies, and to the development of arrangements that simplify access for the public to human rights remedies and avoid some of the complications associated with the Federal system. The Commission believes that the public should not have to grapple with questions of jurisdiction and not have to go from office to office. They should be able to go to one place with their complaint. It is up to the agencies involved to develop procedures that will ensure that the best available remedy is found.

CHAPTER THREE

THE QUESTION OF RESOURCES

Resources and Options

The Human Rights Commission was constituted with seven part-time Commissioners, including the Chairman, and one full-time Commissioner, the Deputy Chairman. It has been given a staff ceiling of twenty-five full-time officers, and a part-time ceiling of five. Of the full-time staff ceiling of twenty-five, ten came from service in the office of the Commissioner for Community Relations and four from the Human Rights Bureau. Thus the ceiling allowed appointment of a further eleven full-time officers. In addition, the Commission has been able to appoint three part-time officers, to add to the two part-time staff who joined it from the office of the Commissioner for Community Relations. Thus it can be seen that although there is staff to cover all the functions of the Commission, its human resources are not plentiful. (A statement of financial expenditure is at Appendix 2.)

The Commission accepts the challenge to do the utmost for human rights with the resources available to it. While it has had to be careful about its priorities, and not waste resources of people, time and money on projects of less than major significance, it believes it has under way a range of activities that represents a proper and forward-looking discharge of its functions. Many of the particular activities are noted in the detailed chapters in Part B of this report.

Members of the Commission have been active in promoting the cause of the Commission in their own areas, in addition to the contribution they have made to the regular meetings of the Commission. Further, the fact that the staff numbers have been relatively small has meant that the office has emerged as a tightly knit and cohesive team, sharing the common purpose of promoting human rights in Australia. In addition, the Commission has adopted a policy that it should wherever possible work with other individuals and organisations active in the field. In the previous chapter, reference has been made to the importance the Commission attaches to working with State agencies concerned with human rights. In Chapter 7 the Commission notes the consultations it has already commenced with representatives of non-government organisations active in the field of human rights. The Commission also intends working with academic institutions and others who can contribute resources to a common pool in the furtherance of human rights. The Commission sees this method of working as inherent in the whole process of furthering human rights.

From Bureau to Commission

When the Human Rights Commission Act came into force on 10 December 1981, the Human Rights Bureau, under Mr P. H. Bailey, had been in existence within the Attorney-General's Department since 5 August 1980. On that date, the Attorney-General announced that Australia would ratify the International Covenant on Civil and Political Rights, which now forms a schedule to the *Human Rights Commission Act* 1981, and established the Bureau by administrative directive. It consisted of seven officers and was seen as an interim organisation, established pending the creation of the

Human Rights Commission. It set about the task of preparation for the Commission by developing a staffing structure; working out procedures for the handling of complaints, informal inquiries, and requests for assistance; making links with other organisations, both government and non-government, in the human rights field; participating in conferences and seminars and preparing a pamphlet about its work and the ICCPR; and promoting the cause of human rights in Australia.

Finding Staff and Accommodation

When the Human Rights Commission Act came into force, one of the first tasks of the Commission was to select its staff. The Commission relies on its staff members to provide the research, advice and general administrative support that are so vital for effective operation. Accordingly it has been of great importance to build on the nucleus of the staff of the Bureau and the Commissioner for Community Relations and fill the remaining of the twenty-five full-time and five part-time posts allocated to the Commission as quickly as possible.

As the establishment of the Human Rights Commission involved the amalgamation of the Office of the Commissioner for Community Relations with the Commission, the latter was fortunate in having immediately available a dedicated and experienced team of officers accustomed to the administration of the Racial Discrimination Act. Most of this group were appointed to form one of the Commission's three branches, the Inquiry and Conciliation Branch. The former Bureau staff formed the nucleus of the Legal and Projects Branch which was established to provide the Commission with legal advice and to conduct research into practical human rights problems. The Promotion and Information Branch has the function of promoting human rights in the community at large and negotiating with the States and the Northern Territory on co-operative arrangements in relation to human rights administration. The three branches work to the overall direction of the Deputy Chairman and the Secretary of the Commission. The staff of the Commission are employed under the *Public Service Act* 1922. This ensures security of tenure and professional independence for the Commission staff. It also means both that the Commission can draw from a wide pool of experienced officers and that it can ensure that its own staff have opportunities for promotion in the wider field of the Commonwealth Public Service. The Commission hopes that operating under the Public Service Act will in due course also make it possible to arrange secondments and transfers of staff to and from the Commission both to its advantage and for the benefit of the Service as a whole.

As an independent statutory body, the Commission must be seen as a genuinely independent organisation promoting the cause of human rights in Australia. Indeed, it was decided during the period of the Human Rights Bureau's preparatory work for the coming of the Commission that it should be housed in privately owned offices rather than in government buildings. The Commission affirmed this decision. Accordingly, after much consideration, the Bureau and, ultimately, the Commission, was located in the AMP Building in proximity to the Administrative Appeals Tribunal and the Ombudsman.

The Commission records its pleasure that in the process of preparing the sixth and seventh floors of the AMP Building for its use, it was possible to install a toilet for use by disabled people use wheelchairs. It is not a matter for congratulations that, after IYDP 1981, this wheelchair-accessible toilet is the only one within a half kilometre radius of the Commission's premises.

The Commission is indebted to the Attorney-General's Department for the administrative support it has so generously and effectively provided to the Commission. The Department has been perceptive and supportive in lending specialist officers who have assisted with great efficiency in the establishment of the Commission in its new

premises and in providing vital skills at times of peak activity when the staffing level of the Commission was inadequate to cope with its workload.

PART B ON THE JOB-THE FIRST SEVEN MONTHS

CHAPTER FOUR HANDLING COMPLAINTS

How the Commission Handles Complaints

Complaint handling is one of the major continuing functions of the Commission. This role is the one which provides most contact with the public, and is likely to become the most visible and time consuming. Accordingly, the Commission has devised a set of procedures to ensure that complaints are handled effectively.

A number of points are common to both human rights and racial discrimination complaints. Complaints need not be in any particular form nor, indeed, do they initially have to be in writing. It is proposed that complaints about human rights generally may be made on the tear-off form attached to the Commission's forthcoming pamphlet, *The Human Rights Commission and You* (described in Chapter 6). It is proposed that a revised pamphlet dealing with complaints under the Racial Discrimination Act will be issued in the coming year.

In general, the Commission will not act upon anonymous complaints. Where, in exceptional circumstances, a complainant wishes to remain anonymous, he/she is required to contact the Commission, by appropriate means, e.g. by telephone or through an intermediary, to discuss the matter.

The Human Rights Commission Act is concerned mainly with ensuring that the laws of the Commonwealth, and the administration of those laws, are consistent with the human rights set out in the Commission's charter. The emphasis of the Racial Discrimination Act, on the other hand, is upon conciliation between parties and the development of understanding, tolerance and friendship among racial and ethnic groups. The procedures that have been developed or are developing within the Commission for handling racial discrimination complaints, and general human rights complaints, reflect these differences in approach.

General Human Rights Complaints: Procedures

On receipt of a complaint relating to human rights generally, the Commission's first step is to consider whether the complaint falls within its charter, that is, whether it relates to Commonwealth law, or a practice under that law, and to human rights as defined in the Covenant or the three Declarations.

Complaints falling within the Commission's charter are carefully investigated. In appropriate cases the Commission is required to try and effect a settlement of the matters involved. To assist it in this task the Commission has the power to call for documents and require persons to appear before it. Where attempts at a conciliated

¹ Conferred under s. 15(1) of the Human Rights Commission Act.

settlement are not appropriate or are unsuccessful, the Commission is required to bring the matter to the notice of the Government and may make recommendations as to appropriate remedial action.' Reports of the Commission on complaints of infringements of human rights are required to be tabled in Parliament, thus exposing to public scrutiny the findings and recommendations of the Commission.'

Where a complaint does not fall within the Commission's charter, the complainant is advised of this and, if appropriate, alternative avenues of recourse are suggested. If the complainant so wishes, the Commission refers the complaint to the relevant authority.

Where feasible, in regard to approaches made to it which are not strictly within its terms of reference, the Commission will adopt a facilitating role. This may, for example, involve making inquiries on an individual's behalf to identify an avenue of assistance, or attempting to clarify apparent misunderstandings between the individual and the agency involved. Such action is, however, limited to avoid unnecessary diversion of staff resources from cases which it is the Commission's statutory duty to handle.

In respect of some of the concerns of the Commission, some other remedies such as are available in the courts or through the Ombudsman already exist. Accordingly, the Commission may, in its discretion, decide not to inquire as a result of a complaint if the complaint could be more effectively or conveniently dealt with elsewhere.' In cases where the Commission considers it should exercise its discretion in this regard, it may, with the complainant's consent, forward the complaint to a relevant authority. In cases where complainants have already laid their complaints elsewhere, the Commission will only take concurrent action on the case if, after consultation with the other agencies, there is a clear reason for doing so.

Racial Discrimination Complaints: Procedures

General

Although the Commission has overall responsibility for the administration of the Racial Discrimination Act, the Commissioner for Community Relations continues to exercise his statutory powers of inquiry and conciliation under that Act.

The Commissioner has, over the seven years that the Racial Discrimination Act has been in force, developed procedures for inquiring into and settling matters of racial discrimination.

A person claiming to have been discriminated against by another person because of race, colour, descent or national or ethnic origin may complain to the Commission.

Details of the complaint are sent by the Commissioner to the person complained about (the respondent) who is invited to respond. In most cases, mediation in this way by the Commissioner is sufficient to bring matters to a satisfactory outcome for the parties.

There are times, however, when it is necessary to bring the parties together to resolve the issue between them. This is done by a compulsory conference which both parties and, at times, others are directed to attend. The conference is chaired by the Commissioner or a member or an officer of the Commission, whose primary role is to assist conciliation between the parties.

Following a compulsory conference, settlement may take place on a variety of bases. Many complainants accept the respondent's explanation of events while others are satisfied with oral, written or public apologies. At times, monetary damages are sought and received.

Section 9(1)(b)(ii) of the Human Rights Commission Act.

¹ Section 30 of the Human Rights Commission Act.

^o This power is conferred under s. 10(4)(d) and (e) of the Human Rights Commission Act.

Should the Commission fail to assist the parties to arrive at a settlement by means of a compulsory conference, a member of the Commission or the Commissioner may issue a certificate to the aggrieved person to enable remedies specified under the Racial Discrimination Act to be pursued through civil court processes. The remedies which the court may impose include damages.

As mentioned elsewhere, the emphasis of the Racial Discrimination Act is upon conciliation and upon the development of community understanding in racial matters. The Commission's policies and procedures are consistent with this emphasis and are aimed at developing harmonious community relations throughout Australia.

Field Trips

The experience of the Office of the Commissioner for Community Relations in undertaking field trips has encouraged the Commission to continue this particular work. Field trips are undertaken to inquire into and settle complaints of racial discrimination. At the same time, they serve to combat racial discrimination and prejudice and to promote tolerance, friendship and understanding between racial and ethnic groups.

During the period under review, field trips were undertaken to Cairns, Bundaberg, the south-west district of New South Wales and the north-west and Gippsland districts of Victoria. The visits enabled settlement on the spot of most complaints. Liaison was established between Aborigines and community groups and organisations, and the police, which assisted in finalising matters of concern and established means whereby future difficulties might be taken up directly at the appropriate local level.

As part of the Commission's endeavours to inform itself on the extent of racial discrimination and racial prejudice, arrangements have been made for Commission members to participate in field trips. For example, Mrs Ford took part in the field trip in the Gippsland district of Victoria. It is proposed that she will accompany officers on field trips into northern New South Wales and throughout Queensland; and that Professor Boyce and Professor Aroney will accompany Mr Grassby on postponed visits to Geraldton and to Moree and Wee Waa respectively.

Statistics and Case Studies

General Human Rights Complaints: Statistics

During this first seven months of its operations, the Commission has received ninety-seven complaints of infringements of human rights.

Most of the complainants have been located in either Victoria, New South Wales or the A.C.T. (a full breakdown appears at Appendix 3).

By far the greatest number of complainants have been male (nearly 70%).

The Commission's concern, in its general human rights jurisdiction, is with Commonwealth law or practice. It is not unnatural, therefore, that about 40% of complaints received related to the actions or responsibilities of the Commonwealth Government or its authorities. In terms of individual issues, justice, immigration and social security matters have been among those most frequently raised.

General Human Rights Complaints: Case Studies

The Commission receives complaints on widely varying subjects. In the general human rights area particularly, a number of complainants tend to see the Commission as having a mandate to investigate alleged infringements of the 'human rights' they perceive as existing, for example an appropriate allocation of road space for bicycle riders, or the activities of State authorities. These areas are not within the Commission's mandate. Thus, about 60% of complaints alleging infringement of human rights were outside

jurisdiction (about 30% in each area). It is expected that, as the work of the Commission becomes better known, this percentage will decline.

A classification of human rights complaints under broad subject headings also appears at Appendix 3—the major headings being Justice, Immigration and Benefits.

A number of complaints are discussed in other chapters. For example, a complaint which has occupied a large amount of the Commission's resources and has involved it in extensive consultations with interested individuals and organisations is that on the question of the absence of a law relating to child destruction in the A.C.T. (Chapter 5).

Complaints have also been received about the restrictions on persons with epilepsy migrating to Australia and about the deportation of persons who have been convicted of criminal offences (mentioned in Chapter 8).

It is perhaps illustrative to discuss some of the other issues raised through complaints in a series of case studies.

Marriage and the family. One matter which appears to raise some quite important questions of policy and finance concerns de facto relationships. So far, the Commission has received complaints about two aspects of de facto relationships. The first concerns a member of the defence force living in a de facto relationship which had been recognised by the Department of Defence for over six years. The complainant was advised that the basis of recognition of de facto relationships for such purposes as the provision of housing was, as a matter of policy, to be changed from January 1981. Prior to January 1981 the criterion for recognition had been evidence of a genuine and potentially lasting domestic relationship, usually satisfied by six months' cohabitation. The new criteria not only require twelve months' cohabitation, but also are limited to couples with dependent children or a legal impediment to marriage.

The second aspect concerns the differing definitions of de facto wife for the purposes of the Social Services Act and the Income Tax Assessment Act. The Department of Social Security in certain circumstances recognises the de facto situation and accordingly withdraws the deserted wives pension. However, the Commissioner for Taxation does not in those particular circumstances recognise the de facto wife for the purposes of the Income Tax Assessment Act, which means that no concessional deduction is available for the de facto husband. Thus the de facto family gets the worst of both worlds—no pension and no taxation deduction. It seems that in addition to the Department of Social Security and the Australian Taxation Office, other departments and agencies adopt their own definitions of de facto marriage. For example, the Superannuation Act makes a distinction, among its definitions of spouse, between those couples who have lived together on a permanent and bona fide domestic basis for a period of three years or more and those couples who have lived together on such a basis for less than three years. In respect of the former, entitlement of an individual to his/her deceased spouse's benefit is automatic. In respect of the latter, the surviving partner has to show that he/she was 'wholly or substantially dependent upon the deceased person'.

Thus there appears to be fairly widespread acceptance among Commonwealth departments and agencies, either by law or by administrative decree, that persons in a de facto rather than a formal marriage relationship are in certain circumstances to be regarded as married. There is, however, no agreement on the basis of this recognition.

From the Commission's point of view, the important basic principle is the provision in Article 23 of the ICCPR that the family is the fundamental group unit of society and should be protected. This kind of cross-jurisdictional problem may well be one where the Commission can have a useful promoting and co-ordinating role, possibly by trying to bring departments and agencies together to review the problem and attempting to develop acceptable conclusions.

Remissions for Prisoners. Another problem raising policy issues relates to the treatment of persons imprisoned for Commonwealth offences. The Commission has

received a complaint that different remission and parole periods are available according to the State in which the offender is imprisoned. The Commonwealth Prisoners Act provides that Commonwealth prisoners may benefit from the remissions available in the State where they are imprisoned. Thus, for example, the 140 or thereabouts Commonwealth prisoners in New South Wales are eligible, if imprisoned for more than a month, for a remission of one-third of the original sentence, plus two days a month if the sentence is more than a year. In Victoria, however, approximately thirty-five Commonwealth prisoners get a third off the original sentence (the same as in New South Wales) and also can have the third taken off the non-parole period (not the same as New South Wales). Similar inconsistencies result when remissions available in other States are compared.

The general policy approach appears to be that there can be no distinction within the one gaol system between Commonwealth and State prisoners and that this is more important than ensuring that Commonwealth prisoners around Australia get the same remissions. The Commission is giving consideration to this, which could of course involve inquires in the States, in the light of Article 26 of the International Covenant. This Article provides, in effect, that all persons are equal before the law and that they are entitled, without discrimination, to be protected by the law.

Register of Cancer Patients. A third issue before the Commission concerns proposals to introduce legislation in the A.C.T. to require doctors to register cancer patients, as they already do for a list of prescribed diseases or conditions. The complaint is that such legislation would constitute an invasion of privacy. The matter is dealt with more fully in Chapter 8.

Public Service Complainants

One matter that has caused the Commission some concern is the difficulties affecting the making of submissions or complaints by public servants. The problem arises because all public servants are constrained by the Public Service Regulations and the Crimes Act from making public, except when authorised, information obtained in the course of their official duties. These provisions have already inhibited some officers from bringing situations of which they are aware to the Commission for attention. The position is compounded in the case of at least some statutory authorities. These are not infrequently affected by their own 'secrecy' provisions, such as section 92 of the Health Commission Ordinance (A.C.T.).

In many cases it can be expected that departments and agencies will not prevent officers from bringing to the notice of the Commission human rights matters of which they become aware. It would nevertheless be unrealistic to suppose that officers would always be able to pursue this course, and the worst cases may well be those least likely to be brought forward.

Accordingly, at the end of the year the Commission was considering an approach to the Government or the Public Service Board to see whether the precedent followed in the case of the Henderson Poverty Inquiry might be followed. In that instance the Board, with the approval of Government, issued guidelines to departments and agencies encouraging minimum restrictions on freedom of expression.

Racial Discrimination Complaints: Statistics

Since 10 December 1981, 381 complaints of racial discrimination have been received. A breakdown of these into areas of complaint appears at Appendix 4, the most frequent being racist statements/mail, employment, judicial/legal actions and provisions of goods and services.

Breakdowns of complaints by complainants and residence also appears at Appendix 4. It is interesting to note both the difference in male-female complaint rates—42% compared to 27%—and the fact that about 50% of complainants have been located in either New South Wales (32%) or Victoria (19%).

In terms of the respondents, about 50% have been private individuals or organisations, just under 30% State authorities, and nearly 15% Commonwealth agencies. (In about 5% of cases, the particular respondent was not identified or complainants were concerned with general issues.)

About 30% of complaints were by or on behalf of Aborigines. Among those other complaints in which complainants specified their ethnic origin (again about 30%), the largest identifiable group were Italians, followed by British and then Indo-Chinese, Arabic, Indian, Spanish/South American and Greek.

Racial Discrimination Complaints: Case Studies

In the short period since it commenced operations the Commission has found that discrimination and prejudice against persons and groups in Australia on account of their race, colour or ethnic origin is a significant factor in the failure to accord to all citizens and residents equality of opportunity in the exercise of fundamental freedoms and human rights. This finding is based on an analysis of the complaints the Commission has received on the many contacts which it has had with the community and on its field work. For the present the Commission continues with the policies and practices established by the Commissioner for Community Relations and, for the future, will endeavour to develop and foster those policies and practices. The Commission has decided that racial discrimination matters would receive the highest priority. It has initiated research and educational projects to support and to extend the work previously undertaken and currently pursued by the Commissioner for Community Relations. One of those projects will concern the identification of human rights problems of Aborigines in country areas (see Chapter 8).

Some examples of complaints and their outcomes, following action by the Commissioner, with the assistance of Commission staff, are set out below.

Local Government. An Aboriginal couple camped on a recreation reserve complained that they were threatened with eviction by the Shire Council. The couple refused to move because of a long history of being shifted by authorities from one place to another in the district where they had lived and worked for thirty years. Confrontation between the couple and the Shire Council threatened harmonious community relations in the town. Court action against the couple relating to assault of a shire official and trespass resulted in publicity.

Commission officers met several times with the complainants, members and officers of the Shire Council and Aboriginal community leaders. The couple decided to leave the recreation reserve after receiving certain undertakings from the Council.

Accommodation (1). An Aboriginal woman and her brother and sister-in-law in a provincial town complained to the Commission that they had been discriminated against in attempts to obtain leased accommodation from two estate agents and from four landlords. They alleged that they had responded by telephone to advertisements in the local paper for flats and other rental accommodation and arranged to inspect the premises or to call at estate agents' offices. They alleged that when it was seen that they were coloured or Aboriginal persons they were told that the premises had been let or that they would not be available to the applicants because of their race or colour. In several instances, the applicants advised the landlord or estate agent that they were coloured or Aboriginal and received no assistance or were told the accommodation would not be available to them because of their race or colour.

Compulsory conferences and other conferences were convened in all matters and parties resolved the issues between them. Apologies and assurances were extended and received. No complainants sought specific remedies.

In several instances, the complainants accepted that they had misunderstood the actions and responses of landlords. The circumstances which they felt to be discriminatory on the basis of race or colour were explained satisfactorily to them as relating to other factors.

(2). In another provincial centre two Aboriginal women complained against a landlord regarding two separate acts of racial discrimination. Both stated that they had responded to a newspaper advertisement seeking tenants for accommodation which was available. When it was discovered they were Aboriginal the accommodation was no longer available. In one instance it was alleged that the landlord said he had a 'Pommy' tenant who did not like Aborigines and that a previous tenant had not looked after the premises.

In the other instance the landlord was alleged to have said 'I am sorry we do not let flats to coloured people'.

Compulsory conferences were convened. The landlord apologised for the offence given to the Aboriginal complainants and assured them that racial discrimination would not be a factor in letting accommodation. This apology and assurance was acceptable to the complainants.

Police (1). An Aboriginal family complained that nine police entered their home without a warrant and arrested several occupants and visitors. Members of the family claimed that police would not have acted in this manner if those in the house had not been Aborigines.

A meeting was arranged between senior police of the district, aggrieved persons and Aboriginal community leaders to inform the police of the matter. The meeting prepared the way for effective liaison between police and the Aboriginal community. Police also undertook to inquire into the complaint and to take appropriate action.

(2). Alleged inactivity by police in pursuing complaints by Aboriginal persons was the cause of several complaints. Serious harassment of Aboriginal families by a gang of white youths was allegedly not pursued sufficiently vigorously to deter the youths. Members of the Aboriginal community felt compelled to protect a family. They apprehended one of the youths and took him to local police. In doing so, they placed themselves at serious risk.

Aborigines also alleged that complaints lodged with police were not acted upon but brought about a situation where police encouraged those complained against to proceed against the Aborigines. They felt that no matter which they had brought to the attention of the police had resulted in any charges. The general feeling of the particular Aboriginal community was that justice was for others but not for them.

Complaints to the Commissioner for Community Relations resulted in prompt senior police action.

(3). In another case an Aboriginal girl was alleged to have been seriously assaulted at a skating rink, after an exchange between Aboriginal and white girls. The father of one of the white girls had allegedly intervened and knocked an Aboriginal girl to the ground. The Aboriginal girl's parents complained that police had not acted on information provided to them.

At the request of the Commissioner for Community Relations police commenced an inquiry. Commission officers subsequently met with police who advised that if they were to proceed they would need to summons not only the father who carried out the assault but also white and Aboriginal girls. The Aboriginal parents were informed of the results of the police inquiry and required no further action. It appeared that a lack of

communication between police and the Aboriginal parents concerned had given rise to their concern.

Advertising. An Australian of Greek origin operating a service station in competition with a service station on the opposite side of the highway complained that he was being subjected to racist slogans in the advertising of his competitor. It appeared that the signs displayed read: 'Get your petrol here for the right price, before the day goes' and 'C'mon Aussie c'mon—get your petrol from the Aussies'. The complainant had resided in Australia for twenty-six years and was an Australian citizen.

During a field trip officers visited both establishments and subsequently brought the parties together. The proprietor of the service station displaying the signs apologised for his action and said that the signs had been removed immediately the offence was brought to attention. The respondent assured the complainant that no such signs would be displayed in future.

Hotel (1). A complaint was received that a young Aboriginal woman was refused service of a meal in a bar of an hotel. It was complained that, after ordering, the waitress went to the back of the hotel and had a discussion with the chef. After waiting fifteen minutes, the complainant asked the waitress when her meal would be served. She was told that she was not to be served. The woman had never been in the hotel before. A compulsory conference was convened and the matter settled on the basis of a written apology by the publican and assurances of service on the same basis as others in the future. The assurance was given in relation to the eight hotels owned by the publican.

(2). A complaint was received concerning refusal of service in an hotel. Two Aborigines were served a round of drinks in the hotel. When they sought a second round the barmaid said that she could not serve them. It appeared to the two Aborigines that she had received directions from the management to provide no further service. Those refused service became angry and a fight started. Police were called and arrested both men.

Later that evening two other Aborigines, apparently unaware of what had happened earlier, entered the bar and ordered drinks. The publican entered the bar, followed by about six policemen, two of whom were in uniform. The publican ordered both Aborigines to leave the bar and it was alleged that one of the policemen not in uniform said, 'Do you want a .38 between the eyes?' It was alleged that, when one of the Aborigines asked the uniformed police whether they had heard this threat, they said they heard nothing.

The Aborigines involved in the fight were charged and convicted as a result of their actions after they had been refused service. In relation to the other two Aborigines, a compulsory conference was convened and the matter settled on the basis of an oral apology. The publican said that he had not realised that the men were not involved in the previous incident and that he had been in an agitated frame of mind at the time. The complainant accepted his explanation and his apology.

Concerning allegations against police, the Officer-in-Charge of the station met the aggrieved persons and undertook to inquire into the matter and to take any disciplinary action necessary.

Employment (1). A National Employment Strategy for Aborigines (NESA) trainee with a government department alleged that non-Aboriginal male and female employees had harassed her because of her race or colour.

The Commissioner was informed that the trainee was about to resign because of the severity of the harassment. At the request of an Aboriginal community worker the Commissioner pursued the matter with the department.

The department advised the Commissioner that derogatory terms were used by officers and that these officers had apologised to the trainee. An officer has been

counselled and informed that further misconduct would be viewed seriously and would lead to appropriate disciplinary measures.

(2). An Aboriginal woman complained that she had applied for a position in an office and was told that she was unsuccessful. Her subsequent inquiries suggested that she had been unsuccessful because a member of the office had indicated 'she would give her a hard time because she was Aboriginal'.

The Commissioner took the matter up with the company which expressed regret that prejudice had resulted in the complainant not being appointed to the position. The management undertook to seek out other positions within the company which could be filled by the complainant.

Driving Licences. The proprietor of a driving school from an industrial city with a population with a wide range of ethnic backgrounds complained that applicants for drivers licences were disadvantaged if they did not know English. He complained that although test papers were in various languages, booklets on road rules were available in English only.

It was further complained that the licence-issuing authority had advised publicly that multi-language material would be available. In addition, the office hours of the testing stations made it impossible for industrial workers, many of whom were of non-English-speaking backgrounds, to obtain licences without loss of income.

The matter was referred to the licence-issuing authority which advised that translation of road rules booklets had taken considerably longer than had been expected. Efforts were being made to expedite production. It was further advised that office hours would be extended.

CHAPTER FIVE

EXAMINING LEGISLATION

Review of Proposed A.C.T. Mental Health Ordinance

One of the roles of the Human Rights Commission is to be aware of proposed legislation which may result in possible human rights infringements. The Commission also has a special duty to watch over the rights of groups, such as children, persons with disabilities and the intellectually disadvantaged, who have restricted opportunities for looking after their own interests. It was for these reasons that the Commission approached the Attorney-General suggesting that he refer to it the draft A.C.T. Mental Health Ordinance 1981 so that its human rights implications could be examined. Following this reference in June 1982 the Commission began consultations with the Capital Territory Health Commission and a wide range of non-government organisations with an interest in the area. The Commission also studied recent legislative changes and other developments throughout the rest of Australia. Attention was also given to recent cases involving mental health legislation which have been argued before the European Court of Human Rights.

In discussions of human rights in the Western world mental health legislation has received surprisingly little attention, in part because of the difficulty of reconciling the rights of the individual to liberty and of the community to protection. International conventions such as the ICCPR contain extended provisions defining the rights of persons faced with criminal charges but tend to ignore the situation of persons held to be detained for their own good. International instruments dealing with economic and social rights are understandably concerned with the right to secure medical treatment and do not address issues concerning the right to refuse treatment. Until very recently there has also been a widespread assumption that the rights of persons who are less than fully rational should be heavily curtailed.

In examining the mental health legislation proposed for the Australian Capital Territory, the Commission has considered the rights of three groups of persons potentially subject to its provisions, whose needs and interests may not always be identical:

- those whose mental capacities are to some extent impaired but who are still capable of making decisions on their own behalf;
- those whose mental capacities are impaired to the point where they are incapable of making reasoned decisions; and
- those who are incorrectly considered to be suffering from mental incapacity.

All three groups need somewhat different provisions to ensure that their essential human rights are protected. In this context it is important to note that the concept of human rights inevitably covers a considerable degree of choice, including the freedom to make the wrong choice where this does not seriously harm other people. In the case of persons who are mentally ill or intellectually disadvantaged little weight has generally been given to the value of personal autonomy promoted by the United Nations in the Declarations on the Rights of the Disabled and of the Mentally Retarded.

Debates over mental health legislation for the A.C.T. have focused on three main issues:

1. who should be covered by the legislation:
 - in terms of how severely disabled an individual would have to be before coming under the compulsory provisions of the legislation; and
 - in terms of whether the mentally ill and the intellectually disadvantaged should be covered by the same provisions;
2. the protective conditions which should guard against the abuse or over enthusiastic use of the emergency provisions and compulsory treatment orders;
3. whether irreversible or controversial forms of treatment (notably psychiatric surgery and electro-convulsive therapy) should ever be forced upon individuals who do not or cannot give their informed consent.

In examining these issues the Commission recognised that in many cases a clear conflict between rights is involved and that it was necessary to attempt to define a position where the competing concerns are so balanced as to create an optimal situation for the individuals who are most directly affected.

At the end of June 1982, the Commission was proposing to report on the draft Ordinance to the Attorney-General at the completion of a second round of consultations with the interested parties.

Review of Commonwealth Crimes Legislation

As part of its functions under section 9(1Xa) of the Human Rights Commission Act, the Commission decided to examine the central crimes legislation of the Commonwealth. The purpose of the examination was to ascertain whether the laws chosen were inconsistent with or contrary to any human rights, and to report to the Attorney-General the results of this examination.

The Commission selected the *Crimes Act* 1914 and other related Commonwealth crimes legislation, namely:

- the *Crimes (Hijacking of Aircraft) Act* 1972;
- the *Crimes (Internationally Protected Persons) Act* 1976;
- the *Crimes (Aircraft) Act* 1963;
- the *Crimes (Protection of Aircraft) Act* 1973;
- the *Crimes (Biological Weapons) Act* 1976;
- the *Crimes (Taxation Offences) Act* 1980;
- the *Crimes at Sea Act* 1979; and
- the *Crimes (Foreign Incursions and Recruitment) Act* 1978.

It was decided that the examination would not, however, extend at this stage to criminal law provisions applying only in the A.C.T. The Commonwealth enactments were to be examined in the light of the ICCPR and, where relevant, the three Declarations with reference to which the Commission operates. In addition, it came to the notice of the Commission that certain of the provisions being examined may also infringe the Racial Discrimination Act and the International Convention on the Elimination of All Forms of Racial Discrimination, so it was decided to examine the enactments against that Convention as well.

The Commission sought informed comment on these pieces of legislation and their application from over sixty interested persons and organisations. Work on the examination was proceeding at the end of the year.

Child Destruction Law for the A.C.T.?

On 1 April 1982, the Human Rights Commission received a submission from the A.C.T. Right to Life Association concerning the law relating to child destruction in the A.C.T.

The Commission examined that submission and determined to proceed on its own initiative under section 9(1)(c) of the Human Rights Commission Act. The Association argued that:

As the law of the A.C.T. now stands there is an obvious gap in that *the child has no legal protection at all while in the process of birth*. This is because:

- (a) the child is not 'wholly born into the world' (section 20, Crimes Act), and
- (b) interference with the child at that stage does not constitute 'procuring a miscarriage' (sections 82-84).

Legislation on the matter of child destruction varies throughout Australia. The existing law in the A.C.T. does not provide a criminal offence on the part of anyone except the mother where a foetus is killed either during the process of birth or so late in the pregnancy that a stillbirth rather than a miscarriage is procured. Similarly, New South Wales has no specific offence of child destruction although a mother can be convicted under section 21 of the Crimes Act, 1900. On the other hand, in Victoria there is an offence of child destruction, namely the killing of a foetus, capable of being born alive, before it has an existence independent from its mother. Evidence of a pregnancy of twenty-eight week's duration is prima facie proof of viability. In Queensland child destruction has the same meaning as in Victoria but acts and omissions to act are covered. South Australian law is similar to Victorian except that acts performed by legally qualified medical practitioners to preserve mothers' lives are excluded. In Tasmania and Western Australia child destruction would appear to be limited to viable fetuses but viability is not defined in the legislation. Preserving the mother's life is a defence in Tasmania.

In England and Wales the Infant Life (Preservation) Act 1929 makes it unlawful to terminate a pregnancy by a method which destroys a foetus capable of being born alive, unless this is done in order to preserve the life of the mother. There is a rebuttable presumption that a foetus of twenty-eight weeks' gestation is capable of being born alive. In Scotland, however, a pregnancy of any duration may be lawfully terminated if the conditions laid down in the Abortion Act 1967 are fulfilled.

The question of whether the right to life proclaimed in Article 6 of the ICCPR extends to the period before birth would not appear to have been the subject of judgment in an international forum. The Article was debated in the travaux of November 1957. An amendment, which would have explicitly protected the right to life of the child before birth, was clearly defeated (U.N. Third Committee Session 820).

Although judgments on Article 6 are lacking, there have been a number of judgments on closely related provisions of other human rights treaties. In examining the provision in Article 2 of the European Convention on Human Rights, 'Everyone's right to life shall be protected by law', the European Commission of Human Rights has declared that the foetus does not have any absolute right to life and has reserved judgment as to whether the Article recognises any 'right to life' of the foetus with implied limitations in the later stages of pregnancy (Application No. 8416/78 *Paton v. United Kingdom*).

The American Convention on Human Rights declares that the right to life 'shall be protected by law and, in general, from the moment of conception' (Article 4.1). In 1981 the Inter-American Commission on Human Rights found that laws which permit abortion even, it would appear, subsequent to viability do not infringe either the Article of the Covenant quoted above, or Article 1 of the American Declaration of the Fundamental Rights and Duties of Man which reads 'Every human being has the right to life, liberty and security of his person' (Resolution No. 23/81 Case 2141).

Thus none of these judgments would suggest an absolute right to life before birth. The Commission, therefore, had found provisionally that an amendment of the law of the Australian Capital Territory is not called for pursuant to Article 6.

On the other hand, the Declaration of the Rights of the Child clearly states in its preamble that 'the child. . . needs special safeguards and care, including appropriate legal protection, before as well as after birth'.

In June 1982, the Commission was considering whether the preamble to the Declaration of the Rights of the Child, or human rights concerns in general, required some change in the law of the A.C.T. relating to child destruction in the process of birth and whether it was possible to meet this problem without creating a range of new problems, especially since current developments in the areas of in vitro fertilisation and foetal medicine are rapidly changing the parameters involved.

CHAPTER SIX

OUTREACH: PROMOTING AN AWARENESS OF HUMAN RIGHTS

The Commission has placed considerable emphasis on initiating action to ensure that people are made aware of their own human rights and the rights of others in the community. For any action to be successful, people need to know the forms in which deprivations of rights, such as discrimination, occur, the reasons for the manifestation, the measures which can be adopted to overcome it and the protections available to counter its effects.

It would be unrealistic to expect to achieve complete, or even substantial understanding and accord on human rights matters overnight. As part of a continuing and developing program, the Commission is establishing close contact with other agencies and individuals who are interested or active in promoting human rights. Members and staff of the Commission have established and consolidated these contacts as a basis for long-term co-operation and mutual support in human rights matters.

The ways in which community education and information can be advanced are many and varied and include consultations, conferences, public inquiries, field trips, formal and informal meetings, educational kits, special projects, publications and use of the print and electronic media. In its first months of operation the Commission has laid the groundwork for future developments by initiating activities and furthering endeavours already commenced by the Commissioner for Community Relations.

Public Contact

Each member of the Commission is also associated with a range of organisations, both non-government and government. In the course of that association there have been regular opportunities for bringing to notice the existence, concerns and role of the Commission.

As a further part of the process of promoting an awareness of human rights and of the Human Rights Commission, members of the Commission have attended and addressed a large number of meetings and conferences. Examples of these occasions are at Appendix 1. In conjunction with other consultative activities (see Chapter 7) they have provided an invaluable opportunity to discuss matters of concern in the human rights field with a wide cross-section of the Australian community as well as providing a means of exploring ways in which agreement can be reached between people of differing views.

Commission staff have also attended workshops and conferences and addressed meetings including those of bodies such as the Institute of Affiliate Accountants in the A.C.T.

Beyond Discrimination: Whole Town Projects

Settling individual cases of racial discrimination as they arise is one aspect of the Commission's work. At the other end of the spectrum are the planned activities that

engage local individuals and organisations in improving the community relations of entire communities.

The Commissioner for Community Relations and his office have worked with several communities over the past three years, setting up appropriate local structures and assisting them in their activities. The general aim in such cases has been to increase awareness of community problems, to improve understanding between different cultural groups and through these to reduce attitudes of racial prejudice. Experience in country towns suggests that settling individual cases is only one part of the process of solving racial discrimination. The changes actually required are often long term and potentially involve many individuals and institutions. To bring about these longer term changes requires a continuing program which would be beyond the resources of the Commission. Such a program may include talks, lectures, films and discussion evenings, often stretching over a considerable time, that aim to involve town leaders, the churches, the schools, the media, the police and the service clubs—a wide selection of influential opinion leaders—as well as members of the disadvantaged community or communities.

A program of this sort is admittedly ambitious, and is too broad for an agency centred in Canberra to carry out. Accordingly, the Commission's strategy, based on that of the Commissioner for Community Relations, is to work out a program under which responsibility for a whole town project ultimately rests with, and is accepted by the local community itself. This approach is a development of the work of the Commissioner for Community Relations, begun in Kempsey and Rockhampton in 1980 and 1981, and described in *A Tale of Two Towns*, Community Relations Paper No. 15.

Community groups in Rockhampton have continued the educational efforts initiated there. In March 1982, the second of two participative seminars was conducted in Rockhampton, to bring together concerned individuals, both black and white, to make plans, and to report back on what constructive measures might be undertaken. Officers from the Commission assisted in these seminars and have since monitored suggestions regarding a six-month regional course for clergy, on ministering with Aborigines.

Following the publication in 1981 of *A Tale of Two Towns*, a number of communities contacted the Commissioner for Community Relations inviting him to commence similar programs for them. The Brisbane Consultative Committee on Community Relations, for example, wished to improve community relations in the multicultural West End area of Brisbane. In March 1982 the Commissioner for Community Relations visited the West End and, with Human Rights Commissioner, Mr C. Gilbert, and the Lord Mayor of Brisbane, the Right Honourable F. N. Sleeman, launched the West End Project, which was initially planned to extend over a period of twelve months.

In each community details of individual programs differ because of the different needs, skills and intentions of the members of the local organisations concerned.

At the end of June, preparations were in hand for a project in Geraldton in Western Australia. This was in response to an invitation extended to the Commissioner for Community Relations by the Geraldton Community Education Centre to visit the town and launch a whole town project.

None of these communities was chosen because it had worse race relations than elsewhere. Indeed the experience of the Commissioner for Community Relations over the past seven years has shown that more communities could benefit from educational measures designed to improve the racial attitudes prevalent in it and to reduce local racial discrimination. Since these attitudes are not isolated phenomena but are closely related to the level of economic well-being, of housing, employment and so on, piecemeal solutions are not likely to have a lasting effect. The Commission sees whole town projects as a potentially important focus for future work.

Information

Human Rights The Commission's Newsletter

During this first year of its operation, the Commission has become aware of the need to publicise not only itself and its activities, but also the practical application of the concept of human rights in Australia. The Commission sees publication of a newsletter as an effective way of achieving both these ends, while at the same time providing a means of self-education through receipt of readers' contributions. There are many significant developments occurring at the national and State level in relation to human rights and the Commission believes it is important that these issues should be looked at in depth. Indeed, the Commission hopes that readers will use *Human Rights* as a forum through which they can convey information and express views on human rights issues in Australia.

Human Rights, the newsletter of the Human Rights Commission, has been planned as a bimonthly publication. Issues of the newsletter are to include Commission news, a report from the Commissioner for Community Relations, a section on human rights cases in the courts, personalia and a calendar of coming events. From time to time special feature articles are to be included which will focus on rights of particular groups such as persons with disabilities, children or prisoners. The newsletter will also contain, from time to time, the views of expert commentators in the human rights area.

In short, the Commission intends *Human Rights* to be accessible, open to suggestions and responsive to the needs of readers. It is only through co-operation and information sharing by all those who are concerned with human rights issues that increasing recognition and observance of human rights can be achieved.

Pamphlet

As a basic method of ensuring that the public is aware of the existence and functions of the Human Rights Commission, work was commenced on an information pamphlet. Titled *The Human Rights Commission and You*, the pamphlet will be published in several community languages and widely distributed. The Commission agreed that the pamphlet would not only summarise its functions and charter, but also the procedures to be followed in making a complaint to the Commission. To this end it is intended that the pamphlet include a tear-off slip on which a complaint can be stated and forwarded to the Commission.

Education

The Work of the Human Rights Commission Resource Centre

The Human Rights Commission's Resource Centre has two main roles—to collect and organise material on human rights and to disseminate information about human rights to the Australian community. To fulfil these roles, the Resource Centre both manages a traditional library and operates as a publications distribution unit.

The Library

The Human Rights Commission library initially inherited three collections — including the entire Resource Centre from the Office of the Commissioner for Community Relations. The library has a selected core of central legal publications, and is developing collections related to particular aspects of human rights.

It is intended that the library will become a central source for human rights material in Australia. The library is open to the public and those wishing to use its resources will be made welcome.

The priority in setting up the library has been the acquisition of main works in the human rights field and the selection of appropriate periodical titles. At present, the library has approximately 3500 monographs and 500 serial titles including Australian and State statutes.

Major projects in hand include the indexing of all the periodical titles and serials, organising a bibliography collection, the arrangement of the monograph collection into broad subject areas and the first draft of the subject headings index designed to ensure that headings are up to date and that terms appropriate to the human rights area are included. This project has been done in conjunction with the team working on the National Human Rights Bibliography (see Chapter 8).

Extensive use has been made of the resources and services of the library and the broad range of inquiries received reflects the varied nature of complaints and submissions directed to the Human Rights Commission.

Distribution of Publications

The distribution of publications on a systematic basis has grown out of an earlier arrangement within the Office of the Commissioner for Community Relations, described in detail in previous annual reports of the Commissioner. In answer to a continuous flow of requests received from students of all ages, as well as from teachers, school principals and librarians at all levels of education, the Commission has found it necessary to consolidate the tasks of selecting and mailing human rights materials. These requests tend to reflect the changing curricula in schools, colleges and universities, as the subjects of prejudice, discrimination, multiculturalism and human rights have been included in a growing number of courses. The educational and promotional activities of the Human Rights Commission under both the Human Rights Commission Act and the Racial Discrimination Act are designed in part to meet just such changing needs.

It is intended to develop more material suitable for class room use. The first such project set in train is the production of a kit of materials on human rights suitable for upper primary schools. One useful product of this project will be the production of publications explaining the nature of human rights. In addition, bibliographies and book lists will be produced to act as guides to teachers interested in tracing background materials.

A full publications program for the Commission is also being planned, under which the Commission will look to the preparation of materials that will meet a wide range of community needs, ranging from detailed research reports and discussion papers to simplified explanatory pamphlets and leaflets.

The Resource Centre will co-ordinate these activities, and provide the outreach facilities needed to service consumer requests for materials already to hand, and those (as they become available) currently being prepared.

Public Inquiry into Freedom of Expression in Australia

As an important contribution to community education and understanding the Commission decided, in March 1982, to invite interested persons and organisations to express views on the right to freedom of expression as set out in paragraphs 2 and 3 of Article 19 of the International Covenant on Civil and Political Rights.

Paragraphs 2 and 3 read:

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
- (a) For the respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

In ratifying the Covenant Australia made this reservation:

Australia interprets Article 19(2) as being compatible with the regulation of radio and television broadcasting in the public interest with the object of providing the best possible broadcasting services to the Australian people.

The invitation to make submissions was, in conformity with the Commission's charter, confined to the sphere of Commonwealth, A.C.T. and other Territory (except the Northern Territory) law and practice.

It was decided that if the inquiry concluded that excessive limitations existed on any aspect of the right to freedom of expression, or that there were insufficient restrictions, the Commission would recommend legislative or other changes to the Attorney-General.

Once the Commission had decided to conduct the Inquiry, submissions from the public and from interested persons and organisations were sought in a number of ways. It was hoped that submissions would come from particular groups, e.g. disabled persons, as well as from individuals having a concern for a particular problem, e.g. racist propaganda or the defamation of ethnic communities.

However, the Commission indicated that it did not wish to review again issues investigated and unanimously recommended upon by the Law Reform Commission in its inquiry relating to unfair publication or investigated by the Parliament and its Committees in relation to the Freedom of Information Act.

The Commission decided that while it would, if requested, respect confidentiality, it would in the normal course expect to receive written submissions which would be available for public inspection, and that in some cases the writer might be invited to discuss the submission. It was hoped that there could also be discussions with other interested persons or groups.

Advertisements were placed in thirteen major metropolitan newspapers and in seventeen ethnic language newspapers and letters were sent to the editors of these ethnic language newspapers telling them about the role and functions of the Commission. A circular concerning the Commission and the Inquiry was sent to those ethnic language newspapers in which advertisements were not placed. A letter was also sent to the Special Broadcasting Service, informing them of the Inquiry and seeking their assistance in the distribution to ethnic radio co-ordinators of prepared draft announcements concerning the Commission and the Inquiry. In addition, letters about the Inquiry were sent to Faculties of Law, Sociology, Social Sciences, Political Science etc. and to the Secretaries of all university and CAE staff associations.

Commissioners and staff of the Commission have drawn attention to the Inquiry and the important issues it involves, when attending various engagements.

Although the closing date for submissions was 31 July 1982, a number of submissions had been received by the end of June. These tend to suggest that the main problems in relation to freedom of expression in this country are censorship in all its forms, the control of all forms of the media in Australia, and lack of community access to media outlets.

Racist Propaganda

A recurring theme of reports by the Commissioner for Community Relations to the Parliament has been his concern at the incidence of racist propaganda. By racist

propaganda is meant public statements and published material in any form which are based on ideas of superiority of one race over another, or in some way attempt to justify or promote racial hatred and discrimination. As part of its research program, the Commission has reviewed the complaints received by the Commissioner for Community Relations on this matter. Approximately one-quarter of all the complaints received since 1975 can be described as relating to racist propaganda of one kind or another, and the proportion of the complaints relating to this matter is tending to increase.

It is not at present against any Australian law, except those that define public order in general, or defamation in particular, to incite racism: to disseminate, that is, racially discriminatory, hostile or even violent ideas. It is also not illegal to organise for racially hurtful and hateful ends.

Some aspects of racist propaganda are made unlawful by the Racial Discrimination Act. Thus section 9(1) makes it unlawful for a person to do any act that involves racial discrimination, and section 16 makes it unlawful for a person to publish or display an advertisement that could indicate an intention to do a racially discriminatory act. However, none of its provisions specifically makes racist propaganda unlawful.

The Commission has been most concerned at this unpleasant form of activity. It has decided that as part of a developing campaign to combat racist propaganda it will hold a conference in Melbourne in November 1982 to consider the relationship between the right to freedom of expression and the calls from any quarters for legislative proscription of racist propaganda. It has also undertaken research directed at identifying how other democracies face the problem of maintaining freedom of expression while imposing some control on the dissemination of racial propaganda and hatred.

Of the politico-judicial systems most comparable to the Australian (British, New Zealand, Canadian and the United States of America), only the U.S.A. has not made specific legislative provision dealing with racial incitement. One should note, however, occasional attempts in the U.S.A. to pre-empt group libel or to punish forms of incitement in the interests of maintaining public order.

Canada chose in 1970 to introduce federal legislation meant to punish those who might incite hatred against sections of the public identifiable in terms of their colour, race, religion or ethnic origin, and likely to lead to a breach of the peace, or who might wilfully promote such hatred *per se*. This was followed by a specific clause in the Canadian Human Rights Act 1977, and by provincial human rights codes, the most recent of which was British Columbia's Civil Rights Protection Act of 1981.

The United Kingdom first moved to ban incitement to racial hatred in 1965. The original initiative was taken very much in the interests of public order and there was seen to be a close link between the two. Non-white immigration on a relatively large scale, and the upsurge in bigotry and unrest that went with it, made the link relatively easy to see, and the need for some kind of legislative intervention seemingly urgent. There were problems with the result, however, particularly in establishing a protagonist's 'intent', in defining key words like 'hatred' and 'insult', and in getting the Attorney-General's approval to prosecute. As a consequence, the incitement provisions were amended in 1976, though not all the suggested reforms were made. As in Canada, prosecutions have been few.

New Zealand followed the general pattern of the United Kingdom legislation by passing an anti-incitement Act in 1971. Its social history has been quite different from Britain's and the permanent presence of a large Maori population has made for different attitudes, and different strategies of inter-racial accommodation. As elsewhere, there has been a notable paucity of prosecutions. Indeed, in 1977 the Act was amended to include conciliation procedures and these have been much more widely used.

The Commission intends to circulate to participants in the proposed conference copies of a background paper containing material both about practice in other countries

and about the basic issues involved in attempts to control racist propaganda. For example, the classical debate is in terms of freedom of expression versus censorship or control of that freedom. The issue of public order tends to intrude, particularly where specially violent modes of expression are used. Considerations of equality of opportunity also enter, when the maligned groups are both condemned and unable to respond effectively.

In the longer term, the Commission intends to consider whether the outcome of its investigation of the complaints received under the Racial Discrimination Act and of the associated issues warrant recommendations to the Government for further action.

Special Measures - Community Attitudes

Aborigines and Torres Strait Islanders receive benefits as special measures to assist them to overcome the disadvantages which they suffer as racial groups. The benefits relate to education, medical and health services, housing and funding of organisations and enterprises. They are given for the sole purpose of helping to overcome disadvantage.

The existence of the benefits has created, and continues to create, considerable resentment within sections of the non-Aboriginal community. Press reports indicate, for example, that a number of organisations have complained about special measures applied by government to improve the position of Aborigines.

The Racial Discrimination Act provides that special measures for the purpose of overcoming disadvantages suffered by certain racial groups are not unlawful acts of discrimination. Accordingly, benefits available to Aborigines to help them overcome disadvantages are not proscribed by the Act.

The resentment seems to derive from a lack of understanding of the benefits paid and of the reasons for them, and unwillingness to accept that Aborigines and Torres Strait Islanders do not enjoy, in general, basic human rights and fundamental freedoms in equal measure with the rest of the community.

Whatever the reasons, the resentment cannot be ignored, for it adds considerably to the divisions within the community and leads to the propagation and development of racial prejudice. Interference with the special measures cannot, however, be justified on that account.

Steps by authorities undertaking special measures to improve community understanding appear to the Commission to offer the best prospect of overcoming resentment. The development of community understanding by other relevant authorities, including the Commission, of the disadvantaged position of Aborigines is also seen to be necessary. Education projects directed towards overcoming the problem of racial prejudice towards Aborigines and Torres Strait Islanders are now more urgent than they were in the past. The Commission encourages government authorities and communities to take action, to these ends, appropriate to their functions and within the ambit of their influence.

CHAPTER SEVEN CO-OPERATING WITH OTHERS

Consulting with Non-government Organisations

Section 9(3) of the *Human Rights Commission Act* 1981 reads:

For the purpose of the performance of its functions, the Commission may work with and consult appropriate non-governmental organisations.

Consultative committees, including representatives of non-governmental organisations, may also be set up under section 17 of the Act.

Since its establishment, the Commission has placed considerable importance on the development of an effective working relationship with non-government organisations concerned and active in the human rights field. It has seen this relationship as involving not only its responsibilities in relation to complaints, but also its responsibilities for promoting discussion and public awareness of human rights.

For working purposes the term 'non-government organisation in the human rights field' has in general been taken to cover an organisation that:

- has as one of its primary objectives the furtherance of human rights as defined by the ICCPR, the three Declarations, or any other instrument that may later be 'declared' under the Human Rights Commission Act or is related to the Commission's overall responsibility for administration of the Racial Discrimination Act, but not an organisation that while supporting one provision does not support the general thrust or advocates achieving its objective by violent means;
- has a clear domestic orientation with respect to its interest in human rights as opposed to being primarily internationally oriented;
- focuses on human rights issues that relate to Commonwealth legislation, administrative arrangements or practices;
- is substantially free from government control and direction;
- is concerned with human rights in general with respect to a particular group or segment of society; or is concerned with a specific aspect of human rights with respect to society as a whole or a broad spectrum of groups or segments.

In addition to the continuing contacts with a substantial number of individual non-government organisations, the Commission has built on the initiative taken by the Human Rights Bureau in convening a consultation with national and A.C.T. based non-government organisations. On 30 April 1982, the Commission held its first consultation with twenty-five national organisations and a number of other bodies interested in human rights problems. The consultation took place in Sydney. The organisations represented are listed at Appendix 5.

The main objectives of the consultation were:

1. to enable Commissioners and representatives of key national NGOs to meet and discuss matters of mutual concern;
2. to explain the Commission, its structure, powers and functions;

3. to outline and discuss the proposed method of operation of the Commission—in handling of complaints, in research and in public education;
4. to share information and seek comments on two matters of immediate concern—a research project on Aborigines in country areas, and the promotional/educational initiatives that could be undertaken in the human rights area; and
5. to enable participants to raise other human rights issues of specific concern to them.

The representatives of the organisations present at the consultation agreed the meeting had been of value in bringing a wide range of organisations together in the human rights context and in paving the way for future consultation and action. They have asked the Commission to arrange another meeting and there will be further consultation with them about the subjects to be discussed on that occasion.

Relations with other Human Rights Agencies

The Commission, as a newcomer to what is itself a relatively new field, has been anxious to establish links with similar bodies working both in Australia and overseas.

There is no other Human Rights Commission in Australia. There are, however, in New South Wales, Victoria, and South Australia, a Counsellor or Commissioner for Equal Opportunity and Boards or Tribunals dealing with discrimination on a number of grounds within State jurisdiction which are similar to aspects of the Commission's jurisdiction at the Commonwealth level. The Deputy Chairman of the Commission, and the Commissioner for Community Relations, participate in the regular meetings held by the Counsellors for Equal Opportunity. At these meetings, issues of common concern are discussed and experiences shared.

One of the particular matters which has been discussed at these meetings is the question of statistics—the aim being to obtain agreement on a uniform statistical base so that statistics on complaints received can be compared across jurisdictions. The National Committee on Discrimination in Employment and Occupation has also agreed to participate in the uniform scheme.

Liaison with the offices of the Counsellors for Equal Opportunity, the New South Wales Anti-Discrimination Board, the Victorian Equal Opportunity Board, and the National Committee on Discrimination in Employment and Occupation also takes place as and when matters of mutual interest arise.

As regards overseas bodies, the Commission has established firm links with the New Zealand Human Rights Commission. The New Zealand Chief Human Rights Commissioner, Mr P. J. Downey, attended the Commission's February 1982 meeting. At that meeting the Commission agreed to participate in the establishment of an Australian and New Zealand Equal Opportunity Reporter organised by the New Zealand Human Rights Commission. The Reporter will comprise the enabling legislation, formal reports and decisions on cases of the New Zealand and Australian Human Rights Commissions, the National Committee on Discrimination in Employment and Occupation and the equal opportunity agencies in New South Wales, Victoria and South Australia.

The Commission maintains a continuing interest in the work of the Canadian Human Rights Commission, as well as that of the European Commission of Human Rights. The European Commission considers and attempts to conciliate in respect of alleged breaches of the European Convention on Human Rights, a convention substantially similar to the International Covenant on Civil and Political Rights. The Commission is in the process of gathering together a collection of the decisions of the European Commission and Court of Human Rights. It is hoped that links with the Canadian and European Commissions will develop further as time goes by.

The Deputy Chairman also attended, as the Australian representative, a United Nations Seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region, held in Colombo, Sri Lanka, commencing on 21 June.

CHAPTER EIGHT

ACTION-ORIENTED RESEARCH

A Pragmatic Approach to Projects

The Commission has established a project group to handle research and related projects. Research projects are normally dealt with by the research staff of the Commission where:

- the team has the necessary skills and time available;
- deadlines are short;
- the matter is related to other business of the Commission which is being handled internally; or
- there is a need to define the ambit of a problem before it can be contracted out.

At the end of the year current in-house research included projects related to:

- the rights of aged persons;
- persons disabled by epilepsy (see Chapter 7);
- de-institutionalisation and guardianship (relating to the rights of those with mental and other disabilities causing diminished capacity to manage their own affairs);
- development of a statistical system for analysis of complaints;
- survey of racist propaganda (see Chapter 6);
- examination of Commonwealth crimes legislation in the context of human rights (see Chapter 5).

A Survey of Human Rights Research Literature and Associated Bibliography is the first project contracted to outside researchers. The project has been awarded to Professor Alice Erh-Soon Tay, Professor of Jurisprudence, University of Sydney and part-time Law Reform Commissioner, Australian Law Reform Commission, and will be completed in April 1983. The survey will review human rights literature—both empirically based and related to legal and policy issues—that is of direct relevance to the mandate of the Human Rights Commission. Its object will be a comprehensive coverage of Australian research and, in addition, major relevant work overseas. The report will contain a bibliographical list (with annotations) of all literature reviewed during the survey, and a comprehensive subject index.

The fact that this is the Commission's first externally contracted project emphasises its importance both to the Commission and to carrying forward systematic study and awareness of human rights.

Arrangements are proceeding for the contracting out of a number of other projects. Among them is a project relating to the human rights of Aborigines in country towns which will be of utmost importance. Because of its importance, the Commission invited an advisory committee, established under the Chairmanship of Professor C. D. Rowley and consisting of equal numbers of Aborigines and non-Aborigines, to assist it in developing and monitoring the project.

The initial phasing of the project is expected to take about twelve months. Its object is to study access to human rights in country towns. Aborigines are the group within Australian society who experience the most consistent negative discrimination and,

consequently, are likely to suffer a greater denial of human rights than any other group within the community.

The purposes of the community study are:

1. to document by careful investigation, inquiry and observation the areas in which discrimination against Aborigines occurs;
2. to establish a basis for assessing the level of racial discrimination, with particular reference to Aborigines, in the various areas of social life which can be used on a comparative basis in other towns;
3. to investigate and identify the causes of discrimination;
4. to distinguish between discrimination on the grounds of characteristics which Aborigines share with other groups, e.g. poverty, lack of formal qualifications, and specific discrimination on racial grounds.

The aim of the study is to produce findings that will act as the basis for comparative studies elsewhere and as the basis for action to ameliorate the situation both in the town surveyed and in other towns. These later studies and programs of action will form the second phase of the total project. To ensure an understanding of Aboriginal circumstances, one of the two co-researchers will be an Aborigine.

Local consultation will assist in determining the priorities. However, areas which would probably need to receive special attention include: the schools; welfare services; clubs and hotels; commercial services; housing and accommodation; employment and the police and the judicial system.

Epilepsy and the Rights of Disabled People

The Human Rights Commission has a special responsibility for the rights of disabled people as set out in the United Nations Declaration on the Rights of Disabled Persons which is found in Schedule 4 of the Human Rights Commission Act. The Commission came into being towards the end of the International Year of Disabled Persons (IYDP) and it was therefore possible to build on the experience gained during that year.

After reviewing developments resulting from the IYDP, the Commission concluded that one group of persons with disabilities whose rights had been relatively neglected were those with hidden disabilities who can not readily claim redress. In the public mind disability tends to be identified with the wheel chair and guide dogs for the blind. Few people who are not directly involved would immediately think of epilepsy, hearing impairment, mental illness or cancer as potentially disabling conditions. For this reason the Commission decided to initiate a pilot project to examine, as a case study, the human rights problems faced by people suffering with a specific hidden disability. In setting up this project, the Commission consulted with the Australian Council for Rehabilitation of the Disabled, the National Committee on Epilepsy and the State Epilepsy Association.

The choice of epilepsy as the hidden disability for study was partially based on the consideration mentioned above. Additionally, there had been a case before the New South Wales Anti-Discrimination Board which had demonstrated a remarkable ignorance of the effects of epilepsy even amongst University administrators.' Overseas studies have shown that persons with epilepsy are especially exposed to the risk of discrimination, notably in the area of employment. Epilepsy is a special case because employers who would not attempt to justify discrimination against potential employees in wheelchairs sometimes argue that they are justified in discriminating against persons with epilepsy.

One problem which is common to almost all persons with hidden disabilities relates to the effect of revealing their disability. Often the invidious choice is whether to tell the truth and face a serious possibility of not obtaining the job or other desired objective, or to keep quiet and run the risk of discovery and subsequent ostracism or persecution. An issue linked with hidden disabilities concerns self-advocacy. There is a general and desirable trend for organisations representing disabled people to be formed of persons with disabilities rather than, as was formerly the case, of parents, friends and well-wishers who inevitably tend to adopt a protective view of the welfare of the disabled persons. For the person with a visible disability, joining the self-advocacy movement does not involve 'coming out' into the open, but the situation is very different for those with hidden disabilities who may have very good reasons for wishing to keep their latent handicap secret. Indeed part of the distinction between a disability and a handicap lies in the social impact which can transform a disability such as epilepsy or mental illness into a handicap. Thus being subject to fits is a disability. This only becomes a handicap when social and environmental conditions prevent the persons with a disability from realising his or her maximum potential because she or he cannot get a job, secure insurance or engage in normal social relationships.

In the area of human rights it should be noted that under Australian law there is now a difference between the rights of the public at large and the rights of disabled persons. Whilst everyone must have access to the rights recognised in the ICCPR this charter does not cover economic and social rights. In contrast, the Declaration of the Rights of Disabled Persons does cover economic and social rights, for example in paragraphs 6 to 8 which declare that:

6. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.
7. Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.
8. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.

The practical implications of the applications of the Declaration in Australia have yet to be explored. This adds a further reason for embarking on the epilepsy survey.

Other Tasks Begun

The Deportation of Convicted Aliens. Prior to the end of the year, the Commission commenced an examination of the human rights issues associated with the deportation of convicted aliens.

The Commission gave particular attention to section 12 of the *Migration Act 1958*. This provides that aliens convicted in Australia of certain crimes may, at the end of their sentences, be deported, at the direction of the Minister for Immigration and Ethnic Affairs. Although an elaborate system of appeals against deportation orders is already in existence, it seems likely that the jurisdiction of the Human Rights Commission will be invoked in appropriate cases.

Review of the Australian Citizenship Act 1948. During the period under review, the staff of the Commission began an examination of the human rights aspects of the present law relating to citizenship, with the object of reporting to the Attorney-General. This was prompted by the announcement by the Minister in May that the Government intended to review and amend the Australian Citizenship Act and the Commission's view

that in any such review human rights considerations should be taken into account. The Commission will, because of the intention to move soon to amend the Act, give priority to this review and to make an early report.

Commonwealth Prisoners in State Gaols. As described in Chapter 4, the Commission has commenced an investigation of the position of Commonwealth prisoners who, because of the structure of the Federal criminal justice system, are all detained in State institutions. The particular focus of the Commission's work has been on the disparities which arise because of the differing terms of remissions available to prisoners in the various States. If, when available, the facts point to significant disparities in the treatment of otherwise similar offenders, an assessment of the action required in order to provide uniform custodial and remission practices for all Commonwealth prisoners will be undertaken.

Privacy and the Compulsory Registration of Cancer. In January 1982 the Commission received a complaint that a proposal by the Capital Territory Health Commission to introduce legislation to require compulsory notification of cancer in the A.C.T. would constitute an unnecessary and undesirable invasion of privacy. The complaint claimed that, since cancer is not a communicable disease, registration could not be justified as a protection to the public. It was also argued that a compulsion to notify would oblige the doctor to inform the patient of the diagnosis when this might be inappropriate.

Article 17 of the ICCPR provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of law against such interference or attacks.

This is a very problematic statement of the right to privacy since it embodies no definition of privacy and is, in many cases, restricted to arbitrary or unlawful interference. Since a law establishing a compulsory cancer registry would clearly not be unlawful the only question which remains is whether it might be arbitrary.

An examination of the original 1960 debates on this Article in the 'Travaux Préparatoires' of the United Nations reveals that those who drafted the Article were thinking almost exclusively in terms of invasions of privacy which involved governmental interference with private correspondence, house searches, wire-tapping and other investigations aimed at particular individuals. At that time the concept of privacy was more limited than today. The representatives of common law countries expressed considerable unease as to how arbitrary governmental acts which were not unlawful could be regulated. It should be noted that many of the rights enshrined in the Covenant are subject to restrictions in the interests of 'the protection of public health or morals' and this might be held to cover a cancer registry even if such a registry were found to involve a breach of privacy.

It would appear that there may not be an objection on privacy grounds as defined by the ICCPR to a cancer registry which would not require the registration of names and addresses. However, a problem arises because it appears that a registry may not be able to function effectively without individual identification. This is because of the need to link medical and death records, to avoid duplication where a patient uses more than one medical facility and to study genetic factors in cancer. The discovery that one drug commonly given to pregnant women caused cancer in their daughters at the time when menstruation starts could never have been made without the use of individuals' identifiable records.

In the course of investigating this question the Commission has examined the workings of cancer registries around Australia and in the United Kingdom. It has also reviewed the approaches to privacy issues involving medical records adopted by the Australian Law Reform Commission, the New South Wales Privacy Committee, the

United States Privacy Protection Study Commission, the Canadian Human Rights Act and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. All of these bodies and provisions would allow for a compulsory cancer registry operated with appropriate controls. The Commission is still examining the overall question of whether privacy should be viewed as a series of distinct rights rather than as an undefined and somewhat amorphous concept. Provisionally it believes compulsory registration with adequate safeguards as to confidentiality may not constitute an arbitrary or unlawful invasion of privacy.

CHAPTER NINE LOOKING AHEAD

This first report of the Commission has of necessity concentrated on the start of its work. Much time in the opening months of a new agency is spent in establishing procedures and contacts. The Commission itself, for example, met twice before the Act was proclaimed, to meet the Attorney-General and others involved in its inception and to consider how best to carry out its functions. The preparatory phase is time and energy consuming and does not necessarily yield much visible result. At the same time, it is necessary that it be undertaken and brought to a reasonable stage of completion before public exposure and the handling of major issues can be undertaken satisfactorily. In short, the Commission has had to develop a capacity to walk before it could begin to run with the major human rights tasks entrusted to it.

By the end of the period under report, the Commission considers the establishment phase had largely been completed. In hand were a number of projects which will be concluded during the first year of operation and will begin to define the Commission's position on a number of issues. For example, the report of the Commission on the Citizenship Act is likely to be tabled in the Parliament during the Budget Sittings, as will the report relating to the proposed A.C.T. Mental Health Ordinance. Later in the year, the Commission hopes to be able to develop proposals in the area of freedom of expression, partly arising from its public inquiry and partly from the conference on freedom of expression and racist propaganda to be held in Melbourne in November. The Commission also expects to publish the survey of literature and bibliography which will form an important basis for promotional work and the informed discussion of human rights in Australia. It also expects that its newsletter *Human Rights* and other publications will begin to generate interest and discussion. It is aware of the importance of interesting educational institutions at all levels in human rights, and looks to taking definitive steps in that direction during the next twelve months.

The Commission cannot be unmindful of the fact that, unless the Parliament intervenes, its mandate will expire on 10 December 1986. In the next year or two, it will naturally indicate in what ways it thinks its powers or charter could usefully be improved. At this stage, recommendations would be too early, but the Commission notes already that there have been difficulties in obtaining evidence from public servants and that the powers it exercises under the Racial Discrimination Act are not altogether consistent with those available under the Human Rights Commission Act. The Commission also notes that in other areas, such as sex discrimination, it presently has no mandate legislated and that the Government has under consideration extending its role in that area. These and other matters will be brought together in a later report so that they can be considered when attention is given to removing the 'sunset clause'.

It is often said that economic matters are more important than human rights. This is a view encountered in international discussions, where the less developed countries tend to adopt a view that places the highest and earliest priority on economic progress and assigns the development of protections for human rights to a later and second order of priority. On the international scene, Australia and other countries are being joined by an

increasing number of countries which recognise that the two objectives of economic progress and the promotion of human rights are not sequential but are in important degrees complementary and in important respects must be pursued together rather than in sequence. It does not help greatly, for example, if a person's income is raised by a few dollars a week but in the process some form of slavery, or heavy restrictions on freedom of movement or of religious belief, come into operation. The same goes in Australia. Too often it is heard that with our economic and financial difficulties too much emphasis should not be put on human rights and support of disadvantaged groups. The Commission disagrees profoundly with those who think that way. It sees human rights as important at all times, and never more important than when economic and financial circumstances are difficult. It is true that when there is economic prosperity it becomes easier to achieve human rights. It is not true that when times are hard human rights should be abandoned: rather, increased efforts should be made to ensure that at least those who are experiencing difficulties in the present economic conditions are not also deprived of their human rights through uncaring or unthinking practices in employment, in the administration of programs or the dispensation of justice, and in the ordinary round of social and community life.

The Commission looks to a difficult but exciting year ahead. It believes the advancement of human rights was never more important than at the present time. It accepts the challenge given to it by the Government and the Parliament and will do what it can to promote the cause of human rights on a broad front in Australia,

**PART C: REPORT FROM
THE COMMISSIONER FOR
COMMUNITY RELATIONS:
10 DECEMBER 1981 -30 JUNE 1982**

CHAPTER TEN

Report

- The proclamation of the Human Rights Commission Act on 10 December 1981 marked the end of an era in the combat of racial discrimination in Australia. It enabled the transfer of the functions of the Commissioner for Community Relations to the Human
- Rights Commission which would in future control the operations of the Commissioner for Community Relations in inquiring into and settling complaints of racial discrimination.

The succeeding six months have seen the gradual integration of the Office of the Commissioner and the Human Rights Bureau into the Human Rights Commission. The Office of the Commissioner had operated for more than six years in combating racial discrimination and racial prejudice and the Bureau had worked for two years in laying the ground for the Human Rights Commission. The integration has proceeded with a mutual recognition of skills and experience. The guiding thought in it was to improve the quality of service to complainants around Australia.

For some, the arrival of the Human Rights Commission was warmly welcomed as a broadening of the charter to ensure equality for all. For others, it was seen as an innovation of doubtful merit and there was considerable fear that the independence and integrity which had been established in the operations of the Office of the Commissioner for Community Relations would be in some way curtailed.

It has been reported consistently to Parliament over the years that for a Commissioner for Community Relations to operate effectively it needs to be ensured that his operations remained outside the possibility of intimidation or improper inducements in any shape or form.

Experience has indicated that whether it is Federal, State or local government agencies or whether private institutions, or individuals, or the great and powerful in the community, there is a need to have fearless objectivity in dealing with complaints.

During the past six months I am pleased to report that the complaint procedures which have been tried and tested over the past seven years have been fully implemented by the Human Rights Commission, and work has continued based on these tried and tested procedures.

I am also pleased to report that in my work with the community there has been full support and an awareness of what needs to be done to combat discrimination in all its forms. The awareness has come from the willingness of the Commissioners to make field visits and to study for themselves, quite independently, the issues confronting the community at this time.

The successful wedding of the two bodies into one Human Rights Commission does carry with it a promise of a maximisation of resources to deal with increasingly challenging problems in the field of racial discrimination and community relations. There are, for the first time, possibilities of resources being available to more adequately tackle the problems which exist in States and Territories.

Following an earlier recommendation, the Human Rights Commission decided to assist Consultative Committees on Community Relations around Australia. The Commission is in contact with Committees exploring ways and means of assisting them while preserving their independence and integrity as non-government organisations. It is hoped in the new financial year that some assistance will be forthcoming to recognise the work that they are engaged in to help them become even more effective.

The backing which the Human Rights Commission has given to the Community Relations field teams in their impartial and independent attitudes towards racial discrimination represents a great moral strength in the job which has to be done. From my point of view it is the most significant strengthening of support in the past seven years.

The Human Rights Commission has quickly identified racial discrimination as the most difficult problem confronting our society and, within that problem has recognised the urgency to resolve the depressed and oppressed situation of Aboriginal people in Australia, and the very earliest decisions have been directed towards identifying ways and means of obviating the old bigotries and laying the basis for new and better co-operation.

Perhaps the most important matter to be determined in the six months since the Human Rights Commission has been established was the High Court decision in relation to the case of John Koowarta versus the Government of Queensland. This was a case that arose out of a complaint of racial discrimination to the Commissioner for Community Relations in 1976 and which led, despite long and patient negotiations with the Queensland Government, to the issuing by the Commissioner of a certificate to enable the complainant to go to court. The complainant, in this case Mr John Koowarta, used the certificate to seek a resolution of the alleged racial discrimination in the Supreme Court of Queensland. The Queensland Government challenged the validity of the Racial Discrimination Act and following my recommendation to the Attorney-General, Senator Peter Durack, immediate action was taken by the Commonwealth to remove the challenge to the High Court of Australia for resolution. This was done by the Attorney-General and the High Court upheld the validity of the Act. The case now returns to the Supreme Court of Queensland where the substance of John Koowarta's claims against the Queensland Government will be heard with a view to resolving complaints of racial discrimination entered by him against that Government.

It is important to record the stage that has been reached in this matter as there have been some widespread misconceptions that the decision by the High Court of Australia gives carte blanche for the resolution for all the outstanding matters and cases against the Queensland Government. It is important to now await the decisions of the Supreme Court of Queensland in relation to the various complaints which have been the subject of certificates issued by the Commissioner to enable the matters to be heard in court. It is evident at this stage that the case of John Koowarta will be the first to be heard and the findings in this particular case will be of great interest to all involved in the combat of racial discrimination.

In a similar matter, representatives of an Aboriginal group have complained that the Queensland Minister for Lands and Forestry has refused to consent to the transfer of a leasehold property because the intended occupiers of the lease are Aboriginal people. It is alleged that such occupation would contravene the 1972 Cabinet Policy of the Queensland Government which regards with disfavour the transfer of any large areas of

freehold or leasehold land for development by Aboriginals or Aboriginal groups in isolation.

At the same time, the various reports that have been made by the Commissioner for Community Relations to the Parliament and also to the community at large in relation to the discriminatory aspects of the Queensland Aboriginal Reserves legislation and regulations have been taken up by the Human Rights Commission for examination in relation to the various Covenants to which Australia is now bound.

I should record as Commissioner that I have encouraged each and every State Government to set up its own apparatus to combat racial discrimination. It is my perception that the task of improving community relations and attacking racial discrimination is greater than could be successfully dealt with by only one agency and it has been my approach to encourage State and local government bodies to take their own steps to ensure that there is a continuing attack on existing discrimination and continuing vigilance in the future against tendencies to revive old bigotries and divisions.

The Governments of New South Wales, Victoria, South Australia and Tasmania have all taken active steps to establish anti-discrimination legislation. South Australia was the pioneer in the field as long ago as 1966 and Tasmanian Governments have sought, unsuccessfully so far, to legislate in that State in a similar way. I believe it is my responsibility to say very clearly that I regard State anti-discrimination legislation and statutory bodies as complementary to Federal legislation and statutory bodies. Both State and Federal legislation and bodies are necessary if there is going to be a united and cogent attack on racial discrimination and prejudice besetting the community. It is within the authority of the Commonwealth Government to enact a very simple amendment to the Racial Discrimination Act which would effectively recognise the validity of the various State initiatives to join with the Commonwealth in the combat of racial discrimination. I recommend that the Commonwealth Government legislate accordingly. This should be done to remove any doubts or any suggestion of sterile rivalry between agencies. It is not a matter of rivalry or of undesirable overlapping, but of very desirable joint activities in the most serious of all community problems at this era in the history of Australia.

The pattern of complaint handling by the Commissioner has been to respond to communities and groups as they have seen problems present themselves and tensions rise as a result of the current economic situation and as they see these related to race or ethnic origin.

During the past half year many visits have been made to communities and groups which have felt the need to confer and discuss their complaints and fears.

It is not always possible to define on first contact the exact nature of a complaint of discrimination. It often takes some discussion to establish exactly what the problem is that is causing the concern. In some instances it may be a matter that is associated with a government decision or a government announcement which seems to a group or a community to be discriminatory. Because the Office has established an independence and a credibility, they are inclined before lodging complaints of discrimination and making them public, to identify the ramifications of announcements, statements and policies, and to establish exactly what the position is.

One of the major problems that has emerged, again very strongly in the past six months, is the discriminatory position of physicians who happen to be born overseas and qualified in the first instance overseas. Typical of the many complaints that have been the source of personal discussion in at least three States, have been the position of physicians who have been registered in a State from overseas but suddenly find that they alone, of practising doctors, are prevented from transporting their skills and qualifications across State borders. The basis of this limitation would appear to be that they were born overseas and did their basic study overseas. It has nothing to do with their

qualifications which have already been validated and found completely acceptable. The investigations into this matter are continuing.

There has also been a number of discussions with community groups which have expressed concern at a rise in instances of racial discrimination which they attributed to the fact that the people concerned believed that the Racial Discrimination Act is no longer recognised either in Queensland or Western Australia.

It is obvious that there is a need to step up awareness of not only the existence of the law but the fact that it has been twice validated by the National Parliament and upheld most recently by the High Court of Australia.

It is my assessment that the very existence of the law has a salutary effect on those who would be tempted to practise racial discrimination. If the law was in fact repealed or the machinery to administer the law was in some way diminished from its present very basic level of activity then there would be a sharp rise in cases of racial discrimination.

In summation the existence of the law acts as a brake on those who are tempted to practise racial discrimination as a result of their own prejudices and bigotries. It is important that the existence of the law and its present status following the High Court decision be the subject of as widespread campaign of awareness as possible.

I strongly recommend consideration of this by the Human Rights Commission in the year ahead. It could be of course a part of the general thrust by the Human Rights Commission to have recognised in Australia the existence of the Commission and of Australia's attachment to various United Nations Declarations and Conventions relating to the recognition and safeguarding of human rights.

The activities of the extremist groups which have been listed in previous annual reports have continued and in a time of increasing economic hardship their activities have provoked resentment and some tension.

Because these groups, although small, containing miniscule memberships except in one case, their exploitation of the print and electronic media and their vigorous pamphleteering give an impression of strength and support which is totally at variance with their actual numbers. It is this impression which is given which tends to heighten tensions because people feel that they are under attack. The planned appearance of disruptive elements from these extremist groups that attended at meetings called by the Minister for Immigration and Ethnic Affairs, the Honourable John Hodges, **M.P.**, in Perth, Melbourne, Sydney and Brisbane were widely reported and the impression was created that this represented a significant community attitude.

The monitoring activities which I personally have carried out in conjunction with many groups in the community indicate that this impression is not correct. A number of the groups have in the past six months reviewed their activities and set out to assess their effectiveness. They have found that despite all the money and energy expended they have not attracted a significant number of followers and this is usually, in their internecine discussions, put down to the inadequacy of the organisation, its title, its form, and so there is a constant reshuffling of names and alliances. It has not yet dawned on them that the fundamental flaw in their entire activity is the rejection by the overwhelming majority of Australians of their extreme racist propositions.

Nevertheless, they constitute a constant concern because their material is unconsciously absorbed by people in the community and is often regurgitated word for word by them without realising the source of the quotations they are using.

The activities of these extremist racist groups receive a tremendous boost when the occasional public figure lends support to some of their propositions. They then feel that they have made a major breakthrough and they are greatly encouraged. It is also a tactic for them to convey by every means possible, support by messages and telegrams, to **the public figure who has supported their propositions.**

I have set out in my community activities generally in responding to general concerns in regard to discrimination to point out that these groups are not representative of any significant body in the community and the *Racial Discrimination Act 1975*, as amended in 1981, is firmly entrenched in the laws of Australia and that there has been no diminution of efforts to combat racism in Australia. A list of my public activities in community relations appears at Appendix 6.

I have been quite objective in acknowledging the deficiencies in staffing and facilities but I have made it quite plain as a reassurance to many groups in this difficult economic time that there has in fact been an additional assistance in the combat of racial discrimination following the formation of the Human Rights Commission.

It would again be a further recommendation that the role of the Human Rights Commission be extended throughout Australia as rapidly as possible to ensure that this additional support is understood and recognised. This can be a powerful moral support for the work of the last seven years.

Australian schools have continued to be regarded by me as comprising the main frontline in efforts to combat racial discrimination. A recent survey carried out by the Community Welfare Department of the State of South Australia indicated that teacher attitudes were the second most important component in the settlement of migrants and refugees. The importance of the teacher and the school has often been underestimated in assessing the success and failure in the settlement of newcomers.

The pattern of my relationship with schools has continued unchanged. On the one hand it is through the various State, Catholic and independent systems to assist and facilitate and support efforts to recognise the multicultural nature of Australian classrooms today and on the other hand to provide an ad hoc crisis intervention resource where there are serious divisions that have appeared in the schools as a result of either the inadequacy of school programs, the insensitivity of staff or the resentment of parents at what they feel to be the lack of response by the schools to the needs of both the students and parents' aspirations for them.

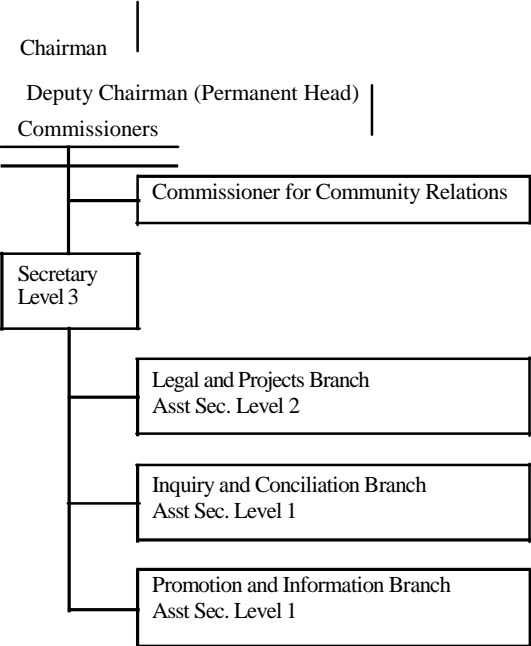
A great deal needs to be done to ensure that the school curricula are appropriate to the student body, that the teachers are fully sensitised and that the materials are appropriate. It must be recorded that there are still a great many inadequate attitudes and procedures followed in Australian schools which unwittingly perpetuate divisions among the various components of the Australian population.

It is still too often the case that there is attitudinal discrimination based on the categorisation of Anglo-Saxon students as 'Australians' and non-Anglo-Saxons as 'migrants' or what is even worse in a distortion of a word, 'ethnics'.

The dynamic nature of the development of Australian speech must always be recognised and a recent example of this was one young boy in a school playground telling another boy to 'get ethnicked'. It is important that the various school systems operating in Australia continue their efforts to revise and improve teacher training, curricula and school materials to take into account the fact that the school classroom in Australia may comprise 100% English-speaking, locally born Anglo-Australians and 100% non-Anglo-Australian children and every possible variation in between.

In the combat of racial discrimination the education and conciliation efforts have been followed as a basis and a background against which the casework can proceed with much greater facility.

ORGANISATION CHART



APPENDIX 1

Schedule of Activities by Commissioners on behalf of the Commission

December 1981 — June 1982

<i>Commissioner</i>	<i>Venue</i>	<i>Engagement</i>
<i>DECEMBER 1981</i>		
Deputy Chairman	United Nations Assn. of Aust. (A.C.T. Div.) Canberra	Address on Human Rights
Deputy Chairman	UN Course on Human Rights Guarantees in Administration of Criminal Justice, Canberra	Address on Human Rights Commissions and their Functions
<i>MARCH 1982</i>		
Mrs Ford	Office of Women's Affairs, Canberra	Liaison with HRC to establish matters of common concern
Mrs Ford	Bendigo	
Ms Hastings	Melbourne	Address at seminar on the role of employers and employees in the economy
Chairman	Women's Lawyers Assn, Sydney	Discussions with Ms/s Lippman, Manes and Dwyer
	Canberra	Address on HRC
Deputy Chairman	Canberra	Address to Annual Meeting of ACT COSS
Deputy Chairman	Canberra	Attended ACT COSS
Deputy Chairman	Canberra	Seminar on Civil Liberties
	Melbourne	Meeting of A.C.T. Ethnic Communities Council
<i>APRIL 1982</i>		
Deputy Chairman		Discussions with Equal Opportunity Commissioners
Mrs Ford		
Ms Hastings		

<i>Commissioner</i>	<i>Venue</i>	<i>Engagement</i>
Mrs Ford	Sydney	Familiarisation visit to N.S.W. Counsellor for Equal Opportunity and Anti-Discrimination Board
All members of Commission except Chairman and Mrs Geia	Sydney	Consultation with National Non-government Organisations in the human rights field organised by HRC
Professor Boyce Chairman	United Nations Assn of Aust., Perth	Address on Human Rights and National Security
Chairman	National Women's Advisory Council, Canberra	Launching the Council's plan of action adapted from UN's world program
Deputy Chairman Professor Aroney Deputy Chairman Professor Aroney Mrs Ford	Torrensville Primary School, Adelaide	Accompanied CCR on school visit
	N.S.W. Ethnic Communities' Council, Sydney	Attended and spoke at Council meeting
	Executive, N.S.W. Ethnic Communities' Council, Sydney	Discussions with Executive
Deputy Chairman	Federation of Ethnic Communities' Councils, Sydney	Liaison with, and interest of, HRC in Federation's work
Deputy Chairman	Victorian Ethnic Communities' Council, Melbourne	Discussions with members of Executive
Deputy Chairman	Conference of Human Rights Practitioners, Melbourne	Discussions on issues including standardisation of statistics
Chairman Deputy Chairman Ms Hastings	CCAIE, Canberra	Lecture to CPS Research Officers
	Ecumenical Migration Centre, Melbourne	Seminar on citizenship and migration
Mrs Ford	State Language Policy Conference, Melbourne	Development of a national language policy
Mrs Ford	Gippsland field trip including Lake Tyers	Participated in conciliation activities for two days and met Aboriginal community leaders
Mr Gilbert	Brisbane Consultative Committee	Attended meeting and advised on developments with HRC
Professor Boyce Mr Gilbert		Discussion with Senator Evans on constitutional reform

<i>Commissioner</i>	<i>Venue</i>	<i>Engagement</i>
Professor Boyce	Perth	Discussions with Senator Giles and Ms Child of W.A. T.L.C. on discrimination against Aboriginals by S.H.C.
Chairman	Conference on Judiciary of South Pacific, Canberra	Attended opening session
Deputy Chairman	Newcastle	Attended seminar on Future of Law Reform in Australia
<i>JUNE 1982</i>		
Mr Gilbert	Canberra	Attended and spoke at Second Division Seminar on Human Rights and Public Administration
Deputy Chairman	Canberra	Paper given to Second Division Seminar on Human Rights and Public Administration
Professor Boyce	Law Society of W.A.	Address on the role of HRC
Deputy Chairman	Perth	Discussions with W.A. Minister for Police and Attorney-General
Professor Boyce	Perth	Consultation with Ethnic Communities' Council and W.A. CCL.
Deputy Chairman	Perth	Talks with Multicultural Advisory Committee on promotional activities
Deputy Chairman	Perth	Attendance at forum on Multiculturalism and Australian Citizenship
Deputy Chairman	Canberra	Address to Third Biennial Conference of Aust. Stipendiary Magistrates Assn.
Deputy Chairman	Australian Bicentennial Authority, Sydney	Attended meetings of Social and Community Task Force
Deputy Chairman	UN Seminar on Regional Arrangements for the Promotion and Protection of Human Rights, Sri Lanka	Attended seminar as Australian representative

APPENDIX 2

Human Rights Commission*Statement of Expenditure 1981-82*

	<i>Expenditure 1981-82</i>
<hr/>	
<i>Special Appropriations</i>	
Holders of Public Officer (<i>Remuneration Tribunals Act 1973</i>)	
• Human Rights Commission (including Commissioner for Community Relations)	113 715
<hr/>	
<i>Appropriation Act (No. 1) and (No. 3)</i>	
<i>Division 181—Human Rights Commission</i>	
1 Salaries and payments in the nature of salary	329 286
2 Administrative expenses	387 593
	<hr/> 716 879
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APPENDIX 3

Breakdown of General Human Rights Complaints Handled by Human Rights Commission between 10 December 1981 and 30 June 1982

	<i>No.</i>	
<i>(I) By Residence of Complainant</i>		
New South Wales	22	23
Victoria	27	28
Queensland	7	7
South Australia	8	8
Western Australia	8	8
Tasmania		—
Australian Capital Territory	19	20
Northern Territory	2	2
Not known	4	4
Total	97	100
<i>(II) By Complainant</i>		
Male	64	66
Female	16	17
Organisation/Group	11	11
Family	6	6
Total	97	100
<i>(III) By Nature of Complaints</i>		
Justice	27	28
Benefits	12	13
Immigration	17	18
Medical treatment	7	7
Sex discrimination	6	6
Race discrimination/propaganda	7	7
Employment	9	9
Participation in government	4	4
Incoherent/outside sphere	8	8
Total	97	100

APPENDIX 4

Breakdown of Racial Discrimination Complaints Handled by Human Rights Commission between 10 December 1981 and 30 June 1982

	<i>No.</i>	
<i>(I) By Residence of Complainant</i>		
New South Wales	121	32
Victoria	72	19
Queensland	60	16
South Australia	20	5
Western Australia	49	13
Tasmania	3	1
Australian Capital Territory	35	9
Northern Territory	15	4
Not known	2	1
Total*	377	100
<i>(II) By Complainant</i>		
Male	160	42
Female	100	27
Organisation/Group	95	25
Family	16	4
S.21(1)(b)	6	2
Total*	377	100
<i>(III) By Nature of Complaints</i>		
Accommodation	36	9
Private dispute	7	2
Employment	53	14
Immigration	10	3
Benefits	19	5
Education	14	4
Provisions of goods and services	46	12
Judicial/legal	20	5
Police	27	7
Harassment	21	5
Others—general	30	8
Racist insults		
—by officials	15	4
—attempted humour	12	3
—electronic media	19	5
—press	29	8

	<i>No.</i>	
—pamphlets	18	5
—neighbourhood dispute	5	1
Total	381	100

* Discrepancy in totals by breakdown with total complaints is because one complainant made five complaints at once.

APPENDIX 5

Attendance at Human Rights Commission's Consultation with National Non-Government Organisations, Sydney, 30 April 1982

A. HUMAN RIGHTS COMMISSION MEMBERS

1. Mr Peter Bailey, O.B.E.
Deputy Chairman
2. Professor Manuel Aroney, O.B.E.
Commissioner
3. Professor Peter Boyce
Commissioner
4. Mrs Norma Ford
Commissioner
5. Mr Christopher Gilbert
Commissioner
6. Ms Elizabeth Hastings
Commissioner

B. COMMISSIONER FOR COMMUNITY RELATIONS

1. The Honourable A. J. Grassby

C. HUMAN RIGHTS COMMISSION STAFF

1. Mr Fergus Thomson
Secretary
2. Dr Sev A. Ozdowski
A/g Director (Projects)
3. Mrs Lorna Lippman
State Representative, Victoria
4. Mr David Marsh Executive
Development Scheme Officer
- 5 Mrs Maree Kelleher
Assisting Administrative Officer

D. PARTICIPANTS

<i>Agency</i>	<i>Participants</i>
1. Amnesty International (Australian Section)	Dr Roger Gurr President
2. Australian Association for the Mentally Retarded Inc.	Mr Jim McLoughlin Board Member
3. Australian Association of Homosexual Rights Lobbies	Mr Jamie Gardiner National Convenor
4. Australian Council for Civil Liberties	Mr Lex Watson Assistant Hon.Sec.

<i>Agency</i>	<i>Participants</i>
5. Australian Council for Rehabilitation of the Disabled	Mrs Felicity Purdy Member of Executive Committee
6. Australian Council of Churches	Mr Russell Rollason Information Officer
7. Australian Council of Social Service Inc.	Mrs Joan McClintock Secretary-General
8. Australian Council on the Ageing	Mr Clifford Picton Chief Executive
9. Australian Early Childhood Association Inc.	Mrs Barbara McNulty, O.B.E. Vice-President
10. Australian Federation of Islamic Councils	Dr M. A. Wang
11. Australian Federation of Right to Life Associations	Mr Frank Street Executive Director A.C.T. Right to Life Assn
12. Catholic Commission for Justice and Peace	Mr Chris Sidoti Associate Secretary
13. Children's Bureau of Australia	Reverend Denis Oakley Secretary
14. Citizen's Committee on Human Rights Inc.	Miss Jan Eastgate National President
15. Executive Council of Australian Jewry	Dr Joachim Schneeweiss President
16. Federation of Ethnic Communities' Councils of Australia	Mrs Eva Byrne Consultant
17. Human Rights Council of Australia	Mr Jim Dunn President
18. Indo-Chinese Refugee Association (Australia) Inc.	Rev. Fr Jeffries Foale President
19. International Commission of Jurists (Australian Section)	The Hon. E. G. Whitlam President
20. Law Council of Australia Victoria	Mr Michael Flynn
21. National Aboriginal Conference	Mr Mike Anderson Research Officer
22. National Council of Women of Australia	Dr Laurel Macintosh President
23. Prisoners' Action Group	Mr Brett Collins Spokesperson
24. United Nations Association of Australia	Dr Jeremy Salt Research Officer
25. Youth Affairs Council of Australia	Mr Sean Mack Executive Officer

E. OBSERVERS

(i) Federal Departments

1. Department of Aboriginal Affairs

Mr Ian Myers
Director
Constitutional Section, General
Branch

<i>Agency</i>	<i>Participants</i>
2. Attorney-General's Department	Mr Jim Dick Acting Senior Assistant Secretary Human Rights Branch
3. Department of Employment and Youth Affairs	Mrs Lavina Evans Director Employment Discrimination Section
4. Department of Foreign Affairs	Mr John Quinn Foreign Affairs Officer UN Political Section
5. Department of Health	Mr Ian Wingett Assistant Director-General Research and Planning Branch No. 1
6. Department of Home Affairs and Environment	Ms Gae Pincus Office of Women's Affairs
7. Department of Immigration and Ethnic Affairs	Mr Mike Lawless Assistant Secretary Legal Branch
8. Department of Social Security	Mr Ken Horsham Senior Assistant Director Welfare Rehabilitation and Subsidies Branch
<i>(ii) State Human Rights Officers</i>	
1. Department of the Attorney-General and of Justice, N.S.W.	Miss Janette Nation Research Assistant
2. Department of Law, Northern Territory	Mr Garry Robinson Law Reform and Policy Section
3. Law Department, Victoria	Mr R. J. Lambert Assistant Crown Solicitor
4. Solicitor-General, Queensland	Mr B. Yorke Acting Senior Legal Officer Constitution and Legislation Branch
<i>(iii) Others</i>	
1. Confederation of Australian Industry	Mr Brian Noakes Research Officer
2. Handicapped Persons Alliance	Mr John Baldwin
3. National Women's Advisory Council	Mrs Beryl Ashe Council Member

APPENDIX 6

Public Activities in Community Relations undertaken by the Commissioner for Community Relations*N.S.W.—Conferences and Seminars*

National Union of Greek-Australian Students 'Nugas'—Conference

N.S.W.—Community Relations Addresses

Society of Real Estate Agents and Valuers Ltd

The Irish Australian Aisling Society

Scandinavian Businessmen's Club

The University of New South Wales—School of Community Medicine

Health Commission of New South Wales, Northern Metropolitan Region Interpreter Service

Rotary International—Rotary District 968 Conference

Drummoyne Rotary Club-30th Anniversary Dinner

St Margaret's Hospital—Migrant Information Luncheon

The Australian Federation of Islamic Councils—Opening 7th Annual Congress

N.S.W.—Community Relations Activities

Chinese Youth League of Australia-1981 Christmas Cultural Concert

Aboriginal Legal Service—Christmas Party

Ethnic Communities' Council of N.S.W—Christmas Barbecue

Greek Macedonian Society of Florinians and Kostorians of

Queanbeyan—Photographic Exhibition

Foreign Language Publications—Christmas Party

ANZ Bank—An Exhibition of Passports

The Orthodox Churches of Wollongong—Epiphany Celebrations

Ryde Municipal Council—Australia Day Citizenship Ceremony

New South Wales Holland Festival

Guardians of The Cedars Association

Prince Henry Hospital—Intercultural Health Centre

Irish Business Association Limited—St Patrick's Day Ball

Bunratty Castle Theatre Restaurant—St Patrick's Day Traditional Irish Luncheon

The Australian Society of Clinical Hypnotherapists—International Convention Ball

Reader's Digest—Cocktail Party

Blessing of the Fishing Fleet, Ulladulla, Easter, 1982

Dante Alighieri Society—Exhibition of Drawings

St George Building Society—Launching Multicultural Advisory Service Vorion

Dimon Spartis Association 'Orea Eleni'—Annual Dinner Dance Greek

Community Council of Sydney—Presentation of 'Dionyssios Solomos' Awards

Victoria—Community Relations Addresses

Erasmus Foundation—Netherlands Australian Cultural Society

Scotch College—General Education Program Course

Footscray Technical School

Monash University—Aboriginal Studies Lecture

Victoria—Community Relations Activities

Festival of Labour Committee—Dinner Dance

Melbourne State College—Multicultural Festival

Istra Social Club-10th Anniversary Celebrations

Richmond Girls' High School—Launching Book 'Why Must We Go?'

A.C.T.—Conferences and Seminars

Australasian Union of Jewish Students—National Summer Conference

A.C.T.—Community Relations Addresses

The Rotary Club of Canberra South—Rotary Youth Program of Enrichment Dinner

United Nations Association of Australia (A.C.T. Division)

A.C.T. Community Relations Activities

Australian Council for Overseas Aid—Christmas Function

Montmatre (South American) Cultural Association—Art Exhibition

Australian Development Commission-10th Anniversary of the Aboriginal Embassy

Ethnic Communities' Council of the A.C.T.—Multicultural Australia Day Festival

Crafts Council of the A.C.T.—Exhibition of Peruvian Textiles

The Greek Orthodox Community and Church of Canberra and District Incorporated

The Canberra Council for Overseas Students

The Pan Pacific and South East Asia Women's Association—Wedding Ceremonies of Asia and Pacific

Queensland—Community Relations Activities

Brisbane Consultative Committee on Community Relations. West End Project

Western Australia—Conferences and Seminars

The Tenth Annual Rotary Conference of District 946 'World Understanding and Peace Through Rotary'

Tasmania—Community Relations Address

Latrobe Apex Club—International Relations Dinner

