

Chapter 5: **Legal Section**

The Legal Section carries out litigation and other legal work on behalf of the Commission, the President and Commissioners to the highest standard. Some of this work is performed under the Acts administered by the Commission, but primarily in the preparation of notices and reports under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).

The Legal Section also provides internal legal advice on discrimination, human rights and other laws relevant to the work of the Commission, and represents the Commission externally, through providing information and education on human rights matters.

The section also assists the Commission in work arising from legislation or bills raising human rights issues and to monitor and promote awareness of developments in international and domestic human rights law, including discrimination jurisprudence in the Federal Court and Federal Magistrates Court.

Other responsibilities include acting as counsel or instructing solicitor for the Commission in external litigation such as applications for review of Commission decisions under the *Administrative Decisions (Judicial Review) Act 1977* (Cth); assisting the Commission to consider applications for exemptions under the *Sex Discrimination Act 1984* (Cth) and the *Age Discrimination Act 2004* (Cth); and responding to applications under the *Freedom of Information Act 1982* (Cth) on behalf of the Commission.

Complaints relating to breaches of human rights or discrimination in employment made under the HREOCA

Where a complaint under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) alleging breaches of human rights or discrimination in employment is received, the Commission attempts to resolve the complaint through the process of conciliation. If the complaint is unable to be resolved through this process and the President is satisfied after inquiry that a breach has occurred, the matter is reported to the federal Attorney-General. This report can make recommendations to address any damage suffered by the complainant; however, these are not enforceable.

Between 1 July 2005 and 30 June 2006, the following Commission reports were tabled in parliament by the Minister.

HREOC Report No. 31

Report of an Inquiry into a complaint by Mr Zacharias Manongga Consul for the Northern Territory, Consul of the Republic of Indonesia that the human rights of Indonesian Fishers detained on vessels in Darwin Harbour were breached by the Commonwealth of Australia

The Indonesian consul in Darwin complained about the conditions of detention of Indonesian Fishers being held on their vessels in Darwin Harbour. At the time, Indonesian fishing vessels apprehended in the Australian Fishing Zone were detained in Darwin Harbour with the crew members on board.

The President and members of the Complaints section visited Darwin to investigate the complaint and met with the respondents, the Department of Immigration and Multicultural and Indigenous Affairs and the Australian Fisheries Management Authority.

The President found the conditions of detention of the Indonesian Fishers breached article 10(1) of the *International Covenant on Civil and Political Rights* (ICCPR) and made several recommendations to prevent further breaches. The report into his inquiry was tabled in Parliament by the Attorney-General on 7 December 2005.

A copy of the report is available at: www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_31/index.html

HREOC Report No. 32

Report of an Inquiry into a complaint made on behalf of federal prisoners detained in New South Wales correctional centres that their human rights have been breached by the decision to ban distribution of the magazine 'Framed'

Justice Action made a complaint on behalf of federal prisoners detained in NSW correctional centres against the State of NSW, Department of Corrective Services and the Commonwealth of Australia.

The complaint arose out of the decision of the Department of Corrective Services to ban distribution of the magazine 'Framed' from NSW prisons. Justice Action publishes 'Framed' and has distributed it in prisons in every State for nearly 20 years. Justice Action alleged on behalf of federal prisoners in NSW that the act of banning the magazine constitutes a breach of Article 19 of the ICCPR, and denied that any material in the relevant issues fell within the exemptions provided in Article 19(3) of the ICCPR.

The President found that the decision to ban the distribution of 'Framed' in NSW correctional centres was inconsistent with the rights of federal prisoners in NSW prisons to freedom of expression under article 19 of the ICCPR. The President made several recommendations including that the Department of Corrective Services remove the ban on the distribution of the publication 'Framed' to federal prisoners in NSW. The report into his inquiry was tabled in Parliament by the Attorney-General on 1 June 2006.

A copy of the report is available at: www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_32.html

HREOC Report No. 33

Report of an Inquiry into a complaint by Tracey Gordon of discrimination in employment on the basis of criminal record

The complainant alleged that she had been discriminated against by the respondent in her application for employment as a Communications Officer on the basis of her criminal record. The complainant's application for the position was rejected by the respondent because her criminal record contained a conviction for drink driving. The respondent claimed that because of her criminal record the complainant was unable to fulfil the inherent requirements of the position of Communications Officer.

The President found that the respondent had discriminated against the complainant on the basis of her criminal record because it had imposed a character requirement beyond that which could be justified as an inherent requirement of the position of a Communications Officer.

The report of the President's inquiry into the complaint was tabled in Parliament by the Attorney-General on 15 June 2006.

A copy of the report is available at: www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_33.html

HREOC Report No. 34

Report of an Inquiry into by Mr Daniel Clark against the Minister for Foreign Affairs and Trade of a breach of his human right to freedom of expression

Mr Clark alleged that the decision of Minister of Foreign Affairs and Trade to withdraw Mr Clark's invitation to participate in a Non-Government Organisation Forum breached his right to freedom of expression under the ICCPR.

The President found the Minister's decision to withdraw Mr Clark's invitation to participate in the Non-Government Organisation Consultations was inconsistent with or contrary to Mr Clark's human rights. The President recommended the

respondent provide a written apology. The minister declined to provide an apology and notified the Commission no action would be taken as a result of the findings.

The report of the President's Inquiry into the complaint was tabled in Parliament by the Attorney-General on 15 June 2006.

The report is available online at: www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_34.html

HREOC Report No. 35

Report of an Inquiry into a complaint by Mr AV of a breach of his human rights while in immigration detention

Mr AV alleged that his human rights had been breached while he was being detained in the Villawood Immigration Detention Centre.

The President found that excessive and unreasonable force had been used by officers employed at the centre while restraining and searching Mr AV. In particular, the President found that Mr AV had been held against the wall by his throat and had been subjected to an unauthorised strip search. These acts were found to constitute inhuman and degrading treatment and breached Mr AV's right to be treated with humanity and inherent dignity. The acts were therefore inconsistent with and contrary to articles 7 and 10 of the ICCPR.

The President recommended that Mr AV be paid \$4 000 in compensation and that an apology be given to him by the Secretary of the Department of Immigration and Multicultural Affairs (DIMA) on behalf of the Commonwealth. An apology was given to Mr AV by the Secretary of DIMA on 5 April 2006 and compensation was paid to him on 27 June 2006.

The report of the President's Inquiry into the complaint was tabled in Parliament by the Attorney-General on 20 June 2006.

The report is available online at: www.humanrights.gov.au/human_rights/human_rights_reports/hrc_report_35.html

Interventions

The Commission has a statutory function of intervening, with the leave of the Court, in proceedings that involve issues of age, race, sex, marital status, pregnancy and disability discrimination, human rights issues and equal opportunity in employment.

The Commission's intervention functions are contained in:

- section 53(1)(g) of the *Age Discrimination Act 2004* (Cth);
- section 67(1)(l) of the *Disability Discrimination Act 1992* (Cth);
- sections 11(1)(o) and 31(j) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth);
- section 20(1)(e) of the *Racial Discrimination Act 1975* (Cth); and
- section 48(1)(gb) of the *Sex Discrimination Act 1984* (Cth).

The Commission will consider seeking leave to intervene in cases where the human rights or discrimination issues are significant and central to the proceedings, and where these issues are not being addressed by the parties to the proceedings. The guidelines that the Commission uses to determine if it will seek leave to intervene in a matter are publicly available on the Commission's website at: www.humanrights.gov.au/legal/intervention_info.html

In exercising those functions, the Commission is seeking to develop Australian law (generally over the long term) so that it is more consistent with human rights standards. The intervention functions also serve an important educative purpose, which the Commission seeks to further enhance by placing all its submissions on its website.

During 2005–06, the Commission considered 12 potential intervention matters: seven of these matters came before the Commission at the request of a party to proceedings or a third party; and five were considered by the Commission's own motion. The Commission resolved to intervene in six matters and was granted leave to intervene in five of those matters. The six matters are summarised below.

Baird v State of Queensland

The Commission was granted leave by the Full Federal Court of Australia to intervene in this matter and made written and oral submissions on 20 February 2006. The proceedings were an appeal against the decision of Dowsett J in the Federal Court (*Baird v Queensland* [2005] FCA 495).

The appellants claimed that between 1975 and 1986 they were employed on missions by the Queensland government ('the Government'). They further alleged that during this period they were paid at a level that was below that being paid by other persons employed by the Government to perform similar work and/or below relevant levels established by applicable industrial awards. The applicants are Indigenous people and claimed that the wage differentiation to which they were subjected constituted race discrimination, contrary to ss 9 and 15 (prohibiting discrimination in employment) of the *Racial Discrimination Act 1975*.

The Court at first instance had found that the appellants were not employed by the Government, but rather by the Lutheran Church of Australia ('the Church') which had administered the missions. While the Church was funded by the Government to run the missions, the Court found that the underpayment of wages was not a consequence of the actions of the Government and that the level of funding provided was not 'based on' race.

The Commission's submissions in the appeal set out the background and context of the *Racial Discrimination Act 1975* and addressed the correct interpretation and application of the *Racial Discrimination Act 1975* in the circumstances of the case. The Full Court has reserved its judgment.

The Commission's submissions are available at: www.humanrights.gov.au/legal/intervention/baird.html

Hurst v State of Queensland

HREOC was granted leave by the Full Federal Court of Australia to intervene in this matter on 24 February 2006. The proceedings were an appeal against the decision of Lander J in the Federal Court of Australia (*Hurst and Devlin v Education Queensland* [2005] FCA 405). Only the first applicant, Tiahna Hurst, appealed the first instance decision.

Tiahna Hurst is a deaf child who complained that her school's requirement that she be taught without the assistance of an Auslan interpreter indirectly discriminated against her, contrary to the *Disability Discrimination Act 1992* (Cth). At first instance, Lander J found that that requirement was not discriminatory because Ms Hurst was able to 'cope' with it, in the sense that she could 'keep up' with her hearing peers. Because she was able to 'cope', she could not demonstrate that she was 'not able to comply' with the requirement.

The Commission made submissions before the Full Federal Court in relation to whether Ms Hurst was 'not able to comply' with the requirement and the reasonableness of the requirement. Central to HREOC's submissions was the idea that although able to 'keep up', Ms Hurst was not able to realise her full potential.

The Commission's submissions are available at: www.humanrights.gov.au/legal/intervention/hurst.html

The Full Federal Court overturned the decision at first instance. It held that a disabled person's inability to achieve his or her full potential, in educational terms, can amount to serious disadvantage.

The Full Federal Court's decision is available at: www.austlii.edu.au/au/cases/cth/FCAFC/2006/100.html

Inquest into deaths by petrol sniffing

In August 2005, the Commission made a written submission to the Northern Territory Coroner in an inquest into three deaths in Central Australia from petrol-sniffing.

The Commission's submissions set out the human rights principles relevant to the inquest and made submissions as to the appropriate scope of the inquest and its recommendations. In particular, it was argued that the Coroner should ensure that systemic aspects of the deaths were fully investigated and reported on to ensure the right to life and the right of children to survival and development were protected.

The Commission's submissions are available at: www.humanrights.gov.au/legal/intervention/presley_etal.html

Inquest into the death of Scott Simpson

The Commission was granted leave to appear in the inquest into the death in custody of Mr Scott Simpson. The inquest was conducted at the State Coroner's Court in Glebe and Westmead from 28 November 2005 to 1 December 2005 and from 20 February 2006 to 3 March 2006.

Mr Simpson had paranoid schizophrenia. He had been held in segregated custody for almost two years at Goulburn and Long Bay correctional centres. He was found dead in his cell on 7 June 2004, apparently by hanging. The Commission submitted that the treatment of Mr Simpson during his incarceration was inconsistent with the rights to humane treatment in articles 7 and 10(1) of the ICCPR in the following respects:

- the prolonged detention of Mr Simpson in segregation, particularly in light of his mental illness;
- the failure to transfer Mr Simpson to hospital; and
- the failure to provide adequate psychiatric care to Mr Simpson while he remained in the correctional environment.

The Commission also submitted that further steps should be taken toward the elimination of obvious hanging points in cells to ensure Australia's compliance with the right to life in article 6 of the ICCPR.

The Coroner's findings were handed down on 14 July 2006. The Coroner's formal finding was that Mr Simpson died on 7 June 2004 when he deliberately hanged himself in his cell at the Long Bay Correctional Centre, Malabar. The Coroner provided an outline of her findings of fact which included:

- Mr Simpson was not provided with adequate medical treatment during his incarceration;

- the time Mr Simpson spent in segregation lead inevitably to a deterioration of his mental state until the crisis point was reached on 7 June 2004;
- that more could have been done to secure a hospital bed for Mr Simpson, but wasn't;
- that Justice Health administrators were reluctant to admit Mr Simpson to D ward, whether unconvinced of the clinical urgency or because of security considerations or a combination of both.

The Coroner made a number of wide-ranging recommendations intended to prevent deaths from happening in similar circumstances in the future.

A copy of the Commission's submissions is available at: www.humanrights.gov.au/legal/intervention/simpson.html

Proceedings in the Family Court of Australia concerning medical treatment for a child

The applicants in this matter seek an order from the Family Court that they may lawfully authorise the medical treatment of their child in respect of the condition of transsexualism without an order of a court. Such treatment is proposed to include both reversible and irreversible treatment of a hormonal nature. In the alternative, the applicants seek an order that the court authorise such treatment and empower the applicants to provide such authorities and consents as are necessary for that purpose.

The proceedings are likely to raise issues that include the following:

- whether the child can give informed consent to the proposed medical treatment
- if the child is unable to give informed consent to the proposed medical treatment, the scope of the parental power to consent to such treatment

The Commission is of the view that the matter raises important issues of human rights especially in relation to those rights recognised in the *Convention on the Rights of the Child* and was granted leave to intervene on 7 March 2006. The matter was ongoing as at 30 June 2005.

Note that pursuant to s 121 of the *Family Law Act 1975* (Cth), the Commission is unable to disclose any details that may disclose the identities of the parties to the proceedings.

The Queen v GJ

On 3 November 2005, the Commission was refused leave to intervene in an appeal heard by the Northern Territory Court of Criminal Appeal. The appeal had been lodged by the Crown in respect of the sentence imposed on Mr GJ who had been charged, and pleaded guilty, under the *Criminal Code Act* (NT) with having sexual intercourse with a child under the age of 16 years and a common assault against the same child. Both the prosecution and sentencing judge accepted that, based on Mr GJ's understanding of traditional law as it applied in the Ngarinaman community, he believed that intercourse with the child was acceptable because she had been promised to him and had turned 14 years of age. It was also accepted that based on Mr GJ's understanding and upbringing in his traditional law, notwithstanding the child's objections, he believed that the child was consenting to sexual intercourse. A sentence was imposed of five months imprisonment for the assault and 19 months imprisonment for the charge of sexual intercourse with the child which were ordered to be served cumulatively but were suspended on certain conditions after the offender had served one month.

The Commission sought leave to appear as an intervener or, in the alternative, as common law *amicus curiae*. Its written submissions filed in support of its application was to the effect that the recognition of group rights (under article 27 of the ICCPR) cannot lead to a breach of an individual's human rights and fundamental freedoms and that while all attempts should be made to reconcile the individual human rights of women and children with the minority rights of Indigenous peoples to retain and enjoy their culture, international human rights law requires that individual rights must ultimately prevail.

The CCA also allowed the Crown's appeal, set aside the sentence and a new sentence of three years and 11 months' imprisonment was imposed to be suspended after serving 18 months.

The Commission's submissions are available at: www.humanrights.gov.au/legal/intervention/queen_gj.html

The decision of the CCA is available at: www.nt.gov.au/ntsc/doc/judgements/2005/ntcca/ntcca020.html

Intervention matters commenced before 2005–06

Inquest into the death of Mulrunji

The Commission has had an active role in the Inquest being conducted by the Queensland Deputy State Coroner into the death in custody on Palm Island in November 2004 of Mulrunji. The Commission has been involved in the proceedings from the outset and has cross-examined witnesses and made submissions on a wide range of issues to which human rights are relevant.

In particular, the Commission has raised human rights concerns relating to the policing, arrest and detention of Indigenous people. The Commission has particularly focused on the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody and has encouraged the Deputy State Coroner to make comments pursuant to her functions under the *Coroners Act 2003* (Qld) that may assist to prevent further deaths.

That matter is ongoing at the time of publication, with final submissions being heard on 2 August 2006 in Townsville.

Australian Competition and Consumer Commission ('ACCC') v Radio Rentals Limited and Anor (No S844 of 2003)

The Commission was granted leave to intervene in this case in November 2004. The Federal Court's decision was handed down on 17 August 2005. A report of this decision can be found in the Commission's 2004–05 Annual Report.

Family Provisions Test Case

The Commission was granted leave to intervene in the Family Provisions Test Case in the Australian Industrial Relations Commission (AIRC) on 26 September 2003. The proceedings consisted of a number of applications to vary federal awards to provide workers with more flexibility to balance their work and family responsibilities. The case was heard by the Full Bench in September and December 2004.

The Full Bench of the AIRC handed down its decision on 8 August 2005. The Full bench introduced a new award provision which gives an employee a right to request that his or her employer extend the period of simultaneous unpaid parental leave to eight weeks; extend the period of unpaid parental leave from 12 months to 24 months; and permit an employee to return from parental leave on a part-time basis until the child reaches school age.

A copy of the decision is available at: www.airc.gov.au/familyprovisions

Amicus curiae

Section 46PV of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) provides that the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Disability Discrimination Commissioner, the Human Rights Commissioner, the Race Discrimination Commissioner and the Sex Discrimination Commissioner, may with permission of the Federal Court or Federal Magistrates Court, seek to appear as *amicus curiae* (or friend of the Court) in the hearings of complaints that have been terminated by the President.

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

As with the Commission's intervention functions, the Commissioners attempt to enhance the educative role of their *amicus* functions by placing all submissions on the Commission's website.

During 2005–06, Commissioners were granted leave to appear as *amicus curiae* in three matters, which are summarised below.

Douglas and Others v Queensland and Others

The Aboriginal and Torres Strait Islander and Social Justice Commissioner and Acting Race Discrimination Commissioner was granted leave on 9 May 2006 to appear as *amicus curiae* in three related matters before the Federal Court of Australia. The applicant in each of the matters claims that they were discriminated against on the basis of their race contrary to the *Racial Discrimination Act 1975* (Cth) while employed on missions in Queensland from 1975 until the mid-1980s.

The matters raise similar issues to those arising in the *Baird* litigation, in which the Commission was granted leave to intervene (see above under Interventions). The matters are awaiting confirmation of their hearing dates, pending the decision of the Full Federal Court in *Baird*.

The Commissioner anticipates seeking to assist the Court in relation to the correct interpretation and application of the Racial Discrimination Act.

Forest v Queensland Health, State of Queensland

The Acting Disability Discrimination Commissioner was granted leave to appear as *amicus curiae* in this matter on 30 March 2006.

The applicant has a psychiatric disorder and claims that his dogs are assistance animals within the meaning of s 9(1) (f) of the DDA as they provide him with physical comfort and reduce his social anxiety.

The applicant claims that he was discriminated against by the respondent because his dog was not permitted to accompany him into the Cairns Hospital reception or a dental surgery operated by the respondent.

The matter is listed for hearing in the Federal Court on 11–14 September 2006 in Cairns.

AB v Registrar of Births, Deaths and Marriages

The Sex Discrimination Commissioner was granted leave to appear as *amicus curiae* in these proceedings on 2 May 2006.

The applicant claims marital status discrimination in the provision of goods and services. The applicant is a post-operative transsexual who applied to alter the record of her sex on her birth registration. The *Births, Deaths and Marriages Registration Act 1996* (Vic) provides that the Registrar cannot make the alteration to the birth registration if the applicant is married. The applicant is married. The Registrar refused the applicant's application. The proceedings raise a number of issues of interest to the Sex Discrimination Commissioner:

- Whether the process of altering the record of sex on a birth registration is the provision of a service?
- If the answer to this question is yes, the relationship between the *Births, Deaths and Marriages Registration Act 1996* (Vic) and the SDA.

The proceedings are listed for hearing in the Federal Court in Melbourne on 3 August 2006.

Amicus Curiae matters commenced before 2005–06

As at July 2005, there was one *amicus* matter which was yet to be finalised. This matter has now been finalised in the manner discussed below.

Forest v Tranter Pty Ltd t/as Kuranda Hotel & Barry Smith

On 30 November 2004, Coker FM granted the Acting Disability Discrimination Commissioner leave to appear as *amicus curiae* in this matter.

The Acting Disability Discrimination Commissioner withdrew his appearance *amicus curiae* in this matter on 24 January 2006 to seek leave to appear as *amicus curiae* in *Forest v Queensland Health, State of Queensland* (see above), which raises the same issues.

Education and Promotion

As noted above, the Commission considers the intervention and *amicus* functions contribute to the Commission's human rights education work by demonstrating how human rights principles may be applied to resolve factual and legal issues before domestic courts.

The Legal Section is also involved in other aspects of the Commission's human rights education and promotion work, particularly those projects involving a focus upon domestic and international law. Two of the Legal Section's more significant human rights education projects for 2005–06 are described below.

Federal Discrimination Law 2005

On 12 May 2005, the Commission launched its publication *Federal Discrimination Law 2005*. The publication was produced by the Legal Section and provides a comprehensive overview of the case law that has been decided in the field of federal unlawful discrimination law. In addition to detailed analysis of discrimination law jurisprudence, the publication also covers issues of practical concern for litigants and practitioners, with chapters on procedural issues, damages and remedies, and costs.

The publication significantly revised, expanded and updated the contents of the 2004 edition. It is an invaluable resource for anyone with an interest in this very challenging area of the law. The publication is accessible online via the Commission's website and can be downloaded for free. Printed copies of the publication are also available for sale. For details, see www.humanrights.gov.au/legal/fed_discrimination_law_05/index.html.

Throughout 2005–06, the Legal Section prepared and published supplements to *Federal Discrimination Law 2005* to take account of recent developments. These supplements are also available as a free download from the Commission's website.

Legal Bulletin and associated seminars

The Legal Section has also continued to publish its quarterly *Legal Bulletin*, providing an update on domestic and international human rights law. The *Legal Bulletin* is published on the Commission's website and links sent on the legal section's email list (see www.humanrights.gov.au/legal/mailling.html to subscribe).

In connection with each new edition of the *Legal Bulletin*, the Legal Section has organised a seminar on a topic of current interest in domestic or international human rights law. The seminars and speakers for 2005–06 were as follows:

10 August 2005: Indigenous Rights under Australian law

This seminar was chaired by the Commission President, the Hon. John von Doussa QC and featured two speakers: Professor Larissa Behrendt, Professor of Law and Indigenous Studies and Director of the Jumbunna Indigenous House of Learning at the University of Technology, Sydney and Jonathon Hunyor, a senior lawyer with the Commission.

7 November 2005: International Protection of Rights of People with Disability

This seminar focused on the draft UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities. The seminar featured two speakers: Mr Graeme Innes, then Deputy Disability Rights Commissioner and Rosemary Kayess, an adjunct lecturer in law at the University of NSW and Chairperson of the NSW Disability Discrimination Legal Centre.

7 April 2006: Developments in Citizenship Law: A Human Rights Perspective

The seminar focused on recent developments in High Court jurisprudence, as well as the potential human rights implications of the Australian Citizenship Bill. The seminar was chaired by the Human Rights Commissioner Mr Graeme Innes AM and featured two speakers: Professor Kim Rubenstein, Director of the Centre for International and Public Law, ANU College of Law, ANU and Mr Bruce Levett of the New South Wales Bar.

14 June 2006: Equal Pay for Equal Work? The High Court's Decision in State of NSW v Amery

This seminar examined the High Court's decision in *State of NSW v Amery*. The seminar was chaired by the Human Rights Commissioner Mr Graeme Innes. The speakers were Dr Christopher Birch SC Barrister & Counsel for the respondents in *State of NSW v Amery* and Simeon Beckett Barrister, President of Australian Lawyers for Human Rights.

Review of administrative decisions made by the Commission

The Commission is at times a party to proceedings in courts or tribunals involving judicial review or merits review of the Commission's administrative decisions. Commission staff are also sometimes party to such proceedings.

Judicial review

Judicial review of Commission decisions generally involves an application to the Federal Court or the Federal Magistrates Court pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (Cth). In accordance with established legal principle, the Commission (as decision maker) usually submits to the jurisdiction of the Court in these matters, leaving the substantive parties (usually the complainant and respondent to the complaint that was before the Commission) to present the matter to the Court. In a very small number of matters, the Commission even limits its role to assisting the Court rather than adopting a contentious or adversarial approach.

The Commission was a party to four applications under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) in 2005–06.

Merits review

Some decisions of the Commission or Commission staff (acting under instruments of delegation) are subject to merits review by the Administrative Appeals Tribunal. These include decisions made under the *Freedom of Information Act 1982* (Cth), and decisions on applications for temporary exemptions under section 44 of the SDA and section 55 of the DDA.

During the reporting period, there was one active merits review matter – a review of the decision of the Commission under the *Freedom of Information Act 1982* (Cth). Those proceedings are currently adjourned while the applicant conducts an appeal to the Federal Court in relation to a procedural decision of the Administrative Appeals Tribunal.

International technical assistance work

From 12–16 December 2005, a senior lawyer from the Commission and a colleague from the International Programs Unit of the Commission conducted a series of meetings in Beijing concerning China's response to the recommendations recently made by the UN Committee on Economic, Social and Cultural Rights. This activity formed part of the China-Australia Human Rights Technical Cooperation Program ('HRTCP') and was the second activity on the topic of the *International Covenant on Economic, Social and Cultural Rights* under the HRTCP. This current activity sought to identify those areas where Australian technical assistance could help to address particular areas of concern identified by the UN Committee in its concluding observations.

The meetings held in Beijing were with senior representatives from a range of Chinese agencies that have direct responsibility for the legal and policy changes that the UN Committee recommended in its report. The purpose of the meetings was to establish whether and how the relevant agency intends to respond to the Committee's recommendations, what difficulties the agency expects to encounter in this reform process, and what cooperation activities with Australia might be of assistance in overcoming these difficulties.