

Statement from the President

This Annual Report is evidence of the vital role that the Commissioners and staff at the Human Rights and Equal Opportunity Commission (the Commission) play in promoting and protecting human rights. In the last year, the Commission has not shied away from the big issues.



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

We have made important contributions to debates about counter-terrorism laws, welfare to work and industrial relations reforms, violence in Indigenous communities and Australia's treatment of asylum seekers. We have launched a national inquiry into discrimination against same-sex couples. Through our legal section we have intervened or appeared as *amicus curiae* in a number of cases with important human rights implications. The Commission has also prepared numerous submissions to parliamentary committees on the human rights impact of proposed legislation. We continue to work with Australia's Arab and Muslim communities to develop strategies to counter vilification and violence.

Our complaints handling section has once again exceeded its performance indicators finalising 93 percent of complaints within 12 months and conciliating outcomes in 39 percent of them. Importantly, 93 percent of parties were satisfied with the service they received.

One of the most challenging human rights issues facing Australia, and indeed all democratic nations, is how to reconcile the need to protect Australians from the threat of terrorism with the need to preserve the human rights principles that lie at the heart of our democracy.

Following the London bombings, the Australian Government introduced the Anti-Terrorism Bill (No.2) 2005. This Bill included provisions for preventative detention orders, control orders and special police powers to stop, search and question people.

The Commission's main concern about the new laws was the absence of judicial oversight and mechanisms for review of the extraordinary new powers the Bill gave to the executive. In public submissions and forums we supported the need to introduce broad-ranging powers to guard against the threat of terrorism. But we also said that these

extraordinary new powers must be accompanied by effective means for review to check that decisions which could potentially violate fundamental rights were necessary and proportionate in the particular circumstances.

As a result of the public discussion and media attention about the new counter-terrorism laws, the Commonwealth Government announced amendments allowing greater judicial involvement and merits review of the most invasive measures. Finding the balance between human rights and national security is an ongoing challenge. There are still aspects of Australia's counter-terrorism laws – such as the proscription regime for terrorist organisations – which we believe would benefit from judicial oversight and merit review mechanisms.

Ultimately, the litmus test for the human rights compatibility of counter-terrorism legislation is proportionality. This was the test adopted this year by the Government-appointed Sheller Inquiry, who accepted the Commission's submission that counter-terrorism laws must be proportionate to the aim of achieving national security.

Focusing public attention on the importance of human rights principles in the policy and law making process is an important part of the Commission's educative function. A crucial element of this education process is the work undertaken by our three Commissioners.

This year the *Striking the Balance* consultations conducted by our Sex Discrimination Commissioner Pru Goward and the Sex Discrimination Unit have fuelled a national debate about how to balance work and family life and divisions of labour between men and women at home and in the workplace. Through her role as Commissioner responsible for Age Discrimination, Pru Goward has also enlivened public debate about challenges facing older workers and promoted public awareness of the *Age Discrimination Act 2004*.

In January 2006 I had the pleasure of welcoming our new Human Rights Commissioner and Acting Disability Discrimination Commissioner Mr Graeme Innes AM. Commissioner Innes, who was previously the Deputy Disability Discrimination Commissioner, steps into the formidable shoes of Dr Sev Ozdowski OAM whose term expired in December 2005.

One of Dr Ozdowski's enduring legacies is his work on mental health. The 2005 *Not for Service Report: Experiences of injustice and despair in mental health care in Australia* produced by the Mental Health Council of Australia and the Brain and Mind Research Institute in collaboration with the Commission shone the spotlight on the crisis in mental health care in Australia. In 2006 the Council of Australian Governments (COAG) agreed to tackle the problems highlighted by the report, announcing additional funding for mental health care of \$1.8 billion over five years.

In April 2006, Commissioner Innes and I launched a national inquiry into discrimination faced by same-sex couples in relation to financial and work related

benefits. The right to non-discrimination and the right to equality before the law are two of the most fundamental principles of human rights law. Yet there is a raft of laws on Australia's books that clearly deny certain rights to gay and lesbian couples.

The inquiry is conducting an audit of all Australian laws that exclude gay and lesbian couples from financial and work-related benefits that heterosexual couples take for granted. Our goal is to identify those discriminatory laws, explain the impact of those laws on real people and recommend changes so the discrimination disappears.

Of course, discriminatory attitudes are often deeply embedded and hard to shake. Overcoming prejudice requires education, leadership and, most importantly, political will. The threat of terrorism has been accompanied by a rising tide of suspicion and fear directed at Australia's Arab and Muslim communities.

If we trace the history of Australia's treatment of migrants we find this fear is little different to the fear that led us to intern members of Australia's German community in World War I. It is a fear born of the unknown and sustained by wild and inaccurate stereotypes that slander the name of Australia's Muslim community. It is a fear that manifests itself in vilification, violence, alienation and anger. It is a fear that discriminates and divides and that we must all work together to dispel.

In this context, I must pay tribute to the work of the Acting Race Discrimination Commissioner Tom Calma and our Race Discrimination Unit, who have sought to work with Arab and Muslim communities and New South Wales and Victoria police to develop lawful strategies to respond to the vilification and vitriol that is all too often directed at Muslim Australians.

Commissioner Calma has also been a pivotal force in addressing and promoting the human rights of Indigenous Australians in his role as the Aboriginal and Torres Strait Islander Social Justice Commissioner. Under his stewardship the Social Justice Unit has produced a ten step plan to address violence in Indigenous communities and paved the way for a national campaign to improve Indigenous health.

Earlier this year I accompanied Commissioner Calma on a visit to Indigenous communities in the Top End. This visit was a powerful reminder of what we already know – that the entrenched deprivation of Indigenous communities is a matter of national shame. It also reinforced the need for governments to take note of Commissioner Calma's 2005 *Social Justice Report* which sets out clear guidelines to make sure the Shared Responsibility Agreement process does not breach human rights.

I am a strong believer in the importance of human rights education and the need to make sure that the Commission's work captures a nationwide audience. One way we try to connect with people is through our Commission website. The website contains a wealth of practical information – popular items include our

guidelines for employees and employers about their rights and obligations under federal discrimination laws. This year the website has received 8,371,613 page views or approximately 70 million hits: twice as many as it did last year.

In 2006 another way we have made ourselves accessible is by holding our Commission meetings in different locations across Australia. This initiative not only allows the Commission to keep regular contact with the state and territory equal opportunity commissions who play host to these meetings but gives us the opportunity to hold forums in different states and territories. These forums are proving to be an excellent way for NGOs and the Commission to explore issues of common concern.

While the Commission's focus is on human rights at home in Australia, our international work is also deserving of recognition. In the last year we have witnessed important reforms in the United Nations. The Human Rights Commission has been abolished and the new Human Rights Council held its first meeting in June.

One of the important questions the reforms raised is what role should National Human Rights Institutions (NHRIs) play in the new Human Rights Council. Through our membership of a working Group established by the Asia Pacific Forum Working Group to consider the role of NHRIs in the new Human Rights Council, the Commission has encouraged the new Council to recognise the vital role that NHRIs play in the human rights field and to make sure that the procedural rules of the Council enable NHRIs to make meaningful contributions to the work of the Council.

The Commission also continues to manage the China-Australia Human Rights Technical Cooperation Program (HRTC), established under the annual Human Rights Dialogue initiated in 1997 between the two governments. Through this program, the Commission works with a number of key Chinese organisations on practical activities aimed at strengthening the protection and promotion of human rights in China. The HRTC program includes activities in both China and Australia and focuses on three main themes: reform of the legal system, rights of women and children and ethnic minority rights.

In the age of global terrorism some argue that the time of human rights has come and gone. In my view, this idea that we must choose between national security and human rights is a dangerous and inaccurate distortion: the only outcome of such an argument is to justify the unjustifiable. Of course, States must take actions to protect their citizens against terrorism as far as possible. Yet these actions must not disproportionately curtail the human rights of those who may be subject to the laws.

Human rights principles are a practical set of minimum standards which can be used by lawmakers to achieve national security without disproportionately limiting fundamental rights and liberties – the very rights that are essential to the maintenance of the rule of law, and ultimately, the sense of security we value so much.

Now, more than ever, we must uphold and cherish the basic principles of mutual respect, tolerance, equality, proportionality and due process. After all, it is by promoting and valuing human rights principles in our everyday life that we lay the foundations for a unified and peaceful future.

Finally, I would like to thank all the staff of the Commission. They have worked tirelessly behind the scenes to ensure the success of the Commission's activities.

A handwritten signature in black ink, reading "John von Doussa". The signature is written in a cursive style with a large, looping initial "J".

John von Doussa QC