

Chapter 9

Race Discrimination

9.1 STATEMENT FROM THE COMMISSIONER

This report covers my fourth year as the Acting Race Discrimination Commissioner at HREOC, a position I occupy in addition to my position as the Aboriginal and Torres Strait Islander Social Justice Commissioner. During the period on which I report, Australia elected a new government, ending almost 12 years of a coalition government.

In the second half of 2007, up to the caretaker period before the Federal Election, I put on the public record my discontent with the way in which the then government was treating a number of minority groups in Australia.

It was indeed a low point, but one that was indicative of an increasingly accepted and politically licensed practice in which the race card was played to garner political support from segments of the community. It was such a practice that led to Arabic speaking people being subjected to the proposal for a different questioning regime when seeking permanent visas.

Then there was the Dr Haneef affair, which revealed a government's haste to capitalise on people's fears and insecurities. Not long after this episode, the government proposed that the intake number of African refugees would be cut under our humanitarian program on the basis that they apparently found it too difficult to 'integrate'. Finally, the nadir was reached when the government moved to suspend the Racial Discrimination Act in order to pave the way for a raft of legislation referred to as the 'Northern Territory Intervention'.

In Australia, we have long accepted that people should not be treated differently on the basis of their race or ethnic origin. Our African communities experience immeasurable hardship when official credence is given to the already existing prejudices against them. The singling out of Muslim Australians in the same way also provoked an outcry from those of us who see this as damaging to our entire community. Indigenous people have also borne the brunt of stereotyping and racist attitudes.



Mr Tom Calma
Race Discrimination Commissioner

As we move forward with a new government, more than ever we have an obligation to ensure that government policy provides a strong and sustainable social framework to fight racism, xenophobia and discrimination, as well as promote social inclusion and community relationships.

In August last year I released *Multiculturalism: A Position Paper by the Acting Race Discrimination Commissioner*, identifying the human rights principles that provide the cornerstone for such a program. As a policy of community harmony, multiculturalism has worked well over the past two decades, replacing the failed policy of assimilation. It was and remains our most successful anti-racism strategy. It needs ongoing support and reinvigoration so that it can meet the new challenges that a culturally diverse society continues to present.

In the coming years we must also address the new challenges of racism by ensuring that our laws provide strong remedies to redress discrimination and promote equality.

To assist in this process I have released the first of a number of background papers entitled *An International Comparison of Racial Discrimination Legislation*. This paper compares the *Racial Discrimination Act 1975* to similar legislation in the United Kingdom, Canada, the United States and the European Union.

Since its enactment in 1975, thousands of individuals and organisations have used the Racial Discrimination Act to address racism, either by making complaints of discrimination, or by negotiating policy changes based on the broader principles of racial equality. The legislation has also made possible important developments in the area of Indigenous land rights, culminating in the recognition of native title in 1993.

While these are important achievements, there is still a long way to go before people from all backgrounds are able to participate fully in the life of our nation. Presently, there is no capacity in the Racial Discrimination Act to promote equality in key institutions such as government agencies or large corporations. In this regard, Australia is trailing behind the UK and Canada which have enshrined a duty to promote equality in government agencies as a statutory requirement. In addition, the evidentiary requirements under the Racial Discrimination Act are proving so onerous that it is difficult for complainants to succeed in an action for unlawful discrimination.

During the year, HREOC has also made significant progress implementing its Community Partnerships for Human Rights Program, which we are pursuing as our National Action Plan-funded initiative. The purpose of this program is to work with Australia's Muslim communities to assist with their connectedness and participation in the social, cultural, economic and political life of the nation, and to help decrease the marginalisation and discrimination Muslim communities, particularly young Muslims, face.

HREOC's approach to this initiative is to be as inclusive and as broad in our areas of action as possible. While we are working to achieve human rights objectives for our fellow Australians of Muslim faith, I hope that our work will benefit other groups who may be able to use the resources or research that are developed. It is also a small contribution to building a wider Australian society that respects human rights and says 'no' to discrimination on the grounds of race or religion.

What has become clear, as our Community Partnerships for Human Rights Program rolls out, is the urgent need for greater and more co-ordinated action by governments in the area of improving community relations. Respect and understanding across cultural, religious and racial divides is essential for Australia's long-term economic

well being and social stability. Any investment in this area will be money and actions well spent. It is with continuing disappointment I note, instead, that HREOC must continue its works in an environment of ever-diminishing financial resources and staff reductions at the very time that modest budget supplementation could offer such significant benefits to the entire nation.

These are just some of the issues that need to be reviewed in order to ensure that the national legal and policy framework designed to fight racism in Australia continues to be responsive to the changing makeup and attitudes of Australian society in the coming years.

9.2 RESEARCH AND POLICY

9.2.1 Multiculturalism position paper

On 17 August 2007, HREOC launched its position paper, *Multiculturalism: A Position Paper by the Acting Race Discrimination Commissioner*. The paper was released at a time when the government was wavering in its commitment to the policy of multiculturalism.

The paper identifies the human rights principles that lie behind the policy of multiculturalism, including the right to racial equality and the right of minority groups to enjoy their culture and religion. It argues that these principles should guide government's social policies and programs.

At the launch of the position paper, HREOC hosted a panel discussion on multiculturalism with the then Shadow Minister of Multicultural Affairs, Urban Development and Consumer Affairs, Laurie Ferguson; Deputy State Director of the DIAC, Mr Jose Alvarez, who spoke on behalf of the Assistant Minister for Immigration and Citizenship, the Honourable Theresa Gambaro MP; Australian Greens Senator for New South Wales, Senator Kerry Nettle; and Professor Duncan Ivison, School of Philosophical and Historical Inquiry, University of Sydney. The speakers brought a range of perspectives to the debate on multiculturalism.

9.2.2 An International Comparison of the Racial Discrimination Act 1975: Background Paper No.1

On 8 April 2008, the Commissioner launched a background paper comparing the Racial Discrimination Act to similar legislation in the UK, Canada, USA and the European Union.

Such a comparison assists in considering whether the Racial Discrimination Act continues to be an effective tool in preventing racial discrimination and promoting racial equality in contemporary Australian society.

The report provides a brief outline of the enactments or codes that regulate race discrimination and vilification in the four jurisdictions. It also identifies in detail the differences and similarities in key areas, such as: standing to commence proceedings; the grounds on which an action for discrimination can be taken; the burden and onus of proving discrimination; provisions on racial vilification; and legislative mechanisms for promoting equality.

9.2.3 Australian Citizenship Test

In 2007-08, HREOC made a number of contributions to the public debate on citizenship. Building on previous submissions made prior to the introduction of the test (see *HREOC Annual Report 2006-07*), HREOC's most recent submission in May 2008 was directed to the operation of the Australian Citizenship Test since its implementation in October 2007. The submission expressed concern at the negative impact that the test was having on refugees and people from non English speaking backgrounds. On 28 May 2008, HREOC attended and contributed to the public consultation being conducted by a government appointed review committee.

9.2.4 Australian Research Council (ARC) Project: Developing Regionally Appropriate Anti-Racism Strategies

HREOC, along with a number of state and territory Equal Opportunity Commissions, is a partner in an ARC Linkage project with the University of New South Wales, which conducts attitudinal studies to understand the types of racist attitudes that exist in various regions of Australia. The Anti-Racism Research Project is headed by Professor Kevin Dunn. HREOC intends utilising the project findings to develop a best practice resource for local governments seeking to develop anti-racism strategies.

9.2.5 National Race Relations Roundtable 2007

A National Race Relations Roundtable meeting was held on 29-30 October 2007 at the Araluen Centre in Alice Springs. The meeting was attended by representatives of state and territory Equal Opportunity Commissions and the New Zealand Human Rights Commission.

The purpose of the annual National Race Relations Roundtable meeting is to provide Commissioners with an opportunity to share strategic dialogue on race relations matters and develop collaborative human rights leadership. Roundtable meetings are held annually and chaired by the Race Discrimination Commissioner.

The October 2007 meeting focused on the status and delivery of the Northern Territory Intervention. Ms Olga Havnen, Coordinator of the Combined Aboriginal Organisation, provided an Aboriginal perspective on the intervention. Mr Jonathan Nicholl, Head of Task Force, reported on the work of the National Indigenous Violence and Child Abuse Intelligence Task Force. Commissioners met with the Board Members of the Tangentyere Council and visited local town camps during their visit to Alice Springs.

In addition, the meeting discussed issues of common concern for many of the Commissioners attending, including racism in the media and racism in employment.

9.3 EDUCATION AND PROMOTION

9.3.1 International Metropolis Conference 2007

The International Metropolis Conference took place in Melbourne on 8-11 October 2007. The Metropolis Conference is an international gathering of community organisations, government agencies and academics to discuss research, policy and practice on migration, diversity, economic growth and social cohesion.

Representatives of the Commissioner contributed to the planning and delivery of two workshops:

- *Efficacy in Racism Policy: A Comparative Analysis of Practice*, which compared mechanisms for addressing racism in Australia, Canada and the USA.
- *Communicating Hope and Fear: Media, Cultural Discourses and the Alien Presence*, which explored a range of media issues in culturally diverse communities, during which HREOC presented on the issue of human rights and cyber-racism.

9.3.2 The Second International Conference on Racism in the New World Order

HREOC and the Gold Coast University co-hosted the Second International Conference on Racism in the New World Order from 6-7 December 2007 on the Gold Coast. Representatives of the Commissioner gave a plenary session presentation about HREOC's complaint process and presented a workshop on the future of multiculturalism.

9.3.3 National Conference on Racism in a Global Context – Murdoch University

On 10 November 2007, HREOC co-hosted the National Conference on Racism in a Global Context with Murdoch University WA. The conference brought together international academics and researchers, local and national government representatives, NGOs, Indigenous leaders, and groups and individuals from the community. The conference explored the experiences and effects of racism with particular focus on Indigenous and African communities issues. A representative of the Commissioner presented a keynote speech entitled *The Global Context for Racism in Australia*, which outlined how the international discourse on terrorism is fuelling and intensifying a racial divide in Australia.

9.4 INTERNATIONAL ACTIVITIES

9.4.1 Australia's Report to the Committee on the Elimination of Racial Discrimination

In April 2008, HREOC provided comments and additional material to the Department of Foreign Affairs and Trade in relation to the draft of Australia's Report to the Committee on the Elimination of Racial Discrimination. The Department will send its updated draft report to HREOC for further consideration in the near future. Australia's report must be provided to the Committee by 30 October 2008.

9.4.2 Gay McDougall: The Fight Against Racism and for the Rights of Minorities in the 21st Century

On 8 April 2008, HREOC and Amnesty International co-hosted the Sydney Centre for International Law and the Sydney Democracy Forum, a seminar by Dr Gay McDougall, the UN Independent Expert on Minority Rights and Chairperson of the Coordinating Committee of UN Human Rights Special Procedures. Dr McDougall's presentation was entitled *The Fight Against Racism and for the Rights of Minorities in the 21st Century*.



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Dr Gay McDougall spoke and answered questions at an evening seminar at HREOC in April 2008

9.5 COMMUNITY PARTNERSHIPS FOR HUMAN RIGHTS PROGRAM

In 2005, the COAG examined the emerging issues around Australia’s social cohesion, harmony and security. This led to the Ministerial Council on Immigration and Multicultural Affairs developing a national action plan, building on recommendations and principles agreed between state and territory based Muslim communities and other faith and community leaders.

Building on HREOC’s substantial body of work in this area (such as *Ismağ*, Unlocking Doors and Living Spirit projects, referred to in earlier Annual Reports), HREOC received funding from the Australian Government’s four-year initiative to implement the National Action Plan (NAP) to Build on Social Cohesion, Harmony and Security.

As a result, HREOC established a new Education and Partnerships Section as part of the Race Discrimination Unit in early 2007. The role of the section is to implement HREOC’s NAP activity in line with HREOC’s functions through the Community Partnerships for Human Rights Program.

9.5.1 Program projects

HREOC, while broadly interpreting the NAP and its role under this program, has a particular focus on two areas. These are working with young Muslim Australians, and addressing issues related to law enforcement and the administration of justice.

In its work with young Muslim Australians, HREOC is developing education strategies and resources associated with civic responsibility, discrimination, human rights and responsibilities and education aimed at young people. It is also exploring the arts and culture, as a means of positive engagement, and conducting research relevant to issues relating to Muslim youth. HREOC is also working with law enforcement agencies across Australia to build their engagement with Muslim communities and to help address discrimination and vilification targeted at Muslim Australians.

HREOC is currently working on a wide range of innovative projects to implement these initiatives and help build community capacity and social inclusion. The *Community Partnerships for Human Rights Program*, working with and for Muslim communities, is working in a total of ten action areas, some of which have multiple sub-projects, including comprehensive evaluation processes and a community engagement strategy. A summary of those projects that had commenced by the end of June 2008 are given below. Up-to-date information about the projects can be read at www.humanrights.gov.au/partnerships/projects.html

- *Adult English as a Second Language (ESL) Teachers' Human Rights Curriculum Resources for New Arrivals:* In partnership with Adult Multicultural Education Victoria, this project will develop a new set of education resources to be used by ESL teachers who teach English to non-English speakers. The resources are about human rights and discrimination of all types and how Australian laws protect people. The materials also address where and how a complaint can be made if discrimination or vilification occurs.
- *Community Language Schools Human Rights Curriculum Resource and Campaign Project:* This project is another education-oriented project in which HREOC is partnering with Australia's peak national body for community language schools, the Community Languages Australia. The project is developing classroom material about discrimination, human rights and cross-cultural respect.
- *Community Policing Partnership Project: To Build Social Cohesion and Harmony with Australian Muslim Communities:* This program is building partnerships between police and Muslim communities across Australia. It focuses on working with young Muslim Australians and law enforcement agencies to help address discrimination and vilification. It is anticipated that, through joint projects, local networks will be established and a stronger sense of social participation, respect and inclusion within communities will be established. In April 2008, the Race Discrimination Commissioner announced the first 19 community/police partnerships across Australia.
- *Freedom of Religion and Belief in the 21st Century Project:* For this project, HREOC is partnering with the Australian Multicultural Foundation in association with RMIT University and Monash University to prepare a report. This team will also consult with a range of organisations including the Australian Partnership of Religious Organisations. The objective of the project is to renew the 1998 HREOC *Report on Freedom of Religion and Belief*.

- *Arts Initiative with Muslim Australians:* The purpose of this initiative is to explore the arts and community cultural development as a safe and constructive environment for self-expression and inclusion. Delivered as a national partnership with the Australia Council for the Arts over three years, HREOC is working with various organisations across Australia in different settings and in different media.
- *African Australians: Their Human Rights and Social Inclusion:* As one of the most visible and recently arrived settlement waves in Australia, Africans face a range of direct and indirect discrimination. This project is the first national assessment of the issues faced by African communities from a human rights perspective. The project is being co-funded by partner agencies and has a particular focus on vulnerable sub-groups such as Muslim Africans, women and youth.
- *Intersections between the Law, Religion and Human Rights: A Roundtable between Judicial Officers, Academics, Religious and Community Leaders:* This project brings together community representatives, members of the judiciary and their professional bodies to examine religious and cultural accommodation in the Australian justice system. It has a particular focus on issues faced by Muslim Australians.

HREOC is also using the opportunities provided by the *Community Partnerships for Human Rights* initiative to refocus on the critical issues relating to religious harmony. The human rights impacts of religious belief, cultural practice and spirituality in a globalised world threatened by fundamentalism, need to be closely examined. HREOC is contributing to policy development and to international reports on these issues.



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Filming for an ESL Education resource, for which HREOC partnered with Adult Multicultural Education Victoria

9.6 LEGISLATIVE DEVELOPMENT

The Race Discrimination Unit also contributes to legislative development, including by making written and oral submission to parliamentary and other Inquiries. A list of these submissions can be found in Chapter 3 of this report, Monitoring Human Rights.

9.7 SPEECHES

A selection of public addresses made by the Race Discrimination Commissioner during 2007-08 is listed below. Speeches can also be accessed on the HREOC website at www.humanrights.gov.au/about/media/speeches/race/index.html

Multiculturalism, a Measure of Justice, Federation of Ethnic Communities' Council of Australia National Congress, Hobart, 30 July 2007.

Keynote speech, delivered by Conrad Gershevitch, Director of the Education and Partnerships Section, on behalf of the Commissioner, Shaping the Future: Third Regional Multicultural Conference, Mount Gambier, SA, 21 September 2007.

Addressing Racism in Australia, delivered by Margaret Donaldson, Director of the Race Discrimination Unit, on behalf of the Commissioner, International Metropolis Conference, Melbourne, 11 October 2007.

Unlocking Doors Project, International Counter-terrorism conference, Melbourne, 16 October 2007.

Racism in a Global Context, delivered by Margaret Donaldson, Director of the Race Discrimination Unit, on behalf of the Commissioner, National Conference on Racism, Murdoch University, Perth, 9 November 2007.

Reflection on the 1967 Referendum and the Commissioner's Multiculturalism Position Paper, Ethnic Communities Council of Victoria Annual General Meeting, Melbourne, 27 November 2007.

Diversity in Health Conference, delivered by Graeme Innes, Disability Discrimination Commissioner on behalf of the Commissioner, Multi-Lingual Mental Health Brochures and Fact Sheets launch, Sydney, 10 March 2008.

Indigenous Rights and the Debate Over a Charter of Rights in Australia, Human Rights Law Resource Centre Annual Human Rights Dinner, Melbourne, 4 April 2008.

Keynote speech, Social Inclusion for New and Emerging Communities Conference, Adelaide, 26 June 2008.